STUDY MATERIAL

EXECUTIVE PROGRAMME

TAX LAWS & PRACTICE

GROUP 2
PAPER 7

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EXECUTIVE PROGRAMME

TAX LAWS & PRACTICE

This paper consists of two parts, namely Direct tax (Income Tax) and Indirect tax (GST and Customs). The tax that is levied directly on the income or wealth of a person is called Direct tax. Indirect taxes are the taxes levied on goods and services on the basis of production, sale or purchase of goods or provision of services in the form of import and export duty, excise, customs, entertainment tax, electricity duty, tax on passenger fares and freight etc. and now Goods & Services Tax levies on supply of goods and/or services.

Goods and Services Tax (GST) is "a path-breaking legislation for New India". This revolutionary taxation system is not merely a tax reform but a milestone in realizing the dreams of India dream of building 'Ek Bharat – Sreshtha Bharat'. GST is the finest example of co-operative federalism in the history of India and is a pro-people reform. Hence, consumer is at the centre of this reform.

The GST Council, a federal body comprising the Union Finance Minister as its Chairman and Finance Ministers of all States as members, has played its role to perfection. Tax administration of Centre and States are working in close harmony. One of the biggest triumphs associated with GST is the spirit and display of cooperative federalism, with almost all decisions on GST being taken with consensus among members of the GST Council. The Council approved the amendments in the GST Act and GST Rules, along with issuance of relevant notifications, to ease of doing business as well as ease of living.

To improve compliance further, tax laws have to be simple, stable and robust; tax rates should remain moderate; and multiplicity of tax exemptions and deductions should be gradually phased out in order to widen and deepen the tax base. Tax administration needs to be further toned up by appropriate use of technology on the one hand, and improving professional competence and responsiveness of the employees on the other. Major tax reform initiative has already been taken by the Government of India from time to time to simplify, rationalize and consolidate the laws and procedure, relating to direct taxes.

In this context, the role of the Income tax Department is most critical as direct taxes are progressive in so far as taxes collected from the rich and affluent can be used for the betterment of the underprivileged and development of society at large. Direct tax administration, thus, plays the role of catalyst in social and economic engineering.

The purpose of this study material is to impart conceptual understanding to the students of the provisions of the direct tax laws (Income Tax) and indirect tax laws (GST and Customs) covered in the Syllabus. This study material has been published to aid the students in preparing for the Tax Laws & Practice paper of the CS Executive Programme. It is part of the educational kit and takes the students step by step through each phase of preparation stressing on key concepts, pointers and procedures. Company Secretaryship, being a professional course, the examination standards are set very high, with emphasis on knowledge of concepts, their applications, procedures under the tax laws and case laws therein, for which sole reliance on the contents of this study material may not be enough.

The subject of Tax Laws and Practice is inherently complicated and is subjected to constant refinement through new primary legislations, rules and regulations made thereunder, annual Budget and court decisions on specific legal issues. It therefore becomes necessary for every student to constantly update himself with the various changes made as well as judicial pronouncements rendered from time to time by referring to the institute's

journal 'Chartered Secretary' and 'Student Company Secretary e-bulletin' as well as other law/professional journals on tax laws.

Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws applicable for relevant examination.

The legislative changes made upto November 30, 2022 have been incorporated in the study material. The students are advised to refer to the updations at the Regulator's website, Supplement relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications. Specifically, students are advised to read **"Student Company Secretary" e-Journal** which covers regulatory and other relevant developments relating to the subject. In the event of any doubt, students may contact the Directorate of Academics at **academics@icsi.edu**.

The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable.

Although due care has been taken in publishing this study material, the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

Important to Note :

Direct Tax Part I: This study material (Direct Tax Part I) is based on Finance Act, 2022 applicable for Assessment Year 2023-24. Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws applicable for the relevant examination. The students may also update themselves of the latest developments, notifications and circulars on Direct Tax from *incometaxindia.gov.in.*

Indirect Tax Part II: The legislative changes made up to November 30, 2022, have been incorporated in this study material. Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws applicable for the relevant examination. The students may update themselves of the latest developments, notifications and circulars on Indirect Tax from *cbic.gov.in.*

EXECUTIVE PROGRAMME

Group 2

Paper 7

TAX LAWS & PRACTICE

SYLLABUS

OBJECTIVES:

- **To provide working knowledge on practical application of Direct Tax Laws.**
- **To provide conceptual knowledge of Indirect Tax Laws with practical application of Indirect Tax Laws.**

Level of Knowledge: Working Knowledge

Part I : Direct Tax (60 Marks)

1. **Direct Tax at a Glance**: An Introduction ● Characteristics of Taxes ● Objectives of Taxation ● Direct vs. Indirect Tax ● Background of Taxation system of India ● Tax Structure & Administration
2. **Basic Concept of Income Tax**: An overview of Finance Bill ● Definitions ● Capital and Revenue Receipts and Expenditure ● Residential Status ● Basis of Charge ● Scope of Total Income
3. **Incomes which do not form part of Total Income**
4. **Income under the Head Salary**
5. **Income under the Head House Property**
6. **Profits and Gains from Business and Profession**
7. **Capital Gains**
8. **Income from Other Sources**
9. **Clubbing provisions and Set Off and / or Carry Forward of Losses**: Income of other persons included in Assessee's Total Income ● Aggregation of Income ● Set off and / or Carry forward of losses
10. **Deductions:** Deductions in respect of certain payments ● Specific deductions in respect of certain income ● Deductions in respect of donations for expenditure under CSR activities
11. **Computation of Total Income and Tax Liability of various entities:** Individual ● Hindu Undivided Family 'HUF' ● Alternate Minimum Tax (AMT) ● Partnership Firm / LLP ● Co-operative Societies ● Association of Person 'AOP' and Body of Individual 'BOI' ● Political Parties ● Electoral Trusts ● Exempt organization – Trust Registration u/s 12A/ 12AA/12AB ● Tax Rates
12. **Classification and Tax Incidence on Companies**: Computation of taxable income and tax liability of Company including Foreign Company ● Taxation on Dividend Income ● Minimum Alternate Tax 'MAT' ● Other Special Provisions Relating to Companies ● Equalization Levy ● Carbon Credit

13. **Procedural Compliance:** Tax Deduction at Source 'TDS' & Tax Collection at Source 'TCS' ● Advance Tax & Self Assessment Tax 'SAT' ● Filing of Returns ● Fee and interest for default in furnishing return of Income

Part II: Indirect Tax (GST & Customs) (40 Marks)

14. **Concept of Indirect Taxes at a Glance**: Background ● Constitutional powers of taxation ● Indirect taxes in India – An overview ● Pre-GST tax structure and deficiencies ● Administration of Indirect Taxation in India

15. **Basics of Goods and Services Tax 'GST':** Basic Concepts and Overview of GST ● GST Model – CGST / IGST / SGST / UTGST ● GST Compensation to States

16. **Levy and Collection of GST:** Taxable Event ● Concept of Supply including Composite and Mixed Supply ● Levy and Collection of CGST and IGST ● Exemptions under GST ● Composition Scheme ● Forward Charge Mechanism ● Reverse Charge Mechanism

17. **Time, Value & Place of Supply:** Concepts of Time of Supply ● Value of Supply ● Place of Supply

18. **Input Tax Credit & Computation of GST Liability:** Overview ● Eligibility and Conditions for taking Input Tax Credit ● Transitional Provisions in ITC ● Ineligible Credits ● Input Service Distributor ● Order of Utilisation of Input Tax Credit

19. **Procedural Compliance under GST:** Registration ● Tax Invoices ● Debit & Credit Notes ● Accounts and Records ● Electronic Way Bill● Returns ● Payment of Tax ● Refund Procedures ● GST Practitioners ● Assessment ● Demand and Recovery ● QRMP Scheme

20. **Overview of Customs Act:** Overview of Customs Law ● Levy and collection of Customs Duties ● Types of Custom Duties ● Classification and valuation of import and export goods ● Exemption ● Baggage Officers of Customs ● Administration of Customs Law ● Import and Export Procedures ● Transportation ● Warehousing ● Duty Drawback ● Demand and Recovery ● Confiscation of Goods and Conveyances.

ARRANGEMENT OF STUDY LESSONS
TAX LAWS & PRACTICE
GROUP 2 • PAPER 7

PART I : DIRECT TAX

PART II : INDIRECT TAX (GST & CUSTOMS)

LESSON WISE SUMMARY
TAX LAWS & PRACTICE

PART I: DIRECT TAX (60 MARKS)

Lesson 1 [Direct Tax at a Glance]

In the present time, taxation is not just a means of transferring money to the government to spend it for meeting the public expenditures or raise revenue to the government, but taxes have become beside that, as a tool for redistribution of income and wealth in the society. It also serves as a means of economic development and plays a significant role in stabilization of income. Taxation assist in finding solutions to the economic problems which are faced by a country, like unemployment, inflation etc. Countries practice sovereignty authority upon its citizens, through levying of taxes. The coverage of the lesson would include:

- Taxes – An Introduction
- Characteristics of Taxes
- Objectives of Taxation
- *Direct* vs. *Indirect Taxation*
- Background of Taxation System of India
- Tax Structure & Administration

Lesson 2 [Basic Concepts of Income Tax]

Taxes are broadly divided into two parts i.e. Direct Taxes and Indirect Taxes. The tax that is levied directly on the income or wealth of a person is called Direct Tax. Income tax is one of the forms of direct taxes. The levy of income tax in India is governed by the Income Tax Act, 1961 and Income Tax Rules, 1962. It is charged on the total income and to derive the total income one must know certain concepts of the Income Tax Act, such as Residential Status, Assessment Year, Previous Year, Assessee etc.

Income tax is leviable on the taxable income and to determine taxable income, ascertainment of the residential status of the person and scope of total income are required at an initial level. There are two types of taxpayers from residential point of view - Resident in India and Non-resident in India. Sourced based income in India is taxable in India whether the person is resident or non-resident in India. Conversely, foreign sourced income of a person is taxable in India only if such person is resident in India. Therefore, the determination of the residential status of a person is very significant in order to find out his / her tax liability. The coverage of the lesson would include:

- An Overview of Finance Bill
- Some basic concepts like Assessment Year, Previous Year, Income, Person, Assessee,
- Capital and Revenue receipts & expenditure
- How to determine the Residential status of a person
- Basis of Charge
- Scope of Total Income

Lesson 3 [Incomes which do not form Part of Total Income]

Tax is calculated on the income earned in the previous year. For providing relief to the tax payers from payment of tax, income tax law contains certain provisions relating to exemption and deduction. Exempted income means the income which is not charged to tax. Section 10 of the Income tax Act, 1961 provides for incomes which are exempted from levy of income tax. For example - Scholarship etc. Further, deduction means the amount which needs to be included in the income first and then they are allowed for deduction in full or in part on fulfillment of certain conditions. For example, deduction for payment of donations under section 80G. This lesson deals with incomes which do not form part of total income.

Lesson 4 [Income under the Head Salary]

The taxability of income of a person depends on the chargeability of income under the Income Tax Act 1961. The total income of an assessee (subject to statutory exemptions) is chargeable under Section 4(1). The scope of the total income, which varies with the residential status, is defined in Section 5 of the Income tax Act, 1961. Section 14 enumerates the heads of income under which the income of an assessee will fall. The rules for computing income and the permissible deductions under different heads of income are dealt in different sections of the Act. The coverage of the lesson includes the computation of Income under the heads Salary.

Lesson 5 [Income under the Head House Property]

House Property income is the second head under which Income is Chargeable to Tax. Rental income from a property being building or land appurtenant thereto of which the taxpayer is owner is charged to tax under the head “Income from house property”. This lesson deals which the various provisions with respect to computation of Income under the head House Property.

Lesson 6 [Profits and Gains from Business / Profession]

Profit and gains of Business or profession (also known as PGBP) is third head in computation of income apart from four incomes, namely, income from salary, income from house property , income from capital gains and income from other sources.

Income earned through profession or business is charged under the head ‘profits and gains of business or profession. The income chargeable to tax is the difference between the credits received on running the business and expenses incurred.

Business: Business means the purchase and sale or manufacture of a commodity with a view to make profit. It includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce and manufacture. Business Income is the profit that is earned from the business. It is nothing but Total Revenue/ Total turnover minus Total Expense. The profit from the business is the taxable income/business income.

Profession: Profession means the activities for earning livelihood which require intellectual skill or manual skill, e.g. the work of a lawyer, doctor, auditor, engineer and so on are in the nature of profession. Profession includes vocation.

Vocation: Vocation implies natural ability of a person to do some particular work e.g. singing, dancing, etc.

Profits: Excess income over expenditure.

Gains: Any incidental revenue from business. As the rules for the assessment of business, profession or vocation are the same, there is no importance of making any distinction between them for income tax purposes

This lesson deals which the various provisions with respect to computation of Income under the head Profits and Gains from Business / Profession.

Lesson 7 [Capital Gains]

This is the fourth head of Income i.e. Capital Gains. Gain arising on transfer of capital asset is charged to tax under the head "Capital Gains". Income from capital gains is classified as "Short Term Capital Gains" and "Long Term Capital Gains". In this part students can gain knowledge about the provisions relating to computation of Income under the head Capital Gains.

Lesson 8 [Income from Other Sources]

This is the residuary head of Income. Any income which is not chargeable to tax under any other heads of income and which is not to be excluded from the total income shall be chargeable to tax as residuary income under the head "Income from Other Sources". In this part students can gain knowledge about the provisions relating to computation of Income under the head Other Sources.

Lesson 9 [Clubbing provisions and Set Off and / or Carry Forward of Losses]

In addition to the general provisions which are applicable for computation of total income, there are special provisions in Sections 60 to 65 of the income-tax act which provide for inclusion of income of other persons in the total income of assessee. The special provisions contained in these sections are designed to counteract the various attempts of an individual for avoiding or reducing his liability to tax by transferring his assets or income to other person(s) while, at the same time, retaining certain powers or interest over the property or it's income. These provisions may also be termed as clubbing provisions and are covered under first part of the lesson. In the second part of this lesson provisions for set-off and carry forward of losses are discussed.

Lesson 10 [Deductions]

The aggregate of income computed under each head, after giving effect to the provisions for clubbing of income and set off of losses, is known as "Gross Total Income". Sections 80C to 80U of the Income-tax Act, lay down the provisions relating to the deductions allowable to assessees from their Gross Total Income. The coverage of the lesson would include:

- The type of deductions allowable from Gross Total Income
- The permissible deductions in respect of payments
- The permissible deductions in respect of incomes
- Deductions allowable in the case of a person with disability.
- The provision related to rebate & relief.

Lesson 11 [Computation of Total Income and Tax Liability of Various Entities]

For calculation of income, amount received is classified under 5 heads of income; it is then to be adjusted with reference to the provisions of the income tax laws in the following manner.

Particulars	Amount (Rs.)
Income under the Head:	
Income from Salaries	XXX
+ Income from House Property	XXX
+ Profits and gains of Business or Profession	XXX
+ Capital Gains	XXX
+ Income from Other Sources	XXX
Adjustment in respect of:	
+ Clubbing of income	XXX
– Set off and carry forward of losses	(XXX)
= Gross Total Income	**XXX**
– Deductions under section 80C to 80U (or Chapter VIA)	(XXX)
= Total Income	**XXX**

The coverage of the lesson would include the income tax treatment with relation to individual, Hindu Undivided Families (HUF), Firms, Associations of Persons and Co-operative Societies is being discussed. The Tax implications, rates of tax and other issues relating to the above persons have been discussed elaboratory.

Lesson 12 [Classification and Tax Incidence on Companies]

In the previous lessons we have learn the tax provisions of persons not being the company. Here, we will go through the income tax provisions of corporate entity. The coverage of the lesson would include:

- Computation of taxable income and tax liability of Company including Foreign Company
- Taxation on Dividend Income
- Minimum Alternate Tax 'MAT'
- Other Special Provisions Relating to Companies
- Equalization Levy
- Carbon Credit

Lesson 13 [Procedural Compliance]

The Income-Tax Act provides for collection and recovery of income-tax in the following ways, namely:

- Deduction of tax at source
- Advance payment of tax
- Self-assessment of tax
- Payment made after the assessment of tax.

Once the tax is deducted, it is duty to deposit the same to the credit of the Central Government under prescribed procedures stated under the Income Tax Act, 1961. In this chapter TDS related aspects of the Income tax act

have been discussed at length with special emphasis on e-TDS and other relevant issues. The coverage of the lesson would include:

- The provisions related to Tax Deducted at Source and Tax Collected at Source
- Advance Tax & Self Assessment Tax 'SAT'
- Filing of Returns
- Fee and interest for default in furnishing return of Income

PART II: INDIRECT TAX (GST & CUSTOMS) (40 MARKS)

Lesson 14 [Concept of Indirect Taxes at a Glance]

This lesson contains the Constitutional powers of taxation and an overview of indirect taxes in India along with pre GST Tax structure and its shortcomings. It also lays an overview of administration of indirect tax structure pre and post Goods & Services Tax.

Erstwhile Indirect taxes consisted of various laws at Central and State level including Value Added Tax (VAT), Excise, Service tax etc. which had some challenges that were required to be addressed like multiplicity of taxes, multiple taxable event and their cascading effects.

Goods & Services Tax (GST) brought a single tax regime which got levied on supply of goods or services or both thereby overcoming the gaps of previous Indirect Tax Laws. Various Constitutional amendments have been made to enable Centre and States to levy GST simultaneously and new articles got inserted.

Lesson 15 [Basics of Goods and Services Tax]

GST is a consumption based tax levied on the basis of the "Destination Principle." It is an inclusive tax regime covering both goods and services, to be collected on value-added at each stage of the supply chain.This lesson covers basics of GST, GSTN and GST models including CGST / IGST / SGST / UTGST and GST Compensation to States.

Basic concepts of IGST include intra-State and inter-State supply. When the location of supplier and the place of supply are within the same state, it is an intra-State Supply. Whereas, A supply of goods and/or services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States, two different union territory or in a state and union territory Further import of goods and services, supplies to SEZ units or developer, or any supply that is not an intra-State supply.

Lesson 16 [Levy and Collection of GST]

The taxable event is supply of goods / services for a consideration, during the course of business / for furtherance of business by a taxable person, and exceptions to this have been set out in the separate schedules. Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Key differences between a composite & mixed supply are that the supplies within a composite supply are naturally bundled whereas within a mixed supply are deliberately bundled and that in the composite supply, the principal supply is discernible, whereas that isn't the case in a mixed supply.

Composition scheme in GST provides an alternative method of tax payment small and medium taxpayers whose turnover is not exceeding the prescribed threshold. The tax rates under this scheme have been kept at minimal but at the same time a person opting to pay tax under composition levy scheme can neither take Input Tax Credit nor it can collect any tax from the recipient. It is a voluntary and optional scheme.

Reverse Charge Mechanism is the process of payment of GST by the receiver instead of the supplier. In this case, the liability of tax payment is transferred to the recipient/receiver instead of the supplier.

Lesson 17 [Time, Value & Place of Supply]

The lesson comprises of basic concepts of Time and Value of Taxable Supply. Taxable event is the point which gives rise to taxability and the point of levy is determined by Time of Supply and thus Value of supply determines value on which GST is payable. Valuation includes determining the value on which GST is payable by following the valuation rules and principles, contained in the GST law.

Place of supply is important to determine the nature of sale (inter-State, intra-State, import or export) and the State where state component of GST will accrue.

Basic concepts of Place of Taxable Supply include intra-State and inter-State supply as well as determining the place of supply under various situations.

Lesson 18 [Input Tax Credit & Computation of GST Liability]

Integrated GST, Central GST, State GST or Union Territory GST paid on inward supply of inputs, capital goods and services are called input taxes and its credit is Input Tax Credit (ITC). Under GST, a seamless flow of credit throughout the value chain is available removing the cascading effect of taxes. ITC is a provision of reducing the tax already paid on inputs, to avoid the cascading effect of taxes.

Company which distributes the Input Tax Credit to various units on the basis of their previous year turnover is called Input Service Distributor. There is no offset of ITC available between the CGST and the SGST.

Lesson 19 [Procedural Compliance under GST]

Procedural Compliances include the terms for eligibility of compulsory and voluntary registration and the persons exempt from registration and procedure thereby. The Lesson explains the concept of tax invoices, debit & Credit Note including cases where delivery Challan or Bill of Supply is needed .

The Act prescribes the accounts and records that an assessee should maintain. Electronic way Bills have been introduced under the GST law for movement of goods. Under GST, various monthly, quarterly and annual returns are filed. Payment can be made via NEFT, RTGS, net banking, debit /credit card. The law prescribes two types of audit under GST - General and Special. Refund Procedures are also contained in the given Lesson.

Lesson 20 [Overview of Customs Act]

With the implementation of GST law, the Basic Customs duty is still levied on imports with other additional duties being subsumed under GST. The basic and overview of Customs Act which consists of provisions for levy and collection of customs duties and its types, classification and valuation of import and export goods along with exemptions, administration of Customs Law including Officers under the Law. Valuation Rules are explained. The Lesson also covers of import and export Procedures, Exemption, Baggage, provisions for transportation, Warehousing and Duty Drawback. The Lesson also explains the conditions for Confiscation of Goods and Conveyances.

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OVERVIEW OF CUSTOMS ACT

Direct Tax at a Glance

Lesson 1

KEY CONCEPTS

■ Taxes ■ Direct Tax ■ Indirect Tax

Learning Objectives

To understand:

- Genesis & Meaning of Taxes
- Key Definitions of Tax
- Rationale to levy Tax
- Types of Taxes
- Characteristics of Taxes
- Objectives of Taxation
- *Direct* vs. *Indirect Tax*
- Background of Indian Taxation System and its structure
- Tax Administration

Lesson Outline

- Taxes – An Introduction
- Characteristics of Taxes
- Objectives of Taxation
- *Direct* vs. *Indirect Taxation*
- Background of Taxation System of India
- Tax Structure
- Tax Administration
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Income Tax Act, 1961 (the Act)
- Income Tax Rules, 1962 (the Rules)

TAXES - AN INTRODUCTION

Genesis of Tax

The word tax is based on the latin word taxo which means to estimate. Taxation has existed since the birth of early civilization. In ancient times taxes were either material or money like goods or services in the primitive society. The subjects used to pay a share of their income to the head of a tribe or to the King who in return provided them with the administration security from foreign aggression and other civic amenities.

In the medieval centuries feudalism was founded, so the origin of modern tax system was also founded. Feudal market dues, tolls for protection and use of road, bridges, ferries, land rent, and other payment in goods and services were gradually transferred into money payment with the rise of money economy, Kings liked to receive money and the people preferred to pay money instead of goods and services. Step by step the old feudal revenue system changed into taxation.

Thereafter, with the development of economic sciences and with the passage of time, the functions of modern state appeared and taxation gradually became a tool of usage with more than one goal and became important source of revenue. During 19th and 20th centuries, there has been both qualitative and quantitative change in the public expenditures. Taxation has passed through the stages with passage of time, and tax's functions and objectives also have changed from the ancient communities to medieval societies and modern societies also, so the tax system has evolved with the evolution of the functions of the modern state.

Meaning of Tax

A tax is a financial charge or other levy imposed upon a taxpayer (an individual or legal entity), collected by a state or the functional equivalent of the same, such that failure to pay, or evasion of or resistance to collection of tax, is punishable by law. The principle reason for taxation was to pay for government expenditures.

> A tax is a compulsory financial charge or some other type of levy imposed on a taxpayer (an individual or legal entity) by a governmental organization in order to fund government spending and various public expenditures (regional, local, or national), and tax compliance refers to policy actions and individual behaviour aimed at ensuring that taxpayers are paying the right amount of tax at the right time and securing the correct tax allowances and tax reliefs.

Key Definitions

There is no precise and accurate definition for the term tax and the concept of tax has been defined differently by different economists. Some definitions are as follows.

"A tax is compulsory contribution from the person to the government to defray the expense incurred in the common interest of all without reference to special benefits conferred". **- Prof Seligman**

"A tax as a share of the income of citizens which the state appropriate in order to procure for itself the means necessary for the production of general public services". **- Deviti. De Marco**

"A tax is a compulsory charge imposed by a public authority irrespective of the exact amount of service rendered to the tax payer in return and not imposed as a penalty for legal offence". **- Hugh Dalton**

"A tax as a pecuniary burden imposed for support of the government, the enforced proportional contribution of persons and property of the government and for all public needs". - **Jom Bouvier**

From the above definitions we may conclude that a tax is compulsory contribution, levied by government from owner of income without direct benefit but for public benefit, and taxes should be arranged by the law.

Rationale to levy Tax

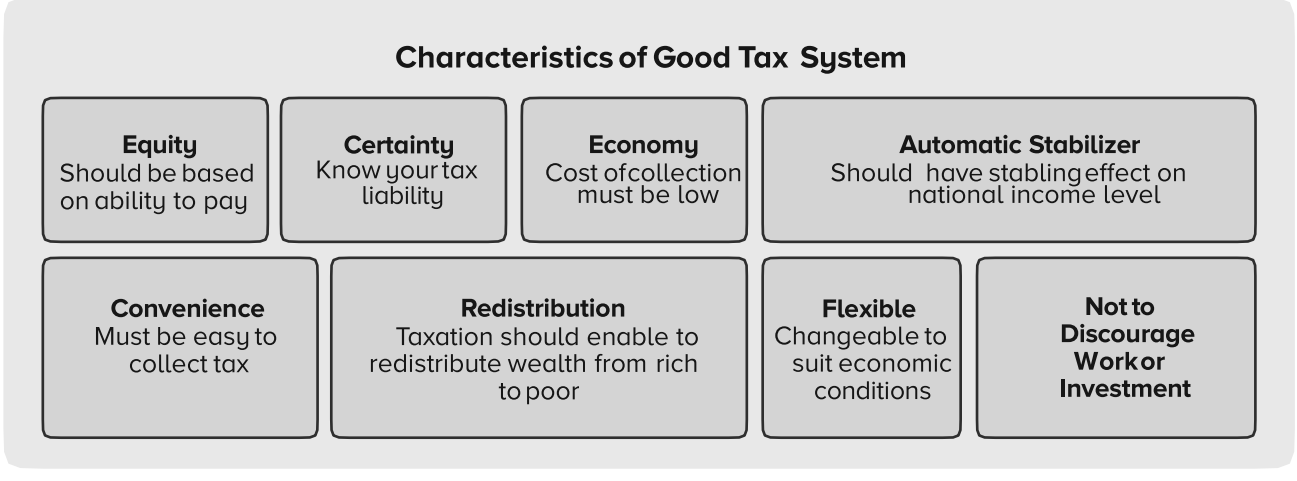
The taxes collected have been used by the government to carry out many functions. Some of these include:

- Expenditures on war,
- The enforcement of law and public order,
- Protection of property,
- Economic infrastructure (such as roads, legal tender, enforcement of contracts, etc.),
- Public works,
- Social Engineering,
- The operation of Government itself, and
- To fund welfare and public services such as education systems, health care systems, pensions for the elderly, unemployment benefits, and public transportation, energy, water and waste management systems, common public utilities, etc.

Modern social security systems are intended to support the poor, the disabled, or the retired person by taxes on those who are still working. In addition, taxes are applied to fund foreign aid and military ventures, to inflate the macroeconomic performance of the economy or to modify patterns of consumption or employment within an economy, by making some classes of transaction more or less attractive. Thus, there is no doubt that most government expenditures must be paid through the taxation system and it is reasonable to see this as the principle function of taxation. Yet there have always been a variety of subsidiary objectives of taxation.

In the present time, taxation is not just a means of transferring money to the government to spend it for meeting the public expenditures or raise revenue to the government, but taxes have become beside that, a tool for reduced demand in the private sector, redistribution of income and wealth in the societies in the countries. It is also a means for economic development and for playing very important role in the case of stabilization of income, protection of domestic industries from foreign ones. Taxation helps to find out solutions for some economic problems that face the state, like unemployment, inflation, and depression. Countries practice sovereignt authority upon citizens, through levy of Taxes.

CHARACTERISTICS OF TAXES



1. **Tax is Compulsory and not Voluntary** – A tax is imposed by law. So tax is compulsory payment to the Governments from its citizens. Tax is duty of every citizen to bear his share for supporting the government. The tax is compulsory payment, refusal or objection for paying tax due leads to punishment or is an offence of the Court of law.
2. **Tax is Contribution** – Contribution means in order to help or provide something. Tax is contribution from members of community to the Government. A tax is the duty of every citizen to bear their due share for support to government to help it to face its expenditures. Some wants are common to everybody in the society like defence and security, so these wants cannot be satisfied by individuals. These social wants are satisfied by Governments, hence it is the duty of the people to support government for these social wants.
3. **Tax is for Public Benefit** – Tax is levied for the common welfare of society without regard to benefit to any special individual. Government proceeds are spent to extend common benefits to all the people.
4. **Tax is paid out of Income of the tax payer** – Income means money received, especially on regular basis, for work or through investment. Tax is paid out of income as long as the income becomes realized, here the tax is imposed. Income owner has profit from any business, so he should pay his share to support the Government.
5. **Government has the power to levy Tax** – Governments are practicing sovereign authority upon the citizens through levying of taxes. Only government can collect tax from the people.
6. **Tax is not the cost of the benefit** – Tax is not the cost of benefit conferred by the government on the public. Benefit and taxpayer are independent of each other, and payment of taxation is of course designed for conferring of benefits on general public.
7. **Tax is for the economic growth and public welfare** – Major objective of the government is to maximize economic growth and social welfare. Developmental activities of the nations generally involve two operations, the raising of revenue and the spending of revenue, so the government spends taxes for economic benefit, for entire community and for aggregate welfare of the society.

OBJECTIVES OF TAXATION

The primary purpose of taxation is to raise revenue to meet huge public expenditure. Most governmental activities must be financed by taxation. But it is not the only goal. In other words, taxation policy has some non-revenue objectives. In today's scenarios, taxation besides being the main resource for supporting government has became a tool for economic growth, social welfare; attract foreigner investment, economic stability, and income distribution. The Objectives of taxation in brief are as under:-

- **Source of Revenue to Government:** Taxes are imposed so as to produce the necessary amount of revenue to meet the requirement of the government, as the public expenditure is increasing in scope and size day by day. Therefore, the main objective of taxes is to raise revenue to meet the government expenditures adequately.
- **Redistribution of Income and Wealth:** Income differs from one person to another in the society. Inequity in income leads to many evils, and the government aims to reduce inequalities between members of the society, to secure social justice. Tax is a means of ensuring the redistribution of income and wealth in order to reduce poverty and promote social welfare. For achieving these goals, government adopts the following:
    i. Imposition of high rate tax upon luxury commodities.
    ii. Applying progressive tax system when levying taxes from taxpayers.
    iii. Imposition of tax exemption to basic goods.

- **Social welfare:** Social welfare is the basic need of the society in the modern age. The government functions have become very important to the society, because the society needs saving, protection, education, health, and so on. All these functions are necessary to make social welfare, so the government receives revenue from tax, and expends it for those functions. Therefore revenue from taxes is fuel to the government for social welfare.
- **Safety of society from bad and injurious customs:** Fighting the bad customs in the society is the primary task of the government, so tax is a tool for fighting some of those customs. From this angle tax imposition of very high percentage on the goods like tobacco and alcohol is an effort to reduce these habits.
- **Economic Significance of Taxes:** Taxes are used from economic point of view, so taxation helps to encourage some economic activities, and as a tool to solve some economics problems. Tax is also a means for directing of scarce economic activities. Taxation helps to accelerate economic growth, and taxation plays very important role in case of economic stability.
- **Economic growth:** Taxes are considered as a tool for economic growth and it helps to accelerate growth of economic development. Economic development has placed considerable emphasis on objectives of taxation policy. Economic development is the main objective in all the countries of the world. Economic development depends on mobilization of resources and efficient use of such resources between different sectors of the economy activities. Tax policy must be designed so as to mobilize the internal resources and use these resources in productive manner.
- **Enforcing Government Policy:** Government policy can easily be enforced by adoption of suitable tax policy. The Government can encourage investment, saving, consumption, export, protection of home industry, employment, production, protection of society from harmful customs, and economic stability through suitable tax policy.
- **Economic Stability:** Maintaining economic stability is one of the tax objectives. Economic stability is a very important factor for the sustained economic growth. Government can effectively use taxes in the case of inflation and depression. These may be increased in inflationary situations. Increase in the rates of existing taxes and the imposition of new taxes would check consumption, decrease the level of effective demand and therefore help in bringing up stability in prices. Heavy taxation transfer purchasing power from the hand of people to the government which if used for productive purpose will increase the level of economic activity and employment.

In the case of depression taxes play an important role. Purchasing power in the hands of people is reduced and they are able to spend less and the demand for commodities and services is reduced. All these lead to a shrinkage of business activity and employment. In this case government should increase the purchasing power in the hands of public through reducing the burden of taxation on the people and impose tax upon saving so that people may be encouraged to spend more and thus help to create more demand for goods and more business activity and employment.

DIRECT VS. INDIRECT TAX

Taxes are usually classified into two categories. These are direct tax and indirect tax. A direct tax is “one which is demanded from the very persons who, it is intended or desired, should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another.”

Direct Taxes: Taxes which are directly levied on Income of the person and its burden cannot be shifted. For example - Income Tax.

Indirect Taxes: Indirect taxes are imposed on price of goods or services. Person paying the indirect tax can shift the incidence to another person. For example - GST or Customs duty.

Differences between Direct Tax and Indirect Tax

Point of Difference	*Direct Tax*	*Indirect Tax*
Meaning	Direct tax is a tax wherein the levy of tax is made on a person and the responsibility of paying such tax is fixed on that person.	In this the levy of tax is made on one person and the responsibility of paying the tax to the Government is fixed on some other person.
Levy	Direct tax is levied on person.	Indirect tax is levied on goods and services.
Transfer of Tax Burden	The burden of direct tax cannot be transferred to other person.	The burden of indirect tax can be transferred to the end users.
Effect	The purpose of direct tax is to redistribute the wealth of a nation.	Indirect tax increases the price of goods or services.
Example	Income Tax.	Goods and Services Tax.
Penalty	It is levied on the Assessee.	It is levied on supplier of Goods & Services.

Merits of Direct Tax

1. **Equity**: Direct taxes have equity of sacrifice, depend upon the volume of income. They are based on the progressive principle, so rates of tax increase as the level of income of a person rises.
2. **Elasticity and productivity**: Direct taxes have elasticity because when the government faces some emergency, like earthquake, floods and famine, the government can collect money for facing those problems through the mode of Direct tax.
3. **Certainty**: Direct tax has certainty on both sides 'tax-payer' and 'government'. The tax-payers are aware of the quantity of tax. They have to pay and rate, time of payment, manner of payment, and punishment from the side of government is also certain about the total amount they are getting.
4. **Reduce inequality**: Direct taxes follow progressive principles so it is taxing the rich people with higher level of taxation and the poor people with a lower level of taxation.
5. **Good instrument in the case of inflation**: Tax policy as fiscal instrument plays important role in the case of inflation, so government can absorb the excess money by raising in the rate of existing taxes or imposition of new taxes.
6. **Simplicity**: The rules, procedures, regulations of income tax are very clear and simple.

Demerits of Direct Taxes

1. **Evasion:** Direct tax is lump sum therefore tax payers may try evasion.
2. **Uneconomically:** Expenses of collection are higher in the case of direct taxes, because they require widel - spread staff for collection.
3. **Little incentive to work and save:** In Direct taxes, rates are of progressive nature. A person with higher

earning is taxed more, in turn he is left little with amount. So the tax payer feels disincentive to work hard and save money after reaching a certain level of income.

4. **Not suitable for a poor country:** Direct taxes are not enough to meet its expenditure.
5. **Arbitrary**: Due to absence of logical or scientific principle to determine the degree of progression in the taxation, the direct taxes are arbitrary.

Merits of Indirect Taxes

1. **High revenue production:** Nature of indirect taxes is imposition on the commodities and services. Here indirect taxes cover a large number of essential goods and luxurious goods which are consumed by the mass both rich and poor people, these help in collecting large revenue.
2. **No evasion:** Nature of indirect tax is that, it is included in the price of commodity, so tax evasion or tax avoidance is difficult.
3. **Convenient:** Indirect taxes are small amount and indirect taxes are hidden in the price of goods and services, hence the burden of these taxes is not felt very much by the tax-payers, and not lump sum like direct taxes.
4. **Economy:** Indirect taxes are economical in collection and the administrative costs of collection are very low. Also the procedure of collection of these taxes is very simple.
5. **Wide coverage:** Indirect taxes cover almost all commodities like essential commodities, luxuries, and harmful ones.
6. **Elasticity:** Since a large number of commodities and services are covered by indirect taxation there is great scope for modifying of taxes, goods and tax rate, much depends on nature of goods and on their demands.

Demerits of Indirect Taxes

1. **Regressive in effect:** Essential commodities are used by all members of community. When taxing these commodities the burden would be equal, and no distinction is made between the rich and poor people.
2. **Uncertainty in collection:** Discourage savings and Increase inflation. Indirect taxes are payable when people spend their income or when people buy goods and services, so tax authorities cannot accurately estimate the total yield from different indirect taxes.
3. **Discourage savings** - **Increase inflation:** Indirect taxes are included in the price of commodity, so people have to spend more money on essential commodities, when levied indirectly. That means the customers cannot save some of their money.
4. **Increase inflation:** Indirect taxes increase the cost of input and output, increase in production cost, push the price of goods. These reflect an increase in the wages of the workers.

BACKGROUND OF TAXATION SYSTEM OF INDIA

Taxation in India during Ancient Times

It is a matter of general belief that taxes on income and wealth are of recent origin but there is enough evidence to show that taxes on income in some form or the other were levied even in primitive and ancient communities. The origin of the word “Tax” is from “Taxation” which means an estimate. Nearly 2000 years ago, there went out a decree from Ceaser Augustus that all the world should be taxed. In Greece, Germany and Roman Empires, taxes were also levied sometime on the basis of turnover and sometimes on occupations. For many centuries, revenue from taxes went to the Monarch. In Northern England, taxes were levied on land and on moveable property such as the Saladin title in 1188. Later on, these were supplemented by introduction of poll taxes, and indirect taxes known as “Ancient Customs” which were duties on wool, leather and hides. These levies and

taxes in various forms and on various commodities and professions were imposed to meet the needs of the Governments to meet their military and civil expenditure and not only to ensure safety to the subjects but also to meet the common needs of the citizens like maintenance of roads, administration of justice and such other functions of the State.

In India, the system of direct taxation as it is known today, have been in force in one form or another even from ancient times. There are references both in Manu Smriti and Arthasastra to a variety of tax measures. Manu, the ancient sage and law-giver stated that the king could levy taxes, according to Sastras. The wise sage advised that taxes should be related to the income and expenditure of the subject. He, however, cautioned the king against excessive taxation and stated that both extremes should be avoided namely either complete absence of taxes or exorbitant taxation. According to him, the king should arrange the collection of taxes in such a manner that the subjects do not feel the pinch of paying taxes.

He laid down that traders and artisans should pay 1/5th of their profits in silver and gold, while the agriculturists were to pay 1/6th, 1/8th and 1/10th of their produce depending upon their circumstances.

The detailed analysis given by Manu Smriti and Arthasastra on the subject clearly shows the existence of a well- planned taxation system, even in ancient times. Taxes were paid in the shape of gold-coins, cattle, grains, raw- materials and also by rendering personal service. Most of the taxes of Ancient India were highly productive. The admixture of direct taxes with indirect taxes secured elasticity in the tax system, although more emphasis was laid on direct tax. The tax-structure was a broad based one and covered most people within its fold. The taxes were varied and the large variety of taxes reflected the life of a large and composite population.

Income Tax in Modern India

Income Tax Act, 1860	***Income Tax Act, 1886***	***Income Tax Act, 1918***	***Income Tax Act, 1922***
Consequent upon the financial difficulties created by the events of 1857, Income Tax was introduced in India for the first time by the British in the year 1860. The Act of 1860 was passed only for five years and therefore it lapsed in 1865. It was replaced in 1867 by a licence tax on professions and trades and the latter was converted into a certificate tax in the following year. It was latter abolished in 1873. Licence tax traders remained in operation till 1886 when it was merged in the Income tax Act of that year.	The Act of 1886 levied a tax on the income of residents as well as non residents in India. The Act defined agricultural income and exempted it from tax liability in view of the already existing land revenue a kind of direct taxes. The Act of 1886 exempted life insurance premiums paid by assessee policies of his own life. Another important provision of this Act were that the Hindu undivided family was treated as a distinct taxable entity.	The Act of 1918 brought under change also receipts of casual or non recurring nature pertaining to business or professions. Although income tax in India has been a charge on net income since inception, it was in the Act of 1918 that specific provisions were inserted for the first time pertaining to business deductions for the purpose of computing net income. The Act of 1918 remained in force for a short period and was replaced by new Act (Act XI of 1922) in view of the reforms introduced by the Govt. of India Act, 1919.	The organizational history of the income tax department dates back to the year 1922. “One of the important aspects of the 1922 Act was that, it laid down the basis, the mechanism of administering the tax and the rates at which the tax was to be levied would be laid down in annual finance acts. This is the procedure brought in much needed in adjusting the tax rates in accordance with the annual budgetary requirements and in securing a degree of elasticity for the tax system. Before 1922 the tax rate were determined by the Income Tax Act itself and to revise the rates, the Act itself had to be amended. The Income Tax Act, 1922

			gave for first time a specific nomenclature to various income tax authorities and laid the foundation of a proper system of administration as per provisions of Income Tax Act 1922 thus, it is the Income Tax Act, 1961, which is currently operative in India.

Income Tax Act, 1961

The present law of income tax in India is governed by the Income Tax Act, 1961 which is amended from time to time by the Annual finance Act and other legislations pertaining to direct tax. The act which came into force on April 1, 1962, replaced the Indian Income Tax Act, 1922, which had remained in operation for around 40 years. Furthermore, a set of rules known as Income Tax Rules, 1962 have been framed for implementing the various provisions of the Income Tax Act, 1961.

TAX STRUCTURE

Constitution of India

The roots of every law in India lies in the Constitution, therefore understanding the provisions of Constitution is foremost to have clear understanding of any law. Let us first understand what it talks about tax:

- Article 265: no tax shall be levied or collected except by the Authority of Law.
- Article 246: distributes legislative powers including taxation, between the parliament of India and the State Legislature.
- Schedule VII- enumerates powers under three lists
  - Union List: Powers of Central Government
  - Legislative List: Powers of State Government
  - Concurrent List: Both Central and State Government have powers, in case of conflict; law made by Union Government prevails.

Some of the major taxes under respective lists are:

Central Government	• Customs including export duties • Excise on Tobacco and other goods manufactured in India except alcoholic liquors for human consumption, opium, narcotic drugs • Corporation Tax • Taxes on inter-state trade of goods other than newspapers • Taxes on inter-state consignment of goods • Any other matter not included in List II or III

State Government	• Taxes on agricultural income • Excise duty on alcoholic liquors, opium and narcotics • Octroi or entry Tax • Tax on intra state trade of goods other than newspapers • Tax on advertisements other than that in newspapers • Tax on goods and passengers carried by road or inland waterways • Tax on professionals, trades, callings and employment

TAX ADMINISTRATION

The Central Board of Revenue or department of Revenue is the apex body charged with the administration of taxes. It is a part of Ministry of finance which came into existence as a result of the Central Board of Revenue Act, 1924.

Initially the Board was in charge of both direct and indirect taxes. However, when the administration of taxes became too unwieldy for one Board to handle, the Board was split up into two, namely the Central Board of direct Taxes (CBDT) and Central Board of Indirect Tax and Customs (CBIC).

Central Board of Direct Taxes

The Central Board of Direct Taxes (CBDT) provides essential inputs for policy and planning of direct taxes in India and is also responsible for administration of the direct tax laws through Income Tax department. The CBDT is a statutory authority functioning under the Central Board of Revenue Act, 1963. It is India's official Financial Action Task force (FATF) unit.

Organizational Structure

The CBDT is headed by CBDT Chairman and also comprises six members. The Chairperson holds the rank of Special Secretary to Government of India while the members rank of Additional Secretary to Government of India.

- Member (Income Tax)
- Member (Legislation and Computerization)
- Member (Revenue)
- Member (Personnel & Vigilance)
- Member (Investigation)
- Member (Audit & Judicial)

The CBDT Chairman and Members of CBDT are selected from Indian Revenue Service (IRS), a premier civil service of India, whose members constitute the top management of Income Tax department.

Income Tax Department

Income Tax department functions under the department of Revenue in Ministry of finance. It is responsible for administering following direct taxation acts passed by parliament.

- Income Tax Act, 1961

- Various Finance Acts (passed every Year in Budget Session)

Income Tax department is also responsible for enforcing double Taxation Avoidance Agreements and deals with various aspects of international taxation such as Transfer pricing. Income Tax department has powers to combat aggressive Tax avoidance by enforcing General Anti Avoidance Rules.

Central Board of Indirect Tax and Customs

Central Board of Indirect Tax and Customs (CBIC) is a part of the Department of Revenue under the Ministry of finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of Customs and GST, prevention of smuggling and administration of matters relating to Customs, GST and narcotics to the extent under CBIC's purview.

GST Council

A GST Council consisting of representatives from the Centre as well as State has been formulated under the GST Law of indirect taxes. The Council will make recommendations to the union and the States on Goods and Service Tax laws, on any other matter relating to GST.

Till date, numerous conclusive meetings of GST Council have been undertaken. Decisions have been taken regarding rates, composition scheme, exemption schemes to north-eastern and hilly areas, compensation method for loss of revenue to states etc. Rules regarding return, refund, registration, payment, invoicing and the like have been finalized by the same. However, various other issues and modalities regarding the GST are constantly being discussed at the GST Council Meetings for smoothening the law and making it easy to implement for society at large.

LESSON ROUND-UP

- **Taxes:** The word tax is based on the latin word *taxo* which means to estimate. To tax means to impose a financial charge or other levy upon a taxpayer, an individual or legal entity, by a state or the functional equivalent of a state such that failure to pay is punishable by law.
- **Characteristics of Taxes:** Tax is compulsory, Tax is contribution, Tax is for public benefit, no direct benefit, Tax is paid out of income of the tax payer, Government has the power to levy tax, Tax is not the cost of the benefit, Tax is for the economic growth and public welfare.
- **Objectives of Taxation:** Revenue, Social objectives, Economic significance of taxes, economic growth, Enforcing Government policy, Economic Stability.
- *Direct* vs. *Indirect Tax*
- Merits and Demerits of Direct Taxes
- Merits and Demerits of Indirect Taxes
- Background and Taxation System of India
- Tax Structure in India
- Tax Administration

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Which among the following is a Progressive Tax?
   a) Customs Duty
   b) Development Surcharge
   c) Sales Tax
   d) Income Tax
2. For which of the following type of tax, union government imposes it but the state governments collect it?
   a) GST
   b) Income Tax
   c) Wealth Tax
   d) Stamp Duty
3. In which of the following system of taxation, the tax rate decreases as the taxable amount increases?
   a) Progressive Taxation
   b) Regressive Taxation
   c) Degressive Taxation
   d) Proportional Taxation
4. CBDT full form:
   a) Central Board of Digital Taxes
   b) Common Board of direct Taxes
   c) Central Board of direct Taxes
   d) Common Board of digital Taxes
5. Merits of Direct Taxes:
   a) equity
   b) elasticity and productivity
   c) Certainty
   d) All of the above
6. CBDT comprises of how many members?
   a) One
   b) Two
   c) four
   d) Six

7. The CBDT is a statutory authority functioning under the _
   a) Central Board of Revenue Act, 1961
   b) Central Board of Revenue Act, 1963
   c) Central Board of Revenue Act, 1965
   d) Central Board of Revenue Act, 1962
8. Income Tax was levied in India for the first time in the Year _____
   a) 1857
   b) 1959
   c) 1860
   d) 1861

Answer: 1 (d), 2 (d), 3 (a), 4 (c), 5 (d), 6 (d), 7 (b), 8 (c)

Descriptive Questions

1. What is the rationale behind to levy tax in India?
2. Distinguish with example the difference between Direct and Indirect Tax.
3. Income tax is progressive tax system? Explain with reasoning.
4. What are the characteristics of Good tax system?

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann
- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wloters Kluwer

OTHER REFERENCES

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962. aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Basic Concept of Income Tax

Lesson 2

KEY CONCEPTS

■ Person ■ Assessee ■ Assessment Year ■ Previous Year ■ Average Rate of Tax ■ Maximum Marginal Rate ■ Income ■ Total Income ■ Capital Receipt ■ Revenue Receipt ■ Control and Management of Affairs ■ Place of Effective Management 'POEM'

Learning Objectives

To understand:

- An overview of Finance Bill
- Some basic concepts like Assessment Year, Previous Year, Income, Person, Assessee etc.
- Distinguish between Capital and Revenue Receipts
- Basic steps in calculation of tax liability
- Concept of Residential Status
- Importance of Residential status for tax purposes
- Basis of Charge of Income Tax
- Scope of total income

Lesson Outline

- An Overview of Finance Bill
- Important Definitions
- Person [Section 2(31)]
- Assessee [Section 2(7)]
- Assessment year [Section 2(9)]
- Previous year [Section 3]
- India [Section 2(25A)]
- Maximum Marginal Rate and Average Rate of Tax
- Income [Section 2(24)]
- Concept of Income
- Total Income [Section 2(45A)]
- Capital and Revenue Receipts
- Case Law
- Charge of Income Tax [Section 4]
- Residential Status [Section 6]
- Test of residence for Individuals
- Test of residence for HUF
- Test for residence for Firm, AOP/BOI
- Test for residence of Companies
- Place of Effective Management 'POEM'
- Scope of total Income [Section 5]
- Income received or deemed to be received in India
- Income accrue or arise in India
- Income deemed to accrue or arise in India [Section 9]
- Computation of Taxable Income and Tax Liability of an Assessee
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

Sections	*Income Tax Act, 1961*
Section 2(31)	Person
Section 2(7)	Assessee
Section 2(9)	Assessment Year
Section 3	Previous Year
Section 2(25A)	India
Section 2(10)	Average Rate of Income-tax
Section 2(29C)	Maximum Marginal Rate
Section 2(24)	Income
Section 2(45)	Total Income
Section 4	Charge of Income Tax
Section 6	Residential Status
Section 5	Scope of Total Income
Section 9	Income deemed to accrue or arise in India

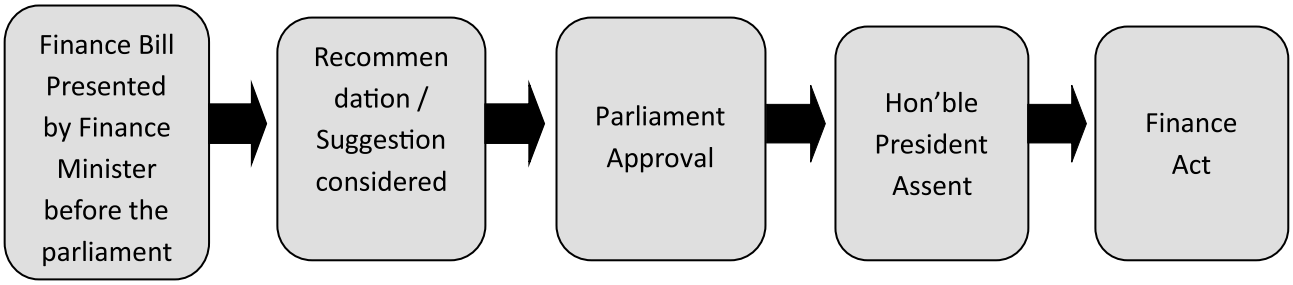
AN OVERVIEW OF FINANCE BILL

The Income tax Act contains the provisions for determination of taxable income, determination of tax liability, procedure for assessment, appeal, penalties and prosecutions. It also lays down the powers and duties of various income tax authorities. The income tax law in India consists of the following components:

Components of Income Tax Law	
Income Tax Act, 1961	This Act came into force on 1st April, 1962 and contains sections 1 to 298, wherein each section may have sub- sections, clauses or sub-clauses and may also have Provisos and Explanations.
Annual Finance Act	Every year Budget is presented before the parliament by the Finance Minister. One of the important components of the Budget is the Finance Bill. This Bill contains various amendments in the Income- Tax Act and other tax laws to prescribe the additions and deletions therein. When the Finance Bill is approved by both the houses of parliament and receives the assent of President, it becomes the Finance Act.
Income Tax Rules, 1962	For implementation of the Act and for administration of the direct taxes, Central Board of Direct Taxes (CBDT) is empowered to frame these rules from time to time. These rules are collectively called as the Income-tax Rules, 1962.

Notifications	Notifications are issued either by Central Government or by CBDT to take care the procedural aspects of the Act from time to time. These notifications are binding on everyone, i.e., on Income Tax Authorities as well as on the assessees.
Circulars/ Clarifications	Circulars and clarifications are issued by the CBDT to clarify the doubts regarding the scope and meaning of certain provisions of the law and primarily to provide guidance to the Income Tax officers. These circulars are binding on the Income Tax Authorities but not on the assessee however an assessee can take benefit of these circulars.
Judicial Decisions (Case Laws)	Decisions pronounced by Supreme Court become Judicial Precedent and are binding on all the courts, Appellate Tribunal, Income Tax Authorities and on assesses. Further, High Court decisions are binding on assesses and Income Tax Authorities which come under its jurisdiction unless it is overruled by a higher authority. The decision of a High Court can not bind other High Court.

Finance Bill as part of the Union Budget is presented usually in the month of February every year and this bill contains amendments in direct as well as indirect taxes. It is presented in the Parliament by the Union Finance Minister. The finance bill is passed by both the houses of Parliament after it is being tabled and necessary recommendation / amendments have been made in it. Once the bill has been passed by the Parliament, it goes to the Hon'ble President of India for presidency assent. After President's assent, the finance bill becomes the Finance Act.



The Finance Bill is presented contains detailing the imposition, abolition, remission, alteration or regulation of taxes proposed in the Budget. It is through the Finance Act that amendments are made to the various Acts like Income Tax Act 1961, Customs Act, 1962 etc. In short, Finance Bill can be considered as an umbrella Act. When the proposals are introduced to the Parliament it is called as a Finance Bill. Once it is passed by the Parliament and assented to by the President, Finance Bill becomes the Finance Act for that year. Finance Bills for various years are available at the website ***http ://indiabudget.nic.in/***

The effective date of applicability of provisions of the Finance Act is usually mentioned in the notification in the official gazette or in the Act itself. Generally, the amendments by the Finance Act are made applicable from the first day of the next financial year. Likewise, amendments by Finance Act, 2021 are effective from 1st April, 2021. Regarding indirect taxes, the ad valorem tax rates (tax rates based on value) are effective from the midnight of the date of presentation of the Union Budget.

IMPORTANT DEFINITIONS

All incomes are categorized under five Heads of Income under the Income tax Law. There is a charging section under each head of income which defines the scope of income chargeable under that particular head. Accordingly income earned is classified under the following heads:

a. Income under the head Salary

b. Income under the head House Property

c. Income under the head Profits and Gains from Business and Profession (PGBP)

d. Income under the head Capital Gains

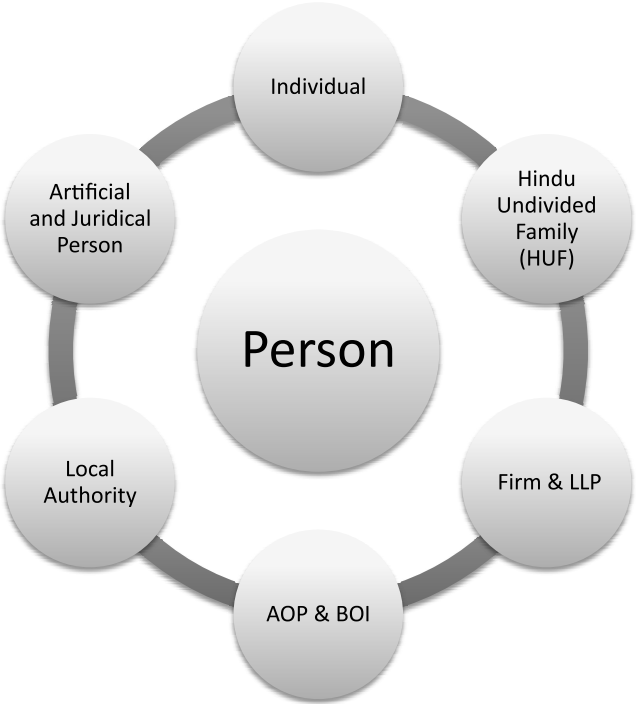
e. Income under the head Other Sources.

Every person, whose total Income of the previous year exceeds the maximum amount which is not chargeable to tax, is an assessee and such total income shall be chargeable to Income Tax at the rates prescribed in the Act for that relevant assessment year. However this Total income shall be determined on the basis of the residential status of an assessee.

Therefore, for the purposes of levy income tax, one must have an understanding of the various concepts or definitions such as previous year, assessment year, Income, total income, person, assessee, residential status etc. These as explained as under:

Person [Section 2(31)]

Income-tax is charged in respect of the total income of the previous year of every person. Hence, it is important to know the definition of the word person. As per section 2(31), Person includes:



- ***Individual***: An individual is a natural human being; i.e.; male, female, minor or a person of sound or unsound mind.
- ***HUF*** : Hindu Undivided Family ('HUF') is treated as a 'person' under section 2(31) of the Income-tax Act, 1961 and is considered as separate entity for the purpose of assessment under the Act. Under Hindu Law, an HUF is a family which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. An HUF cannot be created under a contract, it is created automatically in a Hindu Family. Jain and Sikh families even though are not governed by the Hindu Law, but they are treated as HUF under the Act. For Details about HUF: please refer weblink:

  https://www.incometaxindia.gov.in/pages/i-am/huf.aspx#:~:text=Hindu%20Undivided%20Family%20('HUF',of%20assessment%20under%20the%20Act.

- ***Company***: Section 2(17) of the Income tax Act, 1961 defines the term company to mean :
  - i. any Indian company, or
  - ii. any body corporate incorporated by or under the laws of a country outside India, i.e., a foreign company, or
  - iii. any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income Tax Act, 1922 or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or
  - iv. any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the CBDT to be a company only for such assessment year or assessment years as may be specified by the order of CBDT.
- ***Firm***: It includes a partnership firm whether registered or not and shall include a Limited Liability Partnership as defined in the Limited Liability Partnership Act, 2008.
- ***Association of Person 'AOP'*** : Two or more persons join in for a common purpose or common action to produce income, profits or gains. It may consist of individuals, HUF, companies, firms, etc. as members of AOP. The object of the formation of AOP must be to produce income. It is not enough that the persons receive the income jointly.
- ***Body of Individuals 'BOI'*:** BOI denote the status of persons who are assessable in like manner and to the same extent as the beneficiaries individually.

Only individuals can be the members

Individuals join together for common purposes

Is there any difference between AOP and BOI

Association of Person 'AOP'	***Body of Individual 'BOI'***
An association implies a voluntary getting together for a definite purpose	Body of individuals would be just a body without an intention to get-together
Members of an association of persons can be individual or non-individuals (i.e. artificial persons)	Members of body of individuals can be individuals only
The object of the formation of AOP must be to produce income.	The object of the formation of BOI is not to produce income. It is formed for the social welfare.

- ***A Local Authority*:** It means a municipal committee, district board, body of port commissioners, or other authority legally entitled to or entrusted by the Government with the control and management of a Municipal or local fund.
- ***Every artificial / juridical person not falling within any of the above categories*:** This is a residuary

clause. If the assessee does not fall in any of the first six categories, he is assessed under this clause. Generally, a statutory corporation, deity or charitable institution or an endowment for charitable or religious purposes falls under artificial juridical person.

Assessee [Section 2(7)]

"Assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes:

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or assessment of fringe benefits or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;

(b) every person who is deemed to be an assessee under any provision of this Act ;

(c) every person who is deemed to be an assessee in default under any provision of this Act.

Accordingly, assessee can be categorized as under:

Assessee	***Example***
Normal Assessee: An individual who is liable to pay taxes for the income earned during a financial year is known as a normal assessee.	Mr. A is a salaried individual who has been paying taxes on time on his income.
Representative Assessee: There may be a case in which a person is liable to pay taxes for the income or losses incurred by a third party. Such a person is known as a representative assessee.	Mr. X. He has been residing abroad for the past 7 years. However, he receives rent for two house properties he owns in India. He takes the help of a relative, Mr. Y, to file taxes in India. In this case, Mr. Y acts as a representative assessee. If the assessing officer plans to investigate the tax filing, Mr. Y will be asked to provide the necessary documents as he is the guardian of the property and represents Mr. X.
Deemed Assessee: An individual might be assigned the responsibility of paying taxes by the legal authorities and such individuals are called deemed assessees.	Deemed assessees can be: • The eldest son or a legal heir of a deceased person who has expired without writing a will. • The executor or a legal heir of the property of a deceased person who has passed on his property to the executor in writing. • The guardian of a lunatic, an idiot, or a minor. • The agent of a non-resident Indian receiving income from India.
Assessee in Default: Assessee-in-default is a person who has failed to fulfill his statutory obligations as per the income tax act such as not paying taxes to the government or not file his income tax return.	An employer is supposed to deduct taxes from the salary of his employees before disbursing the salary. He is, then, required to pay the deducted taxes to the government by the specified due date. If the employer fails to deposit the tax deducted, he will be considered as an assessee-in-default.

Assessment Year [Section 2(9)]

"Assessment year" means the period of twelve months commencing on 1st April every year. Therefore, the period beginning on 1st April of one year and ending on 31st March of the next year. Income of previous year of an assessee is taxed during the following assessment year at the rates prescribed by the relevant Finance Act.

Exception to the General Rule: In the following situation, the Income of previous year of an assessee is assessed in the previous year itself:

1. **Income of Non-Resident from Shipping:** [Section 172]- A non resident who is carrying on a shipping business and earns income at any port in India, shall be charged to tax before the ship is allowed to leave Indian Port. Hence income is deemed and computed at a presumptive rate of 7.5% of the amount of the fare/ freight charged by the non-resident ship from the Indian port.
2. **Income of persons leaving India either permanently or for long duration:** [Section 174]- When it appears to the Assessing Officer (A.O.) that an individual may leave India and has no intentions of returning back during an assessment year, then the income is charged to tax during the same Assessment year.
3. **Income of bodies formed for short duration:** [Section 174A]- When it appears to the Assessing Officer (A.O.) that any organization is formed for a particular event and is likely to be dissolved during the current assessment year.
4. **Income of person trying to transfer his assets with a view to avoid tax:** [Section 175]- When it appears to the Assessing Officer (A.O.) that during the current assessment year any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.
5. **Income of discontinued business:** [Section 176]- Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

Previous Year [Section 3]

Income tax is payable on the income which is earned during the Previous Year and it is assessed in the immediately succeeding financial year which is called an Assessment Year.

All assesses are required to follow a uniform previous year, i.e., The Financial Year (1st April to 31st March) as their Previous year. Although assessee may maintain books of accounts on calendar year basis (1st January to 31st December) but his previous year for income tax purposes shall be the Financial year.

Each financial year is both, a previous year as well as an assessment year. It is the previous year for the income earned during the financial year and assessment year for the income earned during the preceding previous year. For example financial year 2021-22 is the previous year for the income earned during the financial year 2021-22 and assessment year for the income earned during the previous year 2020-21.

In case of newly set up business or profession or a source of income newly coming into existence, the first previous year will be the period commencing from the date of setting up of business/profession or as the case may be, the date on which the source of income newly comes into existence and ending on the immediately following March, 31.

Example 1 : Y sets up a new business on May 15, 2022. What is the previous year for the assessment year 2023-24.

Answer : Previous year for the assessment year 2023-24 is the period commencing on May 15, 2022 and ending on March 31, 2023.

Example 2 : A joins an Indian company on February 17, 2022. Prior to joining this Indian company, he was not in employment nor does he have any other source of income. Determine the previous year of A for the assessment years 2022-23 and 2023-24.

Answer : Previous years for the assessment years 2022-23 and 2023-24 will be as follows.

Previous year	**Assessment year**
February 17, 2022 to March 31, 2022	2022-23
April 1, 2022 to March 31, 2023	2023-24

India [Section 2(25A)]

The term 'India' means –

(i) the territory of India as per Article 1 of the Constitution,

(ii) its territorial waters, seabed and subsoil underlying such waters,

(iii) continental shelf,

(iv) exclusive economic zone, or

(v) any other specified maritime zone and the air space above its territory and territorial waters.

Specified maritime zone means the maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

Maximum Marginal Rate and Average Rate of Tax

"Average Rate of income-tax" means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income. [Section 2(10)]

"Maximum Marginal Rate" to mean the rate of income-tax (including surcharge on the income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, AOP or BOI, as the case may be, as specified in Finance Act of the relevant year. [Section 2(29C)]

Income [Section 2(24)]

"Income is the consumption and savings opportunity gained by an entity within a specific timeframe, which is generally expressed in monetary terms. However, for households and individuals, "income is the sum of all the wages, salaries, profit, interests payments, rents, and other forms of earnings received in a given period of time."

In general terms, Income is a periodical monetary return with some sort of regularity. However, the Income Tax Act, even certain income which does not arise regularly are treated as income for tax purposes e.g. Winnings from lotteries, crossword puzzles.

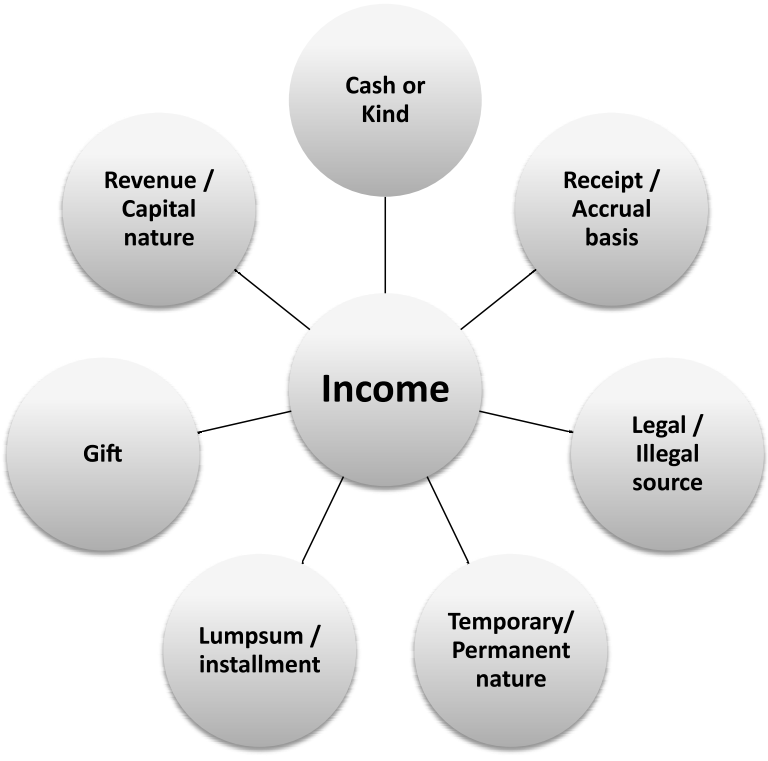
The definition of Income as given in Section 2(24) of the Act starts with the word includes therefore the list is inclusive not exhaustive. The definition enumerates certain items, including those which cannot ordinarily be considered as income but are treated statutorily as such.

As per section 2(24), the term income includes:

S. No.	***Income***	***Taxable Head***
1.	Profits and gains	PGBP
2.	Dividend	Other Sources
3.	Voluntary contributions	Generally exempt under Section 11 and 12
4.	The value of any perquisite or profit in lieu of salary	Salary
5.	Any special allowance or benefit specifically granted to the employee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit	Salary (Generally exempt)
6.	City Compensatory Allowance/ Dearness allowance	Salary
7.	Benefit or Perquisite to a Director / a person having substantial interest/ relative of director	Salary (If as per employment agreement) Else under Other Sources (If not in the terms of employment agreement)
8.	Any Benefit or perquisite to a Representative Assessee	Other Sources
9.	Deemed profits chargeable to tax under section 28 or section 41 or section 59.	PGBP
10.	Capital Gain	Capital Gains
11.	Insurance Profit	PGBP
12.	Banking income of a Co-operative Society	PGBP
13.	Winnings from Lottery	Other Sources
14.	Employees Contribution Towards Provident Fund	PGBP if not deposited by the assessee to the specified fund

S. No.	*Income*	*Taxable Head*
15.	Amount Received under Keyman Insurance Policy	PGBP
16.	**Amount received for not carrying out any activity** : Any sum referred to in Section 28(va), i.e. any sum, whether received or receivable in cash or kind, under an agreement for - (i) not carrying out any activity in relation to any business or profession (ii) not sharing any know-how, patent, copyright, trade-mark, license, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services	PGBP
17.	Any sum referred to in clause (v) or (vi) of sub-section (2) of section 56	Other Sources
18.	Gift received for an amount exceeding Rs. 50,000	Other Sources
19.	Any consideration received for issue of shares as exceeds the fair market value of the shares referred in section 56(2) (viib)	Other Sources
20.	Amount received as an advance or otherwise in the course of negotiation for transfer of a capital asset referred to in clause (ix) of section 56(2)	Other Sources
21.	Any sum of money or value of property received without consideration or for inadequate consideration as referred to in clause (x) of Section 56(2)	Other Sources
22.	Any compensation or payment in connection with termination of employment as referred under clause (xi) of Section 56(2)	Other Sources
23.	Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43.	PGBP

CONCEPT OF INCOME



- **Cash or kind**

  Income may be received in cash or kind. When the income is received in kind, its valuation will be made in accordance with the rules prescribed in the Income-tax Rules, 1962.

- **Receipt basis/ Accrual basis**

  Income arises either on receipt basis or on accrual basis. It may accrue to a taxpayer without its actual receipt. The income in some cases is deemed to accrue or arise to a person without its actual accrual or receipt. Income accrues where the right to receive arises.

- **Legal or illegal source**

  The income-tax law does not make any distinction between income accrued or arisen from a legal source and income tainted with illegality. In *CIT* v. *Piara Singh* (1980) 3 Taxman 67, the Supreme Court has held that if smuggling activity can be regarded as a business, the confiscation of currency notes by customs authorities is a loss which springs directly from the carrying on of the business and is, therefore, permissible as a deduction.

- **Temporary/Permanent**

  There is no difference between temporary and permanent income under the Act. Even temporary income is taxable under the Income Tax Act.

- **Lumpsum / Instalments**

  Income whether received in lump sum or in installment is liable to tax. For example: Arrears of salary or bonus received in lump sum is income and charged to tax as salary.

- **Gifts**

  Normally, gifts constitute a capital receipt in the hands of the recipient. However, certain gifts are brought

within the purview of income-tax, for example, receipt of property without consideration is brought to tax under section 56(2)(x). Gifts of personal nature do not constitute income subject to maximum of Rs. 50,000 received in cash. The recipient of gifts like birthday, marriage gifts, etc. is not liable to income-tax as received in kind however as per the Finance Act, 2009 gifts in kind having fair value upto Rs. 50,000 are not liable to tax but having fair value of more than Rs. 50,000 is wholly taxable.

- **Revenue or Capital receipt**

  Income-tax, as the name implies, is a tax on income and not a tax on every item of money received. Therefore, unless the receipt in question constitutes income as distinguished from capital, it cannot be charged to tax. For this purpose, income should be distinguished from capital which gives rise to income. However, some capital receipts have been specifically included in the definition of income.

Total Income [Section 2(45)]

The term "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act.

CAPITAL AND REVENUE RECEIPTS

The Act contemplates a levy of tax on income and not on capital and hence it is very essential to distinguish between capital and revenue receipts. Capital receipts cannot be taxed, unless they fall within the scope of the definition of "income" and so the distinction between capital and revenue receipts is material for tax purposes.

Certain capital receipts which have been specifically included in the definition of income are compensation for modification or termination of services, income by way of capital gains etc.

It is not possible to lay down any single test or any single criterion as decisive, final and universal in application to determine whether a particular receipt is capital or revenue in nature. Hence, the capital or revenue nature of the receipt must be determined with reference to the facts and circumstances of each case.

Criteria for determining whether a receipt is capital or revenue in nature

An amount referable to fixed capital is a capital receipt whereas a receipt referable to circulating capital would be a revenue receipt. While the latter is chargeable to tax, the former is not subject to income-tax unless otherwise expressly provided.

The Income-tax Act does not define the term "Capital receipt" & "Revenue receipt". Also, it has not laid down the criterion for differentiating the capital and revenue receipt. Yet, it has exempted certain capital receipts from taxation while certain capital receipts have been taken into ambit of capital receipts chargeable as capital gains.

Whether a particular receipt is of the nature of income or capital is explained below by the following examples. The following test can be applied to determine the nature of particular receipt.

Base	*Explanation*	*Example*
Type of capital will depend upon the nature of business	The very same thing may be fixed capital in the hands of one business but circulating capital in the hands of another.	An amount received on account of sale of trading goods or receipts in respect of circulating capital or of flowing capital is revenue receipt, for example sale of a motor car by a dealer. On the other hand a receipt on account of sale of fixed assets is a capital receipt, for example, amount received on sale of a motor car by a person who is not a car dealer.

Nature of receipt also depends upon the reference to the recipient	Whether a particular receipt is capital or revenue in nature must be determined with reference to the recipient who is sought to be taxed as the assessee. For tax purposes the capital or revenue character of the receipt must be determined on the basis of the nature of the trade in the course of which or in connection with which it arises.	• The reimbursement of capital outlay is a capital receipt even if the total amount received exceeds the cost of the outlay itself. • Compensation received for the loss of a capital asset is a receipt of a capital nature whereas the compensation received for damage to or loss of a trading asset is a revenue receipt. • A capital asset is converted into income and the price realized on its sale takes form of the periodic payments of a revenue nature. • Where a person sells his properties and the sale price is payable to him by the purchaser in the form of annuities of a fixed sum so long as the seller is alive or until he attains a particular age.
Capital and Revenue Receipts in Relation To Business Activities	Profits and gains arising from various transactions which are entered into in the ordinary course of the business of the tax payers or those which are incidental to or closely associated with his business would be revenue receipts chargeable to tax. But even in these cases the receipts may be of a capital nature in certain circumstances.	• Profits on purchase and sale of shares by a share broker on his own account • Profits arising from dealings in foreign exchange by a banker or other financial institutions • Income from letting out buildings owned by a company to its employees etc. For instance, profit on sale of shares and securities held by a bank as investments would be of a capital nature. Where profits arise from transactions which are outside the normal dealing of the assessee, although connected with his business, the taxable nature or otherwise of the profits would depend upon the fact whether or not the transaction(s) in question constitute(s) trading activity.

Illustration 1:

State whether the following are capital or revenue receipts/expenses and give your reasons:

1. ABC & Co. received Rs. 5,00,000 as compensation from XYZ & Co. for premature termination of contract of agency.
2. Sales-tax collected from the buyer of goods.
3. PQR Company Ltd. instead of receiving royalty year by year, received it in advance in lump sum.
4. An amount of Rs. 1,50,000 was spent by a company for sending its production manager abroad to study new methods of production.
5. Payment of Rs. 50,000 as compensation for cancellation of a contract for the purchase of machinery with a view to avoid an unnecessary expenditure.
6. An employee director of a company was paid Rs. 3,50,000 as a lump sum consideration for not resigning from the directorship.

Solution:

1. Receipt in substitution of a source of income is a capital receipt. Therefore, the amount received by ABC & Co. from XYZ & Co. for premature termination of an agency contract is a capital receipt though the same is taxable under Section 28(ii)(c).
2. Sales-tax is the liability of a seller to pay to the Government on the sale of goods made by him, which is allowed as deduction as revenue expenditure. If any part of Sales-tax is collected from the buyer of goods that may be treated as a revenue receipt. Thus the sales-tax collected from the buyer of goods is a revenue receipt.
3. Receipt of lump sum royalty in lieu of future royalties is a revenue receipt, as it is an income from royalty.
4. Amount spent by a company for sending its production manager abroad to study new methods of production is revenue expenditure to be allowed as a deduction. Because the new knowledge and exposure of that manager will assist the company in improving its existing methods of production etc.
5. This is a capital expenditure, as any expenditure incurred by a person to free himself from a capital liability is a capital expenditure. In the given case, the payment of Rs. 50,000 for cancelling the order for purchase of the machinery has helped the assessee to become free from an unnecessary capital liability.
6. The amount of Rs. 3,50,000 received for not resigning from the directorship is a reward received from the employer. Therefore it is a revenue receipt.

Illustration 2:

Which of the following is not a revenue receipt?

(i) Compensation received for the loss of a capital asset

(ii) Compensation received for damage to or loss of a trading asset.

(iii) Profits on purchase and sale of shares by a share broker on his own account.

(iv) Income from letting out buildings owned by a company to its employees etc

Options:

a) i only

b) i and ii both

c) i, ii, and iii

d) All of the above

Answer: (a)

CASE LAW

09.07.2010	***CIT (Appellant) v. Saurashtra Cement Ltd. (Respondent)***	***Supreme Court***

Liquidated Damages – Capital Receipt or Revenue Receipt?

Facts of the Case: The assessee, engaged in the manufacture of cement etc; entered into an agreement with M/s Walchandnagar Industries Limited, Bombay, (hereinafter referred to as "the supplier") on 1st September, 1967 for purchase of additional cement plant from them for a total consideration of Rs.1,70,00,000/-. As per

the terms of contract, the amount of consideration was to be paid by the assessee in four instalments. The agreement contained a condition with regard to the manner in which the machinery was to be delivered and the consequences of delay in delivery.

In the event of delays in deliveries except the reason of Force Majeure, the Suppliers shall pay the Purchasers an agreed amount by way of liquidated damages without proof of damages actually suffered at the rate of 0.5% of the price of the respective machinery and equipment to which the items were delivered late, for each month of delay in delivery completion. It is further agreed that the total amount of such agreed liquidated damages shall not exceed 5% of the total price of the plant and machinery." The supplier defaulted and failed to supply the plant and machinery on the scheduled time and, therefore, as per the terms of contract, the assessee received an amount of Rs.8,50,000 from the supplier by way of liquidated damages.

During the course of assessment proceedings for the relevant assessment Year, a question arose whether the said amount received by the assessee as damages was a capital or a revenue receipt.

Judgement: Supreme Court held that it was clear from the agreement that the liquidated damages were to be calculated at 0.5 per cent of the price of the respective machinery and equipment which were delivered late, for each month of delay, without proof of the actual damages suffered by the assessee on account of the delay. The delay in supply could be of the whole plant or a part thereof but the determination of damages was not based upon the calculation made in respect of loss of profit on account of supply of a particular part of the plant. It was evident that the damages to the assessee were directly and intimately linked with the procurement of a capital asset, i.e., the cement plant, which would obviously lead to delay in coming into existence of the profit-making apparatus, rather than a receipt in the course of profit-earning process. Compensation paid for the delay in procurement of capital asset amounted to sterilization of the capital asset of the assessee as supplier had failed to supply the plant within time as stipulated in the agreement. The amount received by the assessee towards compensation for sterilization of the profit-earning source and not in the ordinary course of its business, was a capital receipt in the hands of the assessee.

CHARGE OF INCOME TAX [SECTION 4]

Section 4 of the Act is the charging section. It lays down the basis on which tax is imposed. Section 4 of Income Tax Act is the most effective and operative of the various provisions in the Act since, it is because of this section alone that all other sections become enforceable. The charging section is the backbone of the Act, it lays down the provisions as to what are taxable and at what rates; income of which period is taxable and in whose hands. Accordingly, the section provides that:

(a) Income tax shall be charged at the rate or rates prescribed in the Finance Act for the relevant previous year,

(b) the charge of tax is on various persons specified u/s 2(31),

(c) the income sought to be taxed is that of the previous year and not of the of assessment year,

(d) the levy of tax on the assessee is on his total or taxable income computed in accordance with and subject to the appropriate provisions of the Income Tax Act, including provisions for the levy of additional Income-tax.

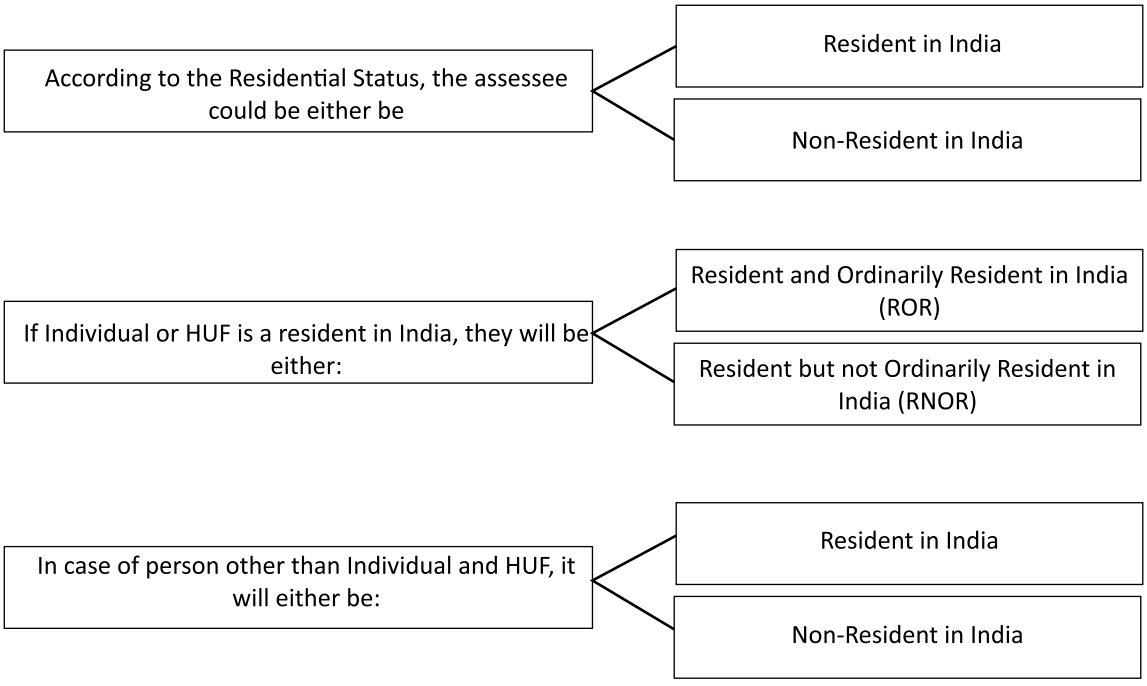
Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

RESIDENTIAL STATUS [SECTION 6]

Total Income of an assessee cannot be computed unless the person's residential status in India during the previous year is known because the taxability of an assessee is dependent on the Residential status during any

Previous Year. Thus, determining residential status of a person is important steps for calculating tax liability of a person.

Section 6 of the Income Tax Act prescribes the criteria to determine the residential status of all tax payers for purposes of income-tax. An assessee's residential status must be determined with reference to the previous year in respect of which the income is sought to be taxed. i.e. the residential status of a person must be determined every year because the residential status of a person may change from one year to next year and so on depending upon the situation.



There are different tests to be applied for different types of person, let us understand test for each category of person:

TEST OF RESIDENCE FOR INDIVIDUAL

Resident

Basic Conditions

Under Section 6(1) of the Income-tax Act, an individual is said to be resident in India in any previous year if period of physical stay in India is

a. 182 days or more in that previous year, OR

b. 60 days or more in that Previous Year AND 365 days or more in Preceding 4 years

If an assessee fails to meet both the above criteria in any Previous Year, then he is considered as Non-Resident for tax purpose in that Previous Year.

Exception to the Basic Condition

In case of the following individuals:

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian

ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958, or for the purposes of employment outside India, the provisions of the second condition shall apply in relation to that year as if for the words "sixty days (60 days)", occurring therein, the words "one hundred and eighty-two days (182 days)" had been substituted.

(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of the second condition shall apply in relation to that year as if for the words "sixty days (60 days)", occurring therein, the words "one hundred and eighty-two days (182 days)" had been substituted. ***However, in case of the citizen or person of Indian origin in the above cases having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted. [Amended vide Finance Act, 2020]***

Deemed Resident: An Individual will be considered as Deemed Resident in the below case:

- Individual being a Citizen of India, AND
- having Total Income in excess 15 lakhs in the Previous Year (Other than foreign Source) AND
- not liable to tax in any other country/territory, by reason of domicile, residence or any similar criteria.

[Section 6(1A) i.e. concept of Deemed Resident introduced vide Finance Act, 2020]

Non-Resident (NR)

If an individual does not satisfy any of the above basic conditions then, he will be treated as Non-Resident. It must be noted that the fulfillment of any one of the above conditions (a) or (b) as applicable will make an individual resident in India for tax purposes. Further it is to be noted that these conditions are alternative and not cumulative in their application.

Resident and Ordinarily Resident (ROR)

An individual may become a resident and ordinarily resident in India if he satisfies both the following conditions given u/s 6(1) besides satisfying any one of the above mentioned conditions:

(i) he is a resident in atleast any two out of the ten previous years immediately preceding the relevant previous year, and

(ii) he has been in India for 730 days or more during the seven previous years immediately preceding the relevant previous year.

Resident but Not Ordinarily Resident (RNOR)

An individual is not ordinarily resident in any previous year if –

(a) he has been a non-resident in India in nine out of the ten previous years preceding that year; or

(b) he has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days (729 days) or less;

(c) a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, who has been in India for a period or periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty- two days; or

(d) a citizen of India who is deemed to be resident in India under clause (1A).

Explanation: "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India.

Therefore, if any individual fails to satisfy even one of the above conditions, he would be an RNOR. From FY 2020-21, a citizen of India or a person of Indian origin who leaves India for employment outside India during the year will be a resident and ordinarily resident if he stays in India for an aggregate period of 182 days or more. However, this condition will apply only if his total income (other than foreign sources) exceeds Rs 15 lakh. Also, a citizen of India who is deemed to be a resident in India (w.e.f. FY 2020-21) will be a resident and ordinarily resident in India.

Note: *Income from foreign sources means income which accrues or arises outside India (except income derived from a business controlled in India or profession set up in India).*

Important Points

- The fact that an assessee is resident in India in respect of one year does not automatically mean that he would be resident in the preceding or succeeding years as well. Consequently, the residential status of the assessee should be determined for each year separately. This is in view of the fact that a person resident in one year may become non-resident or not ordinarily resident in another year and vice versa.
- It must also be noted that the residential status of an individual for tax purposes is neither based upon nor determined by his citizenship, nationality and place of birth or domicile. This is because of the fact that, for tax purposes, an individual may be resident in more than one country in respect of the same year.
- The common feature in both the above conditions is the stay of the individual in India for a specified period. The period of stay required in each of the conditions need not necessarily be continuous or consecutive nor it is stipulated that the stay should be at the usual place of residence, business or employment of the individual. Purpose of stay is immaterial in determining the residential status.
- The stay may be anywhere in India and for any length of time at each place in cases where the stay in India is at more places than one, what is required is the total period of stay should not be less than the number of days specified in each condition.
- While determining residential status, the day of leaving and returning to India should be considered as a stay in India.
- Person of Indian Origin is one who is, or either of his parents or grandparents were born in Undivided India.
- India means territory of India, its territorial waters, continental shelf, Exclusive Economic Zone (upto 200 nautical miles) and airspace above its territory and territorial waters.
- Where the exact arrival and departure time is not available then the day he comes to India and the day he leaves India is counted as stay in India.

Illustration 3:

Mr. A, an Indian Citizen, is living in Mumbai since 1950, he left for China on July 1, 2017 and comes back on August 7, 2022. Determine his residential status for the assessment year 2023-24.

Solution:

Stay in India for a minimum period of 182 days in the previous year : Mr. A has stayed in India for 237 (viz. 25 + 30 + 31 + 30 + 31 + 31 + 28 + 31) days in the previous year 2022-23.

So, this test is satisfied.

So, Mr. A shall be a resident in India during the previous year 2022-23. (Assessment Year 2023-24). Keeping in view the facts of the given case, Mr. A satisfies the two additional conditions also namely: He is resident in two out of ten previous years preceding the relevant previous year.

PY	***Stay in PY (days)***	***Stay during PY (days)***	***Basic Condition Satisfied***	***Resident/Non-Resident***
2021-22	Nil	-	None	Non-Resident
2020-21	Nil	-	None	Non-Resident
2019-20	Nil	-	None	Non-Resident
2018-19	Nil	-	None	Non-Resident
2017-18	30+31+30+1= 92	365 days	Second	Resident
2016-17	365	365	First	Resident

His stay in India is also more than 730 days in 7 previous years preceding the relevant previous year. As he left for China on 1st July 2017.

PY	**Stay (days)**
2021-22	Nil
2020-21	Nil
2019-20	Nil
2018-19	Nil
2017-18	92
2016-17	365
2015-16	366
Total Stay in 7 Previous Years	823

Hence, Mr. A is resident and ordinay resident In India for the assessment year 2023-24

Illustration 4:

Mr. Steve Waugh, the Australian cricketer comes to India for 100 days every year. Find out his residential status for AY 2023-24.

Solution:

Step 1 : The total stay of Mr. Steve Waugh in the last 4 preceding years is 400 days and his stay in India

during the previous year is 100 days. Since, he satisfied the second condition in section 6(1), he is resident.

Step 2 : Since his total stay in India in the last 7 years preceding the previous years is 700 days, he does not satisfy the minimum requirement of 730 days in 7 years.

Therefore the residential status of Mr. Steve Waugh for the assessment year 2023-24 is Resident but not ordinarily resident in India.

Illustration 5:

Dr. A, an Indian Citizen and a Professor in IIM, Lucknow, left India on September 15, 2022 for USA to take up a Professor's job in MIT, USA. Determine his residential status for the assessment year 2023-24.

Solution:

Dr. A being a citizen of India and who has gone out of the country for employment, will be governed by 182 days test only and therefore the second condition under section 6(1), i.e. 60 days during relevant previous year shall not be applicable.

Dr. A stayed in India for 168 (viz. 30 + 31 + 30 + 31 + 31 + 15) days only in the relevant previous year.

Hence, Dr. A shall be a non-resident in India for the assessment year 2023-24 as condition by stay of 182 days. in relevant previous year is not satisfied.

Illustration 6:

Mr. Anil, an Indian citizen, leaves India on 22nd September, 2022 for the first time to work as an Engineer in France. Determine his residential status for AY 2023-24.

Solution:

During the previous year 2022-23, Mr. Anil, an Indian citizen, was in India for 175 days (i.e. 30+31+30+31+31+22). He does not satisfy the minimum criteria of 182 days. Also since he is an Indian citizen leaving India for the purpose of employment outside India, the second condition u/s 6(1) is not applicable to him.

Therefore Mr. Anil is non-resident for the AY 2023-24.

CASE LAW

April 3, 2009	***Manoj Kumar Reddy V. Income Tax Officer (International Taxation)***	***ITAT***

Facts of the Case: The case relates to AY 2005-06. The assessee was an employee of an Indian company. On 23.01.2004, the employer Indian company issued a deputation letter to the assessee and directed him to work on some specified project in USA. As per the deputation order, it was mentioned that he will remain continued to be employed under the Indian company only.

During the deputation period, he came to India and stayed in India from 18.08.2004 to 06.09.2004. After completing his work he returned back to India on 31.01.2005 at 4 A.M. Summary of his stay in India is given below:-

Previous Year	No. of days in India
2000-01	365
2001-02	365

2002-03	365
2003-04	306
2004-05	78

Following contentions were observed by ITAT in this case:-

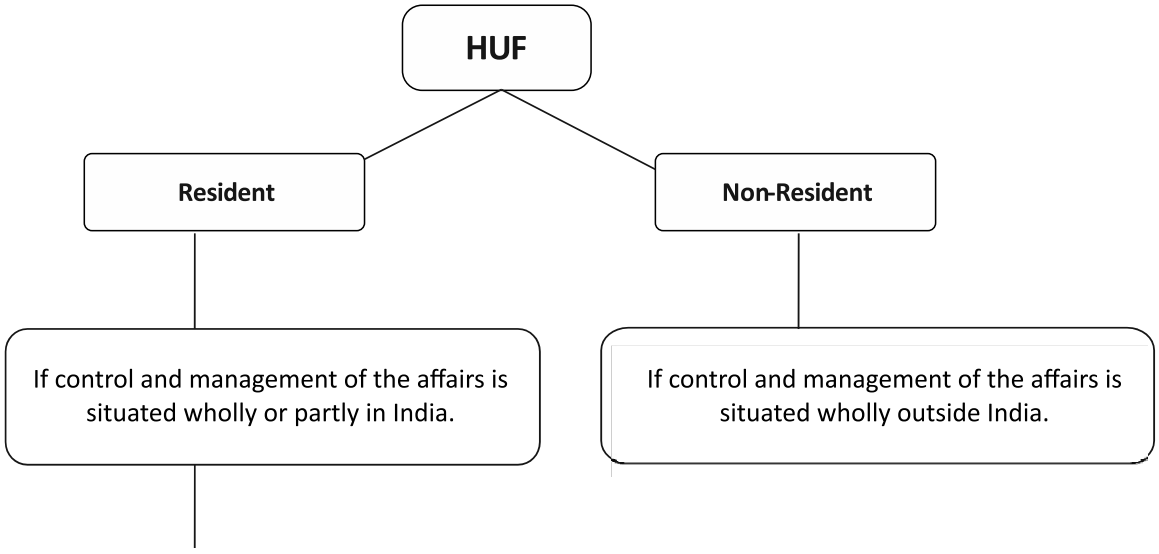
- During PY 2004-05, total stay of assessee in India was for a period less than 182 days. Hence, first limb of Section 6(1) shall not apply.
- As far as second limb of Section 6(1) is concerned. It is getting applicable as stay in India during the PY is for 78 days i.e. more than 60 days and total stay in all 4 PY preceding PY 2004-05 is exceeding 365 days. However, benefit given in explanation 1 to the second limb also needs to be examined.

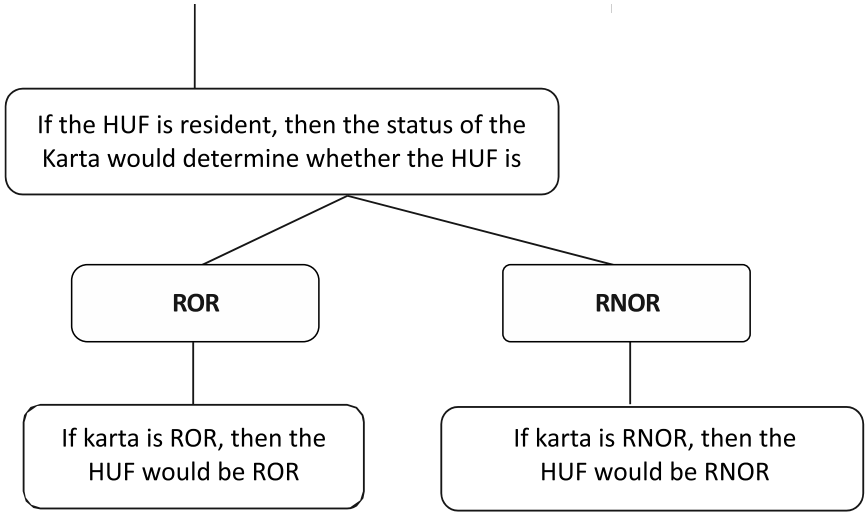
Explanation 1 clause (a) applies where assessee leaves India for employment purpose. ITAT relied on decision of Authority of Advance Ruling in case of British Gas India (P) Ltd. [2006] 285 ITR 218 (New Delhi) where it was held that for purpose of "employment outside India", even assessee on deputation sent outside India by an Indian employer is also covered. However, clause (a) of Explanation 1 shall apply for that year only in which the assessee is leaving India for employment, i.e. PY 2003-04 in this case. Hence, Clause (a) of Explanation 1 is applicable for PY 2003-04 only not for PY 2004-05.

Clause (b) to Explanation 1: The assessee was for a "visit" in India from outside India during 18.08.2004 to 06.09.2004. However, he returned back to India on 31.01.2005. The period after 31.01.2005 cannot be treated as "visit". Hence, clause (b) to Explanation 1 cannot apply. However, to determine period of stay under second limb of Section 6(1) period of visit shall be excluded. Hence, total stay during PY 2004-05 will be reckoned from 31.01.2005 to 31.03.2005.

Judgement: ITAT held that "Day" does not include "fraction of Day". Therefore, assessee's total stay was for a period of 59 days only. 31.01.2005 was not included because he arrived in India at 4 A.M. The residential status of assessee - Non-Resident.

TESTS OF RESIDENCE FOR HINDU UNDIVIDED FAMILIES 'HUF'





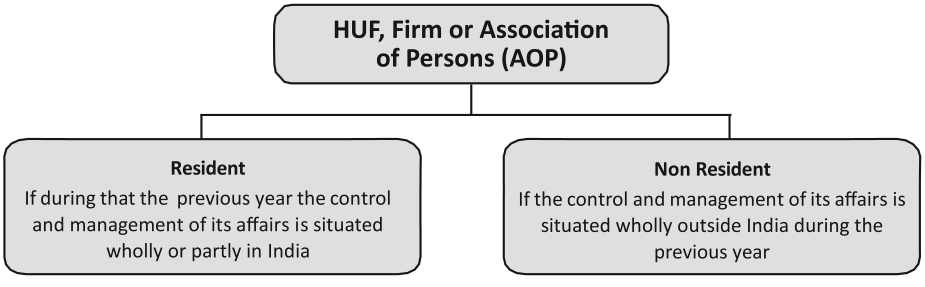
Place of Control and Management

The expression control and management refers to the functions of decision-making and issuing directions but not the places where from the business is carried on. In other words, the Control and Management means taking policy decisions relating to business. Policy decisions are concerning finance, marketing, production, advertising, personnel etc. It does not mean day to day operations of the concern / assessee. The control and management is situated at that place where policy decisions are taken.

The business may be done from outside India and yet its control and management may be wholly within India. Therefore, control and management of a business is said to be situated at a place where the head and brain of the business is situated. The place of control may be different from the usual place of running the businesses and sometimes even the registered office of the assessee. But control and management do imply the functioning of the controlling and directing power at a particular place with some degree of permanence.

- Control and Management of HUF : It is with Karta or its Manager.
- Control and Management of Firm/AOP : It is with Partners/Members.

"Control and Management" means de facto control and management and not merely the right to control or manage. Control and management is situated at a place where the head, the seat and the directing powers are situated. The mere fact that the family has a house in India, where some of its members reside or the karta is in India in the previous year, does not constitute that place as the seat of control and management of the affairs of the family unless the decisions concerning the affairs of the family are taken at that place. Although, it is the karta who normally has control and management of the affairs of a Hindu Undivided Family yet any other coparcener can control and manage the affairs. Therefore, the mere fact of absence of the karta does not make the family non-resident.



An HUF can be "not ordinarily resident"

If manager/karta has been a not ordinarily resident in India in the previous year in accordance with the tests applicable to individuals. Where, during the last ten years the kartas of the H.U.F. had been different from one another, the total period of stay of successive kartas of the same family should be aggregated to determine the residential status of the karta and consequently the H.U.F.

In other words, if Karta of Resident HUF satisfies both the following additional conditions (as applicable in case of Individual) then Resident HUF will be ROR, otherwise it will be RNOR :

Additional Conditions:

(1) Karta of Resident HUF should be resident in atleast 2 previous years out of 10 previous years immediately preceding relevant previous year.

(2) Stay of Karta during 7 previous years immediately preceding relevant previous year should be 730 days or more.

Important Note:

- It is immaterial whether Karta is Resident or Non-Resident during relevant previous year, for the purpose of determining whether HUF is ROR or RNOR. If Karta satisfies both the additional conditions, then HUF will be ROR, otherwise RNOR.
- Firms, association of persons, local authorities and other artificial juridical persons can be either resident (ordinarily resident) or non-resident in India but they cannot be not ordinarily resident in India.
- Even if negligible portion of the control and management of the affairs is exercised from India, it will be sufficient to make the family, firm or the association resident in India for tax purposes. For instance, if the affairs of a firm are controlled partly from India and partly from Bangladesh, the firm would be resident in India.
- While the control and management of the affairs of the firm or family would necessarily be exercised by the partners of the firm or members of the family, the residential status of the members or partners is generally irrelevant for determining the residential status of the firm or family. But in cases where the residential status of the partners materially affects or determines the place of control and management of the affairs of the firm, the residential status of the member or partners should also be taken into account in determining the residential status of the firm or the family.
- The mere fact that all the partners are resident in India does not necessarily lead to the conclusion that the firm is resident in India because there may be cases where even though the partners are resident in India, control and management of the affairs of the firm is exercised from outside India.
- A Hindu Undivided Family would generally be presumed to be resident in India unless the assessee proves to the tax authorities that the control and management of its affairs is situated wholly outside India during the relevant accounting year.

CASE LAW

1.	***CIT v. PL. M. TT.***	***Madras High Court***

Proof of power or capacity to control and manage is not relevant for determining the control and management. What is necessary is to test the actual power or control.

Where all partners of a firm were residing in India and they appointed a power of attorney in Ceylon (now Sri Lanka) who was entirely in charge of the business and the partners did not play any role in control and management, it was held that the firm was not tax resident in India. The High Court of Madras in CIT v. PL.

M. TT. Firm3 held that as per the terms of the deed de jure control remained with the principal but de facto control or actual control was with the agent. Thus, rather than mere proof of power or capacity to control and manage, the actual power or control was relevant.

2.	***Saraswati Holding Corpn. Inc v. Dy. DIT (IT)***	***ITAT***

Day to Day affairs of the business is not sufficient for determining the Control and Management of affairs.

Interpreting the phrase 'control and management of affairs' in Saraswati Holding Corpn. Inc v. Dy. DIT(IT)4, the ITAT held that control and management of affairs do not mean the control and management of the day-to-day affairs of the business. The fact that discretion to conduct operations of business is given to some person in India would not be sufficient. The words 'control and management of affairs' refer to head and brain, which directs the affairs of policy, finance, disposal of profits and such other vital things consisting the general and corporate affairs of the company. Thus, where decisions on investments were taken by directors outside India, the income from investments made in India could not be taxed in the hands of the company only because a few persons had been given authority to conduct the affairs.

Illustration 7:

An HUF, whose affairs of business are completely controlled from India. Determine its Residential status for AY 2023-24 (a) if Karta is ROR in India for that year (b) If Karta is NR in India but he satisfies both the additional conditions (c) If Karta is RNOR in India.

Solution:

HUF would be Resident in India as Control and Management is wholly situated in India. Determination of whether HUF is ROR or RNOR:

a) HUF is ROR in India as Karta would be satisfying both the additional conditions (because he is ROR).

b) HUF is ROR in India as Karta is satisfying both the additional conditions. Karta's Residential status during relevant previous year (i.e. resident/non-resident) is irrelevant.

c) HUF is RNOR as Karta does not satisfy both the additional conditions.

Illustration 8:

Karta of an Hindu Undivided Family comes to India every year for a minimum period of 60 days and maximum 91 days. Determine residential status of the HUF for the assessment year 2023-24.

Solution:

Hindu Undivided Family is resident since the karta has come to India for at least 60 days but the stay of karta during seven years can be maximum 637 days. Hence HUF can be considered as resident but not ordinarily resident.

Illustration 9:

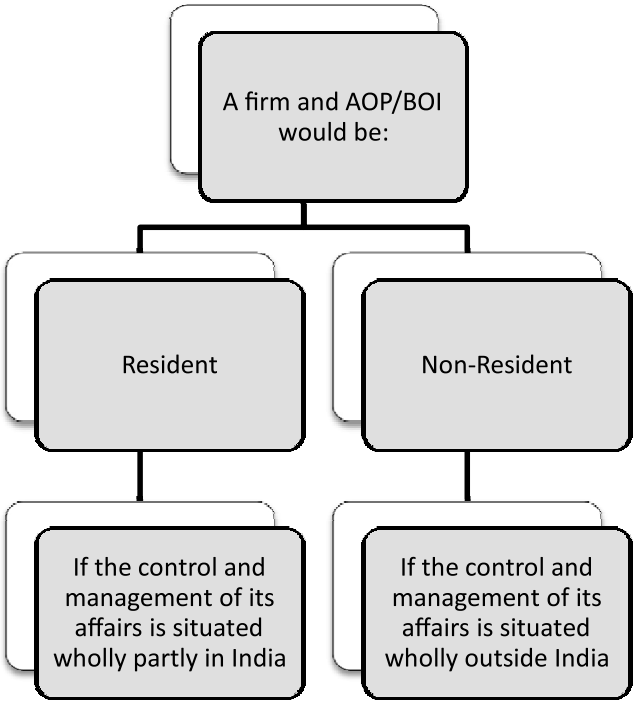
Hindu Undivided Family is being managed partly from Mumbai and partly from Japan. The Karta of HUF is a foreign citizen and comes to visit in India every year since 1980 in the month of April for 105 days.

Determine residential status of HUF for AY 2023-24.

Solution:

Since the control and management of the affairs of HUF is partly managed from Mumbai and therefore HUF is resident in India. Further, the Karta of HUF is also satisfying both of additional conditions of section 6 (6)(b) and therefore HUF is resident and ordinarily resident in India during the AY 2023-24.

TEST OF RESIDENCE FOR FIRM AND AOP/BOI



- Business and the whole of it may be done outside India and yet the control and management of that business may be wholly within India.
- It is entirely irrelevant where the business is done and where the income has been earned. What is relevant and material is from which place has that business been controlled and managed.

Illustration 10:

AB & Co. is a partnership firm whose operations are carried out in India. However, all meetings of partners take place outside India as all the partners are settled abroad. Determine Residential status of firm for AY 2023-24.

Solution:

AB & Co. is Non-Resident in India during relevant previous year as Control and Management (place where policy decisions are taken, here it is the place where meetings are held) is wholly situated outside India.

Once the residential status of an individual is identified, the rule of taxation could be applied to determine whether an income is to be taxed or not.

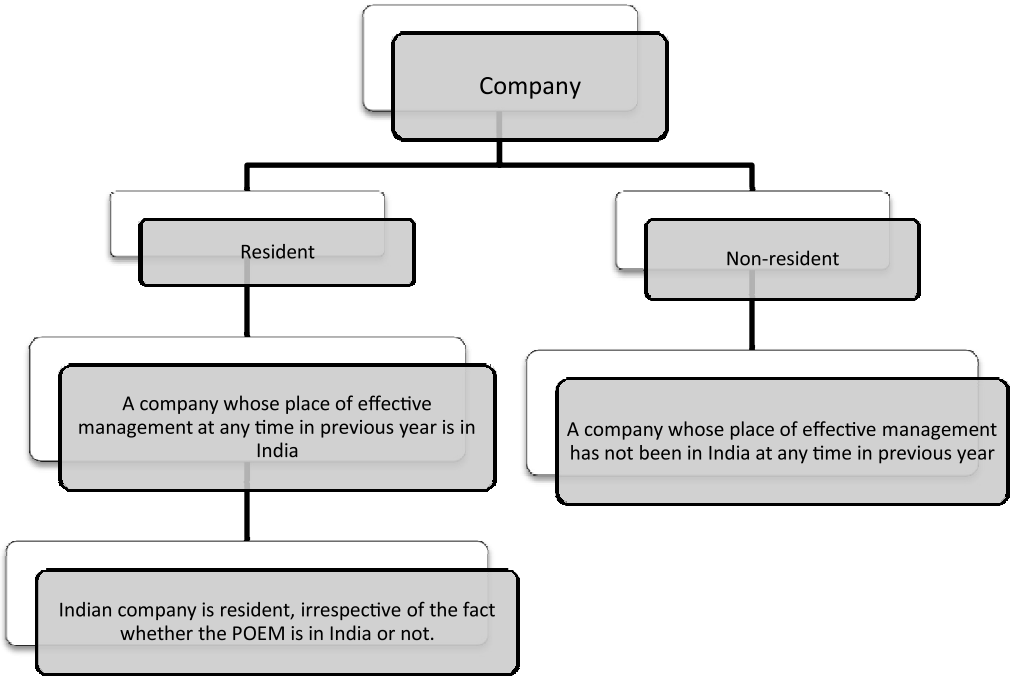
TEST OF RESIDENCE FOR COMPANIES

A company shall be said to be resident in India in any previous year, if –

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

Accordingly, all Indian companies are always resident in India regardless of the place of its place of effective management. However, in the case of a foreign company the place of effective management is the basis on which the company's residential status is determinable.



For this purpose, Place of Effective Management means a place where Key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

***Note**: Vide Circular No 08 of 2017 dated 23rd February, 2017, it has been clarified that the POEM provisions shall not apply to a company having turnover or gross receipts of Rs. 50 crore or less in a financial year. So, in that cases, the criteria for determining the residential status would be Control and Management of the affairs.*

Please refer details: https://www.incometaxindia.gov.in/communications/circular/circular25_2017.pdf

Guiding Principles for Determination of Place of Effective Management (POEM)

The process of determination of POEM would be primarily based on the fact as to whether or not the company is engaged in active business outside India. The PoEM concept is one of substance over form and since "residence" is to be determined for each year, POEM will also be required to be determined on year to year basis. An entity may have more than one place of management, but it can have only one place of effective management at any point of time.

The test of PoEM is based on whether the entity is earning only passive income and its operations are so structured that it is present or active in a country without paying applicable taxes. Thus, a company having key managerial people stationed in India with substantial asset base in India and selling goods through a subsidiary may yet claim that it has no PE in India and being incorporated outside India, it could end up paying very little tax. The concept of PoEM thus examines whether the company is in fact a tax resident of a foreign state with substantial operations outside India or whether the incorporation or having different places of business is only a device to evade tax by being a non-resident.

As per the PoEM guidelines, a company shall be said to be engaged in "active business outside India" if the passive income is not more than 50% of its total income and

(i) less than 50% of its total assets are situated in India; and

(ii) less than 50% of total number of employees are situated in India or are resident in India; and

(iii) the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Explanation : For the aforesaid purpose :

The income shall be	As computed for tax purpose in accordance with the laws of the country of incorporation; or as per books of account, where the laws of the country of incorporation do not require such a computation.
The value of assets	• In case of an individually depreciable asset, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the previous year; and • In case of a pool of fixed assets being treated as a block for depreciation, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year; • In case of any other asset, shall be its value as per books of account.
The number of employees	the number of employees shall be the average of the number of employees as at the beginning and at the end of the year and shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees.
Pay roll	the term "pay roll" shall include the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer.
Head Office	"Head Office" of a company would be the place where the company senior management and their direct support staff are located or, if they are located at more than one location, the place where they are primarily or predominantly located. A company head office is not necessarily the same as the place where the majority of its employees work or where its board typically meets.
Passive income	"Passive income" of a company shall be aggregate of, income from the transactions where both the purchase and sale of goods is from / to its associated enterprises; and income by way of royalty, dividend, capital gains, interest or rental income. *Note* : any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.
Senior Management	"Senior Management" in respect of a company means the person or persons who are generally responsible for developing and formulating key strategies and policies for the company and for ensuring or overseeing the execution and implementation of those strategies on a regular and on- going basis. While designation may vary, these persons may include : (i) Managing Director or Chief Executive Officer; (ii) Financial Director or Chief Financial Officer; (iii) Chief Operating Officer; and (iv) The heads of various divisions or departments.

The conditions of having earned passive income of less than 50% and having less than 50% or assets, employees and payroll expenses have to be satisfied cumulatively. Thus, merely because say 95% of the income of a company is from royalty but 90% of its assets are outside India, it need not be scrutinized for PoEM since other conditions are not met. The company would be engaged in active business outside India. The idea is to identify such companies who may be trying to evade taxes by merely having incorporation or a set of directors operating from outside India while in substance it is carrying out activity in India and earning incomes which should be subject to tax in India.

The place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India. However, it is established that the Board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person (s) resident in India, then the place of effective management shall be considered to be in India. For the purpose of determining whether the company is engaged in active business outside India, the average of the data of the previous year and two years prior to that shall be taken into account. In case the company has been in existence for a shorter period, then data of such period shall be considered.

The determination of POEM would be a two stage process as follows:

First Stage: Identification or ascertaining the person or persons who actually make the key management and commercial decision for conduct of the company business as a whole.

Second Stage : Determination of place where these decisions are in fact being made.

Note : The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM it is the substance which would be conclusive rather than the form.

Some of the guiding principles for determining the POEM

(a) The location where a company's Board regularly meets and makes decisions may be the company place of effective management provided, the Board retains and exercises its authority to govern the company; and in substance, make the key management and commercial decisions necessary for the conduct of the company business as a whole. Mere formal holding of board meetings at a place would by itself not be conclusive for determination of POEM being located at that place.

Note : A company's board may delegate some or all of its authority to one or more committees such as an executive committee consisting of key members of senior management. In these situations, the location where the members of the executive committee are based and where that committee develops and formulates the key strategies and policies for mere formal approval by the full board will often be considered to be the company's place of effective management.

(b) The location of a company's head office will be a very important factor in the determination of the company's place of effective management because it often represents the place where key company decisions are made. The following points need to be considered for determining the location of the head office of the company :

If the company's senior management and their support staff are based in a single location and that location is held out to the public as the company's principal place of business or headquarters then that location is the place where head office is located. If the company is more decentralized (for example where various members of senior management may operate, from time to time, at office located in the various countries) then the company's head office would be the location where these senior managers :

i. are primarily or predominantly based; or

ii. normally return to following travel to other locations; or

iii. meet when formulating or deciding key strategies and policies for the company as a whole.

In situations where the senior management is so decentralised that it is not possible to determine the company's head office with a reasonable degree of certainty, the location of a company's head office would not be of much relevance in determining that company's place of effective management.

(c) The use of modern technology impacts the place of effective management in many ways. It is no longer necessary for the persons taking decision to be physically present at a particular location. Therefore physical location of board meeting or executive committee meeting or meeting of senior management may not be where the key decisions are in substance being made. In such cases the place where the directors or the persons taking the decisions or majority of them usually reside may also be a relevant factor. It may be clarified that day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of POEM.

If the above factors do not lead to clear identification of POEM then the following secondary factors can be considered :

i. Place where main and substantial activity of the company is carried out; or

ii. Place where the accounting records of the company are kept.

The determination of POEM is to be based on all relevant facts related to the management and control of the company, and is not to be determined on the basis of isolated facts that by itself do not establish effective management, as illustrated by the following examples:

i. The fact that a foreign company is completely owned by an Indian company will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

ii. The fact that there exists a Permanent Establishment of a foreign entity in India would itself not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

iii. The fact that one or some of the Directors of a foreign company reside in India will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

iv. The fact of, local management being situated in India in respect of activities carried out by a foreign company in India will not, by itself, be conclusive evidence that the conditions for establishing POEM have been satisfied.

v. The existence in India of support functions that are preparatory and auxiliary in character will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

vi. The place where day to day, operational decisions are taken would not be PoEM.

Further, based on the facts and circumstances if it is determined that during the previous year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been mainly /predominantly in India.

Example 1: Company A Co. is a sourcing entity, for an Indian multinational group, incorporated in country X and is 100% subsidiary of Indian company (B Co.). The warehouses and stock in them are the only assets of the company and are located in country X. All the employees of the company are also in country X. The average income wise breakup of the company's total income for three years is:

i. 30% of income is from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises;

ii. 30% of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises;

iii. 30% of income is from transaction where purchases are made from associated enterprises and sold to non- associated enterprises; and

iv. 10% of the income is by way of interest.

Interpretation: In this case passive income is 40% of the total income of the company. The passive income consists of :

i. 30% income from the transaction where both purchase and sale is from/to associated enterprises; and

ii. 10% income from interest.

The A Co. satisfies the first requirement of the test of active business outside India. Since no assets or employees of A Co. are in India the other requirements of the test is also satisfied. Therefore company is engaged in active business outside India.

Example 2: The other facts remain same as that in Example 1 with the variation that A Co. has a total of 50 employees. 47 employees, managing the warehouse, storekeeping and accounts of the company, are located in country X. The Managing Director (MD), Chief Executive Officer (CEO) and sales head are resident in India. The total annual payroll expenditure on these 50 employees is of Rs. 5 crore. The annual payroll expenditure in respect of MD, CEO and sales head is of Rs. 3 crore.

Interpretation: Although the first limb of active business test is satisfied by A Co. as only 40% of its total income is passive in nature. Further, more than 50% of the employees are also situated outside India. All the assets are situated outside India. However, the payroll expenditure in respect of the MD, the CEO and the sales head being employees resident in India exceeds 50% of the total payroll expenditure. Therefore, A Co. is not engaged in active business outside India.

Example 3: The basic facts are same as in Example 1. Further facts are that all the directors of the A Co. are Indian residents. During the relevant previous year 5 meetings of the Board of Directors are held of which two were held in India and 3 outside India with two in country X and one in country Y.

Interpretation: A Co. is engaged in active business outside India as the facts indicated in Example 1 establish. The majority of board meetings have been held outside India. Therefore, the POEM of A Co. shall be presumed to be outside India.

Example 4: The facts are same as in Example 1 but it is established by the Assessing Officer that although A Co.'s senior management team signs all the contracts, for all the contracts above Rs. 10 lakh the A Co. must submit its recommendation to B Co. and B Co. makes the decision whether or not the contract may be accepted. It is also seen that during the previous year more than 99% of the contracts are above Rs. 10 lakh and over past years also the same trend in respect of value contribution of contracts above Rs. 10 lakh is seen.

Interpretation: These facts suggest that the effective management of the A Co. may have been usurped by the parent company B Co. Therefore, PoEM of A Co. may in such cases be not presumed to be outside India even though A Co. is engaged in active business outside India and majority of board meeting are held outside India.

For Detailed POEM Guidelines:

http ://www.incometaxindia.gov.in/news/circular06/2017.pdf

SCOPE OF TOTAL INCOME [SECTION 5]

Section 5 of Income Tax Act, 1961 provides Scope of total Income in case of person who is a resident, in the case of a person not ordinarily resident in India and person who is a non-resident. Income can be from any source which (a) is received or is deemed to be received in India in such year by or on behalf of such person ; or (b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or (c) accrues or arises to him outside India during such year .

Scope of total income has been defined on the basis of Residential status

(A) Resident and Ordinarily Resident Assessee

According to Sub-section (1) of Section 5 of the Act the total income of a resident and ordinarily resident assessee would consist of :

(i) income received or deemed to be received in India during the accounting year by or on behalf of such person;

(ii) income which accrues or arises or is deemed to accrue or arise to him in India during the accounting year;

(iii) income which accrues or arises to him outside India during the accounting year.

It is important to note that under clause (iii) only income accruing or arising outside India is included. Income deemed to accrue or arise outside India is not includible.

(B) Resident but Not Ordinarily Resident In India

Proviso to section (1) of section 5 the total income in case of resident but not ordinarily resident in India

(i) income received or deemed to be received in India during the accounting year by or on behalf of such person;

(ii) income which accrues or arises or is deemed to accrue or arise to him in India during the accounting year;

(iii) income which accrues or arises to him outside India during the previous year if it is derived from a business controlled in or a profession set up in India.

(C) Non-Resident

Sub-section (2) of Section 5 provides that the total income of a non-resident would comprise of :

(i) income received or deemed to be received in India in the accounting year by or on behalf of such person;

(ii) income which accrues or arises or is deemed to accrue or arise to him in India during the previous year.

Rule of Taxation on the basis of Residential Status

Nature of Income	ROR	RNOR	NR
Income received in India (Whether accrued in or outside India)	Taxed	Taxed	Taxed
Income deemed to be received in India (Whether accrued in or outside India)	Taxed	Taxed	Taxed

Income accruing or arising in India (Whether received in India or outside India)	Taxed	Taxed	Taxed
Income deemed to accrue or arise in India (Whether received in India or outside India	Taxed	Taxed	Taxed
Income received and accrued outside India from a business controlled or a profession set up in India	Taxed	Taxed	Not Taxed
Income received and accrued outside India from a business controlled from outside India or a profession set up outside India	Taxed	Not Taxed	Not Taxed
Income earned and received outside India but later on remitted to India (Whether tax incidence arises at the time of remittance)	Not Taxed	Not Taxed	Not Taxed

Explanation 1 - Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2 - For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

INCOME RECEIVED OR DEEMED TO BE RECEIVED IN INDIA

Income received in India: Income received in India is taxable regardless of the assessee's residential status therefore it has great significance.

(i) The receipt contemplated for this purpose refers to the first receipt of the amount in question as the income of the assessee.

For instance, if A receives his salary at Delhi and sends the same to his father, the salary income of A is a receipt for tax purposes only in the hands of A; his father cannot also be said to have received income when he receives a part of the income of A. In the hands of A's father it is only a receipt of a sum of money but not a receipt of income.

(ii) Method of Accounting: Although receipt of income is not the sole test of its taxability, the receipt of income would be the primary basis for determining the taxability of the amount in cases where the assessee follows the cash system of accounting; however, where the assessee follows the mercantile system of accounting, the income would become taxable as the income of the accounting year in which it falls due to the assessee regardless of the date or place of its actual receipt.

(iii) While considering the receipt of income for tax purposes both the place and the date of its receipt must be taken into account. The income in question should be not only received during the accounting year relevant to the assessment year but must also be received in India in order to constitute the basis of taxation. Thus, if an item of income is received outside India and after a few years is brought into India the subsequent receipt of the same amount in India should not be taken as the basis of taxing the same since the same income cannot be received twice and it will be known as Remittances.

(iv) For the purpose of taxation both actual and constructive receipt must be taken into account. Receipt by some other person on behalf of the assessee should be treated as receipt by the assessee for being taxed in his hands.

(v) The question of taxability of a particular income received by the assessee depends upon the nature of income. For instance, income from salaries and interest on securities would attract liability to tax immediately when it falls due to the assessee regardless of its actual receipt by or on behalf of the assessee.

Income deemed to be received in India: In addition to the income actually received by the assessee or on his behalf, certain other incomes not actually received by the assessee and/or not received during the relevant previous year, are also included in his total income for income tax purposes. Such incomes are known as income deemed to be received. Some of the examples of such income are:

(i) All sums deducted by way of taxes at source.

(ii) Incomes of other persons which are included in the income of the assessee i.e. clubbing provision.

(iii) The amount of unexplained or unrecorded investments.

(iv) The amount of unexplained or unrecorded moneys, etc.

(v) The annual accretion in the previous year to the balance standing at the credit of an employee participating in a Recognised Provident fund to the extent provided in Rule 6 of Part A of the Fourth Schedule [Section 7(i)]. The contributions made by the employer to Recognised Provident Fund in excess of 12% of the employees salary and the interest credited to the Provident Fund account of the employee in excess of the prescribed rate shall be included in the salary income of the employee. This amount is known as annual accretion.

(vi) The transferred balance in a Recognised Provident Fund to the extent provided in Rule 11(4) of Part A - Fourth Schedule [Section 7(ii)].

(vii) Any dividend declared by a Company or distributed or paid by it within the meaning of Section 2(22) [Section 8(a)].

(viii) Any interim dividend unconditionally made available by the Company to the member who is entitled to it [Section 8(b)].

INCOME ACCRUE OR ARISE IN INDIA

The accrual of income is different and distinct from the receipt of income discussed above. Sometimes in the context of accrual or arise the word earned is used. A person may be said to have earned his income in the sense that he has contributed to the production by rendering of goods or services. But in order that the income may be said to have accrued to him, an additional element is necessary, that is, he must have created a debt in his favour. Income is said to accrue when it comes into existence for the first time or at the point of time when the right to receive the income arises although the right may be exercised or exercisable at a future date. Income is said to be received when it reaches the assessee. When the right to receive the income becomes vested in the assessee, it is said to accrue or arise.

Income is said to accrue only to that person who is lawfully entitled to that income. Income accrues at the place where the source of the income is situated, which may or may not be the same as the place from which the business activities are carried on. Normally, income accrues at the place where the contract yielding the income is entered into and for this purpose the contract should be taken to have been entered into at the place where the offer is accepted.

CASE LAW

2018	***CIT v. Millennium Estate (P.) Ltd.***

Income in respect of sale of flats accrued when possession of flat was given and not when allotment letter was issued [in favour of assesse]

The assesse carried on business as a contractor and developer. During scrutiny, the Assessing Officer found that an amount was shown as advances received from its buyers. The assesse submitted that aforesaid amounts were received as advance at time of allotment on 14-3-2007 and that further consideration was received on 1-4-2007, when possession of flat was given, and, thus, said sum was chargeable to tax in next assessment year. However, the Assessing Officer treated said sum as accrued income in subject assessment year holding that sale of flats had taken place when they were allotted under an allotment letter.

Held that from the allotment letter and possession letter, it was very evident that possession of flats was given on receipt of total consideration, i.e., only on 1-4-2007. The said amount was an advance during subject assessment year and said income accrued as income in assessment year 2007-08.

2018	***Principal CIT v. Davangere Urban Co-operative Bank Ltd.***

Income from Non Performing Assets (NPA) should be assessed on cash basis and not on mercantile basis, despite assessee following mercantile system of accounting [Assessment year 2010-11] [in Favour of assessee]

Held that Income from NPA should be assessed on cash basis and not on mercantile basis, despite the assessee following mercantile system of accounting. In view of aforesaid legal position, the Assessing Officer was not justified in bringing to tax on interest on non-performing assets on accrual basis just because the assessee followed hybrid system of accounting.

INCOME DEEMED TO ACCRUE OR ARISE IN INDIA [SECTION 9]

Certain types of income are deemed to accrue or arise in India even though they may actually accrue or arise outside India. The categories of income which are deemed to accrue or arise in India are :

(1) Any income accruing or arising to an assessee in any place outside India whether directly or indirectly

  (a) through or from any business connection in India,

  (b) through or from any property in India,

  (c) through or from any asset or source of income in India, or

  (d) through the transfer of a capital asset situated in India [Section 9(1)(i)].

(2) Income, which falls under the head “Salaries”, if it is earned in India. Salary payable for service rendered in India would be treated as earned in India. Further, any income under the head “Salaries” payable for rest period or leave period which is preceded and succeeded by services rendered in India, and forms part of the service contract of employment, shall be regarded as income earned in India [Section 9(1)(ii)].

(3) Income from Salaries which is payable by the Government to a citizen of India for services rendered outside India (However, allowances and perquisites paid outside India by the Government is exempt) [Section 9(1)(iii)].

(4) Dividend paid by a Indian company outside India [Section 9(1)(iv)].

(5) Interest [Section 9(1)(v)]

(6) Royalty [Section 9(1)(vi)]

(7) Fees for technical services [Section 9(1)(vii)]

(1) (a) Income by virtue of Business Connection

In cases where all the operations or activities of a business are not carried on in India but a part of them arise by virtue of the business connection in India, the income which is deemed to accrue or arise in India, should be taken to be only that part which could reasonably by attributed to the operations carried on in India. Rule 10 of the Income-tax Rules contains the basis on which the income attributable to the operations carried out in India could be deemed to accrue or arise in India.

However, where a substantial part of a non-residents output is sold in the Indian market through brokers to various customers in India, or mere rendering of services outside India to a person carrying on business in India does not amount to a business connection in India.

Similarly, where an Indian exporter selling goods through non-resident selling agents, receives sale price in India, credits commission on sales to non-resident agents in his books of account and remits the amount to them later, such commission to non-residents is neither received or deemed to be received in India nor deemed to accrue or arise in India *[C.I.T. v. Toshoku Ltd. (1980) 125 ITR p. 525 (S.C.)]*.

The expression business connection includes:

(i) the maintenance of a branch office, factory, agency, receivership, management or other establishment for the purchase or sale of goods or for transacting any other business;

(ii) the erection of a factory where the raw products purchased locally are processed or converted into some form suitable for export outside India;

(iii) appointing an agent or agents in India for the systematic and regular purchase of raw materials or other commodities or for the sale of the non-resident's goods, or for any other purpose;

(iv) the formation of a close financial association between a resident and a non-resident company which may or may not be related to one another as a holding and subsidiary company;

(v) the formation of a subsidiary company to sell or otherwise deal with the products of the non-resident parent company;

(vi) the grant of a continuing license to a non-resident for the purpose of exploitation for profit of an asset belonging to the non-resident;

(vii) any business activity carried out through a person acting on behalf of the non-resident If.

- He must have an authority which is habitually exercised to conclude contracts on behalf of the non- resident. However, if his activities are limited to the purchase of goods or merchandise for the non- resident, this provision will not apply.
- Where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, a business connection is established.
- Business connection is also established where he habitually secures orders in India, mainly or wholly for the non-resident. Further, there may be situations when other non-residents control the above-mentioned non-resident. Secondly, this non-resident may also control other non-residents.

Thirdly, all other non-residents may be subject to the same common control, as that of the non-resident. In all the three situations, business connection is established, where a person habitually secures orders in India, mainly or wholly for such non-residents. Exception: "Business connection", however, shall not be held to be established in cases where the non-resident carries on business through a broker, general commission agent or any other agent of an independent status, if such a person is acting in the ordinary course of his business. A broker, general commission agent or any other agent shall be deemed to have an independent status where he does not work mainly or wholly for the non- resident.

(viii) Significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean:

(a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, as may be prescribed:

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not –

(i) the agreement for such transactions or activities is entered in India; or

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.

No Business connection in India in following cases of Non-Resident

1. Tax Exemption for encouraging Export: For the purpose of encouraging exports, a specific tax concession has been given by providing that no income shall be deemed to accrue or arise in India to a non-resident through or from his operations which are confined to the purchase of goods in India for the purpose of export. Consequently, the exemption would not be available if the goods purchased in India are sold in India or are not exported outside India. Further, if the non-resident works up the raw-materials into finished or semi-finished products, the exemption would be withdrawn and he would become chargeable on such portion of the profits as is attributable to his manufacturing it in India.
2. Operations confined to collection of news and views for transmission outside India by or on behalf of Non Resident who is engaged in the business of running news agency or of publishing newspapers, magazines or out and out sale by the parties concerned journals;
3. Operations confined to shooting of cinematograph films in India if such Non-Resident is :

(a) an Individual - he should not be a citizen of India; or

(b) a firm - the firm should not have any partner who is a citizen of India or who is resident in India; or

(c) a company - the company does not have any shareholder who is a citizen of India or who is resident in India.

(1) (b) Income arising from any property in India

Income arising in a foreign country from any property situated in India would be deemed to accrue or arise in India. In this context, the term property does not refer to house property alone but it refers to all tangible properties whether movable or immovable. For instance, the rent or hire charges for the use of buildings or machinery of the assessee which, under an agreement are payable only outside India, would be deemed to accrue or arise in India.

(1) (c) Income arising from any assets or source of Income in India

Income arising through or from any asset or source of income in India would also be deemed to accrue or arise in India. In this context, the term source means not a legal concept but something which a practical man would regard as a real source of income.

(1) (d) Income arising from transfer of any capital assets situated in India

- Capital gains arising to an assessee from the transfer of a capital asset situated in India would be deemed to accrue or arise in India irrespective of the fact whether the capital asset in question represents a movable or immovable property or a tangible or intangible asset.
- It is also immaterial whether the consideration for the transfer of the capital asset is actually paid or payable in India or outside.
- The place of registration of the document of transfer of property is equally immaterial.
- However, if the capital asset, prior to the transfer, is situated outside India, the provisions of Section 9(1) would not apply to deem the capital gains arising on the transfer as accruing or arising in India for purposes of its taxation in India.

(2) Income from Salaries

- Income which is chargeable under the head Salaries is deemed to accrue or arise in India in all cases when earned in India. For this purpose income is said to be earned in India if the services are rendered in India.
- The actual place of accrual of the salaries, the residential status of the employer, the citizenship or nationality of the employee and whether the employee is a Government servant or an employee of private enterprise are immaterial. However, under Sub-section (2) of Section 9, any pension payable outside India to a person residing permanently outside India should not be deemed to accrue or arise in India if the pension is payable to civil servants and retired judges provided they were appointed before the 15th August, 1947 and continued to serve after the constitution came into operation.

  Barring this exception, non-residents and not ordinarily residents entitled to receive salary or pension earned by them in India would be deemed to receive income which has accrued in India even though the income may be actually accruing and received outside India.

(3) Income from Salaries which is payable by the Government to a citizen of India for services rendered outside India

- Income from salaries payable by the Government to a citizen of India outside India for his services rendered outside India, is deemed to accrue or arise in India even though the income is actually accruing outside India and is also received outside India. Thus, under this provision, salary income of all Government servants, working outside India is deemed to accrue in India. In the absence of this provision they would not be chargeable to tax in respect of such income as they would, after some time, become non-residents.

This provision to deem income as accruing in India applies only in respect of their income from salary but not in respect of the allowances and perquisites to which they are entitled to while serving in a foreign country. Section 10(7) of the Income-tax Act, 1961 contains a specific provision to exempt Government servants from tax on their services in a foreign country partly to meet the higher cost of living in that country.

- Salaries paid by the Indian Government in a foreign country to citizens of the foreign country should not, however, be deemed to accrue in India since this provision applies only to Indian citizens employed by the Government who are rendering service outside India.

(4) Dividend paid by a Indian company outside India

- Dividend paid by any Indian company outside India is deemed to accrue or arise in India and the income is consequently chargeable to income-tax irrespective of the fact whether the dividend is interim dividend or a final dividend and whether it is an actual dividend or a notional dividend.
- The place of declaration of the dividend is immaterial and the date of payment is equally immaterial for deeming the income to accrue in India.
- Normally, dividend income arises at the place where the source of income is situated, i.e., where the shares yielding the income are kept. Shares are said to be situated at the place where the share register of the company is kept. While the share register of a company should ordinarily be kept at the place where its registered office is located, even if the share register is kept outside India and the dividends are declared outside India, the dividend would still be deemed to accrue in India because the company is an Indian company.
- Dividends declared by foreign companies outside India would not, however, be deemed to accrue or arise in India even in cases where the foreign company is resident in India because of the control and management of its affairs being situated wholly in India.
- In order to deem the dividend income as arising in India, the residential status of the shareholder as also the status of the assessee, whether he is an individual, company or local authority, are irrelevant.

(5) Interest

Interest payable in following cases will be deemed to accrue or arise in India and will be taxable in the hands of recipient irrespective of his residential status (i.e., ROR, RNOR or NR).

Interest payable by :

- Government; or
- A Resident in India, except where interest is payable in respect of moneys borrowed and used for the purpose of business or profession carried outside India or earning any income from any source outside India (i.e., Interest payable by a Resident for loan used in India for any purpose, whether for business or profession or otherwise);
- A Non-Resident in India provided interest is payable in respect of moneys borrowed and used for a business or profession carried on in India (i.e., Interest payable by a Non-Resident for loan used for only business or profession in India).

(6) Royalty

Royalty payable in following cases will be deemed to accrue or arise in India and will be taxable in the hands of recipient irrespective of his residential status (i.e., ROR, RNOR or NR).

Royalty payable by:

- Government; or
- A Resident in India except where it is payable in respect of any right/information/property used for the purpose of a business or profession carried on outside India or earning any income from any source outside India (i.e., Royalty payable by a Resident for right/information/property used for any purpose in India whether business or profession or for earning other incomes);
- A Non-Resident in India provided royalty is payable in respect of any right/information/property used for the purpose of the business or profession carried on in India or earning any income from any source in India (i.e., Royalty payable by a Non-Resident for right/information/property used for any purpose in India whether business or profession or for earning other incomes).

(7) Fees for Technical Services

Fees for technical services payable in following cases will be deemed to accrue or arise in India and will be taxable in the hands of recipient irrespective of his residential status (i.e., ROR, RNOR or NR).

Fees for technical services payable by:

- Government; or
- A Resident in India except where services are utilized for the purpose of a business or profession carried on outside India or earning any income from any source outside India (i.e., Fees for technical services payable by a Resident for services utilised for any purpose in India whether business or profession or for earning other incomes);
- A Non-Resident in India provided fee is payable in respect of services for the purpose of a business or profession carried on in India or earning any income from any source in India (i.e., Fees for technical services payable by a Resident for services utilised for any purpose in India whether business or profession or for earning other incomes);

Illustration 11:

Mr. X earns the following income during the previous year ended 31st March, 2023. Determine the income liable to tax for the assessment year 2023-24 if Mr. X is (a) resident and ordinarily resident in India, (b) resident and not ordinarily resident in India, and (c) non-resident in India during the previous year ended 31st March, 2023.

- Profits on sale of a building in India but received in Holland – Rs. 20,000
- Pension from former employer in India received in Holland – Rs. 14,000
- Interest on U.K. Development Bonds (1/4 being received in India) – Rs. 20,000
- Income from property in Australia and received in U.S.A. – Rs. 15,000
- Income earned from a business in Abyssinia which is controlled from Zambia (Rs. 30,000 received in India) – Rs. 70,000
- Dividend on shares of an Indian company but received in Holland – Rs. 10,000
- Profits not taxed previously brought into India – Rs. 40,000
- Profits from a business in Nagpur which is controlled from Holland – Rs. 27,000

Solution : Computation of income liable to tax :

Particular	*Resident & Ordinarily Resident (Rs.)*	*Resident but not Ordinarily Resident (Rs.)*	*Non-Resident (Rs.)*
Profits on sale of a building in India but received in Holland (accrued in India received outside India)	20,000	20,000	20,000
Pension from former employer in India received in Holland (accrued in India, received out of India)	14,000	14,000	14,000
Interest on U.K. Development Bonds (Accrued out of India, 1/4th received in India)	5,000	5,000	5,000
Interest on U.K. Development Bonds (Accrued out of India, 3/4th received out of India)	15,000	Nil	Nil
Income from property in Australia and received in U.S.A. (Accrued and received out of India)	15,000	Nil	Nil
Income earned from a business in Abyssinia which is controlled from Zambia (Business controlled outside India)	70,000	30,000	30,000
Dividend on shares of an Indian company but received in Holland (Accrued in India)	10,000	10,000	10,000
Profits not taxed previously brought into India (Not an income so not taxable)	Nil	Nil	Nil
Profits from a business in Nagpur which is controlled from Holland (Accrued in India)	27,000	27,000	27,000
Total	**1,76,000**	**1,06,000**	**1,06,000**

Illustration 12:

A had the following income during the previous year ended 31st March, 2023:

- Salary Received in India for three Months - Rs. 9,000
- Income from house property in India - Rs. 13,470
- Interest on Saving Bank Deposit in State Bank of India - Rs. 1,000
- Amount brought into India out of the past untaxed profits earned in Germany - Rs. 20,000
- Income from agriculture in Indonesia being invested there - Rs. 12,350
- Income from business in Bangladesh, being controlled from India - Rs. 10,150

- Dividends received in Belgium from French companies, out of which Rs. 2,500 were remitted to India- Rs. 23,000

You are required to compute his total income for the assessment year 2023-24 if he is : (i) a resident; (ii) a not ordinarily resident, and (iii) a Non-resident.

Solution :

Computation of total income of A is given below:

Particular	***Resident & Ordinarily Resident (Rs.)***	***Resident but not Ordinarily Resident (Rs.)***	***Non-Resident (Rs.)***
Salary Received in India for three Months (Indian received in India)	9,000	9,000	9,000
Income from house property in India (Income accrue or arise in India)	13,470	13,470	13,470
Interest on Saving Bank Deposit in State Bank of India (Income accrue or arise in India)	1,000	1,000	1,000
Amount brought into India out of the past untaxed profits earned in Germany (not an income, hence not taxable)	Nil	Nil	Nil
Income from agriculture in Indonesia being invested there (Income accrue or arise outside India)	12,350	Nil	Nil
Income from business in Bangladesh, being controlled from India (it is supposed that the money is not received in India) (Income accrued outside India from a business controlled from India)	10,150	10,150	Nil
Dividends received in Belgium from French companies (Income accrue outside India. Remittance to India is irrelevant)	23,000	Nil	Nil
Total	**68,970**	**33,620**	**23,470**

Illustration 13 :

Mr. Y earns the following income during the previous year ended on 31st March, 2022. Determine the income liable to tax for the assessment year 2023-24 if Mr. Y is (a) resident and ordinary resident (b) resident and not ordinary resident, and (c) non-resident in India during the previous year ended on 31st March, 2023.

(b) Honorarium received from Government of India (Travelling and other incidental expenses of Rs. 7,000 were incurred in this connection)- Rs. 20,000

(ii) Profits earned from a business in Tamilnadu controlled from Pakistan - Rs. 50,000

(iii) Profits earned from a business in U.K. controlled from Delhi - Rs. 30,000

(iv) Profits earned from a business in U.S.A. controlled from Pakistan and amount deposited in a bank there - Rs. 40,000

(v) Income from a house property in France, received in India - Rs. 10,000

(vi) Past untaxed foreign income brought into India during the year - Rs. 25,000

(vii) Dividends from a German company credited to his account in Pakistan - Rs. 35,000

(viii) Agricultural income from Burma not remitted to India - Rs. 40,000

(ix) Pension for services rendered in India, but received in Pakistan - Rs. 30,000

Solution:

Computation of Income liable to tax of Mr. Y is given below:

Particular	***Resident & Ordinarily Resident (Rs.)***	***Resident but not Ordinarily Resident (Rs.)***	***Non-Resident (Rs.)***
Honorarium received from Govt. of India	20,000	20,000	20,000
Profits earned from a business in Tamilnadu controlled from Pakistan (Income accrue or arise in India)	50,000	50,000	50,000
Profit earned from a business in U.K. controlled from Delhi (Income accrue or arise outside India from a business controlled from India)	30,000	30,000	-
Profits earned from a business in USA controlled from Pakistan and amount deposited in a Bank there (Income accrue outside India)	40,000	-	-
Income from a house property in France, received in India (Income received in India)	10,000	10,000	10,000
Past untaxed foreign income brought into India during the year (Not taxable as profit of past years, also remittance is irrelevant)	-	-	-
Dividends from a foreign company credited to his account in Pakistan (Income accrue outside India)	35,000	-	-
Agricultural income from Burma not remitted to India (Income accrue outside India)	40,000	-	-

Pension for Services rendered in India, but received in Pakistan (Income deemed to accrue or arise in India)	30,000	30,000	30,000
Total	**2,55,000**	**1,40,000**	**1,10,000**

Computation of Tax Liability includes following steps:

1. Determine the category of person
2. Determine the residential status of the person as per section 6
3. Calculate the Total income as per the provisions
4. Calculate the tax on income.

COMPUTATION OF TAXABLE INCOME AND TAX LIABILITY OF AN ASSESSEE

Income tax is a charge on the assessee's income. Income Tax law lays down the provisions for computing the taxable income on which tax is to be charged. Taxable income of an assessee shall be calculated in the following manner.

1. Determine the residential status of the person as per section 6 of the Income tax Act, 1961.
2. Calculate the income as per the provisions of respective heads of income. Section 14 classifies the income under five heads.
   (i) Income from salaries
   (ii) Income from House Property
   (iii) Profits and gains of business or Profession
   (iv) Capital Gains
   (v) Income from other sources.
3. Consider all the deductions and allowances given under the respective heads before arriving at the net under each head.
4. Exclude the income exempt under section 10 of the Act.
5. Aggregate of incomes computed under the 5 heads of income after applying clubbing provisions and making adjustments of set off and carry forward of losses is known as Gross Total Income.
6. Deduct therefrom the deductions admissible under Sections 80C to 80U (if applicable). The balance is called Total income.
7. The total income is rounded off to the nearest multiple of Rupees ten. (Section 288A)
8. Add agriculture income (if any) in the total income calculated in (6) above. Then calculate tax on the aggregate as if such aggregate income is the Total Income.
9. Calculate income tax on the net agricultural income as increased by Rs. 2,50,000/3,00,000/5,00,000 as the case may be, as if such increased net agricultural income were the total income.
10. The amount of income tax determined under (9) above will be deducted from the amount of income tax determined under (8) above.

11. Calculate income tax on capital gains under Section 112, and on other income at specified rates.
12. The balance of amount of income tax left as per (10) above plus the amount of income tax at (11) above will be the income tax in respect of the total income.
13. Deduct the following from the amount of tax calculated under (12) above.
    - Rebate under section 87A (if applicable).
    - Tax deducted and collected at source.
    - Advance tax paid.
    - Double taxation relief (Section 90 or 91).
14. The balance of amount left after deduction of items given in (13) above, shall be the net tax payable or net tax refundable for the assessee. Net tax payable/refundable shall be rounded off to the nearest multiple of Ten rupees (Section 288B).
15. Along with the amount of net tax payable, the assessee shall have to pay penalties or fines, if any, imposed on him under the Income-tax Act.

For calculation of income, amount received is classified under 5 heads of income; it is then to be adjusted with reference to the provisions of the Income Tax laws in the following manner.

Particulars	***Amount (Rs.)***
Income under the head :	
+ Income from Salaries	XXX
+ Income from House Property	XXX
+ Profits and gains of business or profession	XXX
+ Capital gains	XXX
+ Income from other sources	XXX
Adjustment in respect of :	
+ Clubbing of Income	XXX
– Set off and carry forward of losses	(XXX)
= Gross Total Income	XXX
– Deductions under section 80C to 80U (or Chapter VIA)	(XXX)
= Total Income	XXX

LESSON ROUND-UP

- Tax is the financial charge imposed by the Government on income, commodity or activity. Government imposes two types of taxes namely Direct taxes and Indirect taxes. Direct tax is one where burden of tax is directly on the payer. While Indirect tax is paid by the person other than the person who utilizes the product or service.
- The Income tax Act contains the provisions for determination of taxable income, determination of tax liability, procedure for assessment, appeal, penalties and prosecutions.
- Every year a Budget is presented before the parliament by the Finance Minister. One of the important components of the Budget is the Finance Bill. The Bill contains various amendments such as the rates of income tax and other taxes. When the Finance Bill is approved by both the houses of parliament and receives the assent of President, it becomes the Finance Act.
- To levy income tax, one must have the understanding of the various concepts related to the charge of tax like previous year, assessment year, Income, total income, person etc. These are summarized below:
- **Income:** No precise definition of the word 'Income' is available under the Income-tax Act, 1961. The definition of Income as given in Section 2(24) of the Act starts with the word includes therefore the list is inclusive not exhaustive.
- **Assessee:** In common parlance every tax payer is an assessee. However, the word assessee has been defined in Section 2(7) of the Act according to which assessee means a person by whom any tax or any other sum of money (i.e. interest, penalty etc.) is payable under the Act.
- **Person:** Income-tax is charged in respect of the total income of the previous year of every person. Hence, it is important to know the definition of the word person.
- **Assessment year** means the period of twelve months commencing on 1st April every year.
- **Previous year:** Income earned in a year is taxable in the next year. The year in which income is earned is known as previous year.
- **Computation of Income**: Income tax is a charge on the assessee's income. Income Tax law lays down the provisions for computing the taxable income on which tax is to be charged.
- Total income of an assessee cannot be computed unless the person's residential status in India during the previous year is known. According to the residential status, the assessee can either be;
  (i) Resident in India, or
  (ii) Non-resident in India.
- Section 6 of the Income-tax Act prescribes the tests to be applied to determine the residential status of all tax payers for purposes of income-tax. There are three alternative tests to be applied for individuals, two for companies and Hindu Undivided Families and firms, associations of persons, bodies of individuals and artificial juridical persons.
- **Residential status of Individual:** The residential status of individual is determined on the basis of number of days he / she is physically present in India.
- **Residential status of HUF :** The test to be applied to determine the residential status of a HUF, Firm or other Association of Persons is based upon the control and management of the affairs of the assessee concerned. A HUF, firm or other association of persons is said to be resident in India within

the meaning of Section 6(2) in any previous year, if during that year the control and management of its affairs is situated wholly or partly in India during the relevant previous year. If the control and management of its affairs is situated wholly outside India during the relevant previous year, it is considered non-resident.

- A HUF can be "not ordinarily resident" If manager/karta has been a not ordinarily resident in India in the previous year in accordance with the tests applicable to individuals.
- Firms, association of persons, local authorities and other artificial juridical persons can be either resident (ordinarily resident) or non-resident in India but they cannot be not ordinarily resident in India.
- Residential status of Company: All Indian companies within the meaning of Section 2(26) of the Act are always resident in India regardless of the place of effective management. In the case of a foreign company, the place of effective management (POEM) is the basis on which the company's residential status is determinable.
- Basis of charge: Section 4 of the Act imposes a charge of tax on the total or taxable income of the assessee. The meaning and scope of the expression of total income is contained in Section 5. The total income of an assessee cannot determined unless we know the residential status in India during the previous year. The scope of total income and consequently the liability to income-tax also depends upon the following facts:
  - i. whether the income accrues or is received in India or outside,
  - ii. the exact place and point of time at which the accrual or receipt of income takes place, and
  - iii. the residential status of the assessee.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions 'MCQs'

1. Person is defined under section _of the Income Tax Act, 1961
   (a) 2 (31)
   (b) 2 (7)
   (c) 2 (9)
   (d) 3
   Answer: (a)
2. Association of persons consists of .....
   (a) Individuals (only)
   (b) Company
   (c) Any Person other than (a)
   (d) Any kind of person
   Answer: (d)

3. Body of Individuals consists of .....
   (a) Individuals (only)
   (b) Company
   (c) Any Person other than (a)
   (d) Any kind of person

   Answer: (a)

4. Income is defined under section ..... of the Income Tax Act, 1961
   (a) 2 (31)
   (b) 2 (24)
   (c) 2 (9)
   (d) 3

   Answer: (b)

5. Which of the following is not a revenue receipt?
   (i) Compensation received for the loss of a capital asset
   (ii) Compensation received for damage to or loss of a trading asset.
   (iii) Profits on purchase and sale of shares by a share broker on his own account.
   (iv) Income from letting out buildings owned by a company to its employees etc.
   (a) i only
   (b) i and ii both
   (c) i , ii, and iii
   (d) All of the above

   Answer: (a)

6. The incidence of tax on income under the Income tax Act, 1961 is linked with residential status of an assessee. Ram, an individual brought into India during the previous year 2022-23 past untaxed profits of Rs. 2,00,000 of the business in UK. State in which case amount of Rs. 2,00,000 brought into India be put to tax in A.Y. 2023-24 when Ram is (a) Resident and Ordinary resident (R&OR); (b) Resident and not Ordinary resident (R&NOR) and (c) Non-Resident (NR).
   (a) Taxable in case of R&OR and R&NOR
   (b) Taxable in case of R&OR and Non Resident
   (c) Not taxable in all R&OR; R&NOR and Non-Resident
   (d) Taxable in all R&OR; R&NOR and Non-Resident

   Answer: (c)

7. Radhika during the previous year 01.04.2022 to 31.03.2023 received (1) Dividend from XYZ Ltd of UK, a Foreign Company of Rs. 12,00,000 (2) Agriculture income from land in Rajasthan of Rs. 50,000 (3) Short term capital gain on sale of shares of Indian company received in London of Rs. 60,000. Total Income of Radhika when she is a Resident and not Ordinarily Resident (R&NOR) for Assessment Year 2023-24 shall be :

(a) Rs. 13,10,000

(b) Rs. 60,000

(c) Rs. 1,10,000

(d) Rs. 12,00,000

Answer: (b)

8. Sita Raman born in U.K. is a foreign citizen. His father Radha Raman was born in Rajasthan in 1960 and mother Geeta was born in South Africa in 1965. His grandfather was also born in Rajasthan in 1935. Sita Raman for the first time to see historical places comes to India on 25th November, 2020 and remained till June, 2021 for 200 days. Residential status for assessment year 2021-22 of Sita Raman shall be :

(a) Resident and Ordinarily Resident

(b) Not Ordinarily Resident

(c) Non-Resident

(d) None of the above

Answer: (c)

9. The definition of Income as per section 2(24) of the Income tax Act, 1961 is ..... :

(a) Inclusive

(b) Exhaustive

(c) Exclusive

(d) Descriptive

Answer: (a)

10. A & Co. received Rs. 2 lacs as compensation from B & Co. for premature termination of contract of agency. Amount so received is ..... :

(a) Capital receipt & taxable

(b) Capital receipt & not taxable

(c) Revenue receipt & taxable

(d) Revenue receipt & not taxable

Answer: (a)

11. If Karta is ROR in India but control & management of HUF is situated partly outside India in PY, HUF is:

(a) ROR

(b) RNOR

(c) NR

(d) None of the above

Answer: (a)

Descriptive Questions:

1. Determining the Residential Status of an assessee is the First Step for computing the tax liability of an assessee. How?
2. Explain the term POEM 'Place of Effective Management"?
3. Define the term 'Business Connection'?
4. Distinguish between the Capital and Revenue Receipt?
5. Capital Receipt will also be taxable if it is expressly provided in the Act. Explain with examples.
6. Income may be legal as well as illegal for tax purposes. Explains.
7. Explain the term 'Active Business outside India' as define in guiding principles of 'POEM'.

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann
- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax rules-1962.aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Incomes which do not form part of Total Income

Lesson 3

KEY CONCEPTS

■ Exemption ■ Deduction ■ Rebate ■ Agriculture Income

Learning Objectives

To understand:

- Income which does not form part of Total Income
- The various exemptions available under the Income Tax Act, 1961

Lesson Outline

- Introduction
- Income which do not Form Part of total income
- Combination of Agriculture and Non-Agriculture Income
- List of Income which do not Form Part of total Income
- Agriculture Income
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

INTRODUCTION

Income Tax is calculated on the total income of a person for the previous year. For providing relief to the tax payer, Income Tax laws provide various exemptions, deduction and rebate under the Income Tax Act, 1961 'the Act'. The exempt income is often confused with the deductions and rebate. However there is difference between these concepts. Deduction & Exemption are two Synonyms words in first appearance but has vital difference at length in Income Tax Act. Deduction means subtraction of an amount from the SUM of Income which is already having under different heads of Income. Whereas Exemption means the whole income itself is exempt from tax.

The same has been explained in the table below:

Exemption	***Deduction***	***Rebate***
• Exemptions are claimed on the basis of the source of income. • The exempted income is not included in the total Income of the assessee for computing Gross Total Income.	• Deductions are allowed on the basis of the payments/ investments made during the year. • The tax deductions are allowed under different heads of income as well as from the gross income.	• Rebate is a percentage amount reduced from total income tax payable. • Tax rebate is allowed as a reduction to the total tax payable

There are several incomes that do not form part of the total income of the assessees, which are entailed u/s 10 of the Act. Being exempt, these do not enter the computation of taxable incomes. The major difference between incomes exempt u/s 10 and the deductions under Chapter-VI-A, incomes u/s 10 do not enter into the computation of taxable income for assessees at all as they are exempt; whereas Chapter for VI-A, first incomes are added and form part of Gross Total Income (GTI) and only then these deductions under the Chapter are allowed.

Expenditure incurred in relation to any exempt income is not allowed as a deduction while computing income under any of the Heads of Income. For getting deduction you have either to expense out or invest in designated area in other words it is Cash outflow. On the other hand, Inflow of income is itself exempt from tax i.e. Exemption. It results in increase in cash inflow. The government declares the exemption through either circular or notification in public interest. The following are the receipts / income which are exempt under Income tax Act, 1961.

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Agricultural Income [Section 10(1)]

Section 10(1) states that agricultural incomes are not included in the total income of the assessees. The term Agricultural Income can be quite wide in scope as under:

- It could take the form of rent or revenues derived from a land in India (If agricultural land is situated in a foreign country, the entire income would be taxable), and used for agricultural purposes
  - ✓ The amount received in money or in kind, by one person from another for right to use land is termed as **Rent**. The rent can either be received by the owner of the land or by the original tenant from the sub-tenant. It implies that ownership of land is not necessary. Thus, the rent received by the original tenant from sub- tenant would also be agricultural income subject the other conditions mentioned above.
- It could take the form of income through agriculture / cultivation to render the produce fit for being taken in to the market for sale
  - ✓ Agriculture would include **basic operations** which are absolutely necessary for raising produce, and **subsequent operations** which are performed after the produce sprouts from the land.

- ✓ Therefore, activities like tilling of the land, sowing seeds, and both the basic and subsequent operations performed together in conjunction with each other would be construed as the agricultural purpose.
- ✓ In order to render the produce, fit for being taken to market for sale, the activities would include all activities, like cleaning, drying, winnowing, crushing etc. Example, let's assume the process being referred to is obtaining rice from paddy, the process ordinarily employed by the cultivator would include:
  - Removing hay from basic grains
  - Removing chaff from the grains
  - Filtering the grain to remove stones
  - Packing the rice in gunny bags.

Therefore, all activities, manual or otherwise, all the processes would be included in and therefore constitute the activities deployed to render the produce fit for being taken to the market.

- It could take the form of sale of agricultural produce itself
  - ✓ Here, the most important part to be understood is that the produce must be sold in it's raw form, and then that will constitute agricultural income. However, if the produce is further subjected to processes other than the processes ordinarily employed to render the produce fit for the market, example, for tobacco, cotton, tea, these are subjected to further manufacturing processes before being commercially sold, and therefore the income so arising from such sale would be treated as a mix of agricultural and business income.

CASE LAW

30.11.2011	*Dy. CIT v. Best Roses Biotech (P) Ltd.*	ITAT Ahmadabad Bench

Facts of the Case: Assessee acquired land from agriculturist on lease and constructed a greenhouse flower project on said land. It started growing of rose flower / plants on bridge of plastic trays erected with help of M.S. stand 2.3 ft. above land. The assessee claimed the income from rose flower as exempt. The Assessing Officer held that the rose plants were not planted on earth land and no basis operation was carried out by assessee on land hence, not eligible for exemption. According to assessee, for plantation of roses a very well treated soil was required, manures were mixed in soil for preparing a base for growing rose plants trays were filed with mixture of soil, insecticides were sprinkled on plants to save plants from any disease, root stocks were brought from market and planted in green house, mother plant was otherwise reared on earth, subsequently saplings were planted on plastic trays which were kept at height of 2-3 ft. placed on M.S. stand, purpose of growing rose plants at a height was primarily to avoid pest and to develop in a controlled atmosphere and green house was used for various benefit so that sunlight and humidity level both could be maintained.

Judgment: In fact assessee's activity has already been endorsed as an agriculture activity by several other connected authorities certifying it as an agricultural operation. After an elaborate discussion of the facts as well as law pronounced by several courts, as also the decisions now cited from the side of the Revenue, it is finally held that considering the advancement of technology and the use of the advanced equipment in *DCIT Navsari* v. *Best Roses Biotech Pvt. Ltd.* cultivation; coupled with the conventional cultivation method, put together, made the operation carried out by the assessee was agricultural operation in nature. Respectfully placing reliance on this decision as also the few decisions

cited hereinabove, the considered view that the income in question cannot be included in total income being within the ambits of the provisions of Section 10(1) of the Act. The view taken by Ld. CIT(A) is hereby affirmed and this ground of Revenue's appeal is dismissed.

Illustration 1:

Whether income from nursery constitutes agricultural income?

Solution:

Yes, as per *Explanation 3* to section 2(1A), income derived from saplings or seedlings grown in a nursery would be deemed to be agricultural income, whether or not the basic operations were carried out on land.

Rule 7 - Where the income is partially agricultural income and partially business income, **the market value** of any agricultural produce so raised by the assessees, which has been further utilised / processed in such business will be allowed as a deduction in such business.

Determination of market value - There are two possibilities here:

(i) The agricultural produce is capable of being sold in the market either in its raw stage or after application of any ordinary process to make it fit to be taken to the market. In such a case, the value calculated at the average price at which it has been so sold during the relevant previous year will be the market value.

(ii) It is possible that the agricultural produce is not capable of being ordinarily sold in the market in its raw form or after application of any ordinary process. In such case the market value will be the total of the following:

- The expenses of cultivation;
- The land revenue or rent paid for the area in which it was grown; and
- Such amount as the Assessing Officer finds having regard to the circumstances in each case to represent at reasonable profit.

Illustration 2:

Kundan Lal grows sugarcane and uses the same for the purpose of manufacturing sugar in his factory. 40% of the sugarcane produce is sold for INR 15,00,000 and the cost of cultivation of this part is INR 8,00,000. 60% of the sugarcane produce is further subjected to manufacturing sugar and the Market Value (MV) of the same was INR 33,00,000 and the cost of cultivation of this part was INR 21,00,000.

Post incurring INR 3,00,000 in the manufacturing process for sugar, that the sugarcane was subjected to, the sugar was sold for INR 40,00,000.

You are required to advise on his Agricultural and Business Income.

Solution:

Particulars	***Figure in Lakhs***	***Figure in Lakhs***
Item	**Sugarcane**	**Sugar**
Sale	48.0	40.0

Cost of cultivation	29.0	33.0
Further Mfg.	0.0	3.0
Agriculture Income	**19.0**	
Business Income		**4.0**

Notes:

a) 40% of the sugarcane produce was sold raw @ INR 15,00,000 and 60% of the sugarcane produce was subjected to further manufacturing, MV was INR 33,00,000. Therefore, for the purposes of agricultural income, the entire produce was disposed at a consideration of INR 48,00,000

b) The cost of 100% produce is INR 800,000 and INR 21,00,000 for the 40% and 60% respectively, which is INR 29,00,000

c) For sugar, the MV of the 60% produce would be taken as the cost hence, and therefore the cost of cultivation would be INR 33,00,000

Income from Manufacture of Rubber [Rule 7A]

This rule applies on income from sale of latex, or crepes derived from latex, coagulum obtained from rubber plants, grown by the seller in India. In such cases, 35% of profits on sales is taxable as business income and 65% as agricultural income, which stands exempt.

Illustration 3:

Nikhil manufactures latex from rubber plants grown by him in India. These are subsequently sold in the market at INR 50,00,000. The costs incurred are as under:

- Manufacturing Latex: INR 12,00,000
- Growing Rubber Plants: INR 18,00,000

Solution:

The treatment is explained as under:

Particulars	***INR***
Total Income	50,00,000
Total Costs	30,00,000
Profits	20,00,000
Business Income	7,00,000
Agricultural Income	13,00,000

Note: the business income chargeable to tax under the head "Profits and Gains from Business / Profession" is taken @ 35% of the profits and the agricultural income is taken @ 65%, which is subsequently exempt from tax.

Illustration 4:

Mr. A manufactures latex from the rubber plants grown by him in India. These are then sold in the market for Rs. 50 lacs. The cost of growing rubber plants is Rs. 20 lacs and that of manufacturing latex is Rs. 10 lacs. Compute his total income.

Solution:

The total income of Mr. A comprises of agricultural income and business income. Total profits from the sale of latex= Rs. 50 lacs – Rs. 20 lacs – Rs. 10 lacs = Rs. 20 lacs. Agricultural income = 65% of Rs. 20 lac = Rs. 13 lacs

Business income = 35% of Rs. 20 lacs = Rs. 7 lacs

Income from the Manufacture of Coffee [Rule 7B]

This rule applies on income from sale of coffee grown & cured by the seller in India. In such cases, 25% of profits on sales is taxable as business income and 75% as agricultural income, which stands exempt.

However, in case of income from sale of coffee, grown, cured, roasted and grounded by the seller in India, with / without mixing flavoured ingredients, 40% of the income would be taken as taxable as business income and 60% as agricultural income, which stands exempt.

CASE LAW

Whether claim of assessee of exemption under section 10(1) on proceeds from sale of coffee subjected to only pulping and drying was accepted for several years and there were hundreds of coffee growers whose income were also exempted, re-opening notice issued only against assessee during relevant assessment year was unjustified [Assessment year 2009-10] [In favour of assesse]

Karti P. Chidambaram* vs. *Asstt. CIT (2017) (Mad.)

The assessee, owner of coffee estates, was engaged, in growing coffee and after pulping and drying, sells coffee as raw coffee. For several assessment years, the assessee had been granted exemption under section 10(1) on income from sale of raw coffee. During relevant assessment year, reopening notice was issued against the assesse on ground that the assessee sold cured coffee and not raw coffee and hence 25 percent of total receipts from sale of coffee was eligible to tax. Subsequently, a reassessment order was passed making additions to income of the assessee.

Held that since re-assessment order was passed without disposing of the assessee's objections to re-opening of assessment and without passing a speaking order, same was unjustified. Further, where claim of the assessee of exemption of income under section 10(1) on proceeds from sale of coffee subjected to only pulping and drying was accepted for several years and there were hundreds of coffee growers whose income were also exempted, re-opening notice issued only against the assessee during relevant assessment year was unjustified.

Income from Growing and Manufacturing of Tea [Rule 8]

This rule applies on income, where the assessees themselves grow tea leaves and manufacture tea in India. In such cases, 40% of profits on sales are taxable as business income and 60% as agricultural income, which stands exempt.

Summary Chart			
Nature of Income	***Income tax Rule applicable***	***Amount of agricultural income***	***Amount of non-agricultural income***
Income from growing and manufacturing of rubber	Rule 7A	65% of such income	35% of such income
Income derived from sale of coffee grown and manufactured in India	Rule 7B(1)	75% of such income	25% of such income
Income derived from sale of coffee grown, cured, roasted and grounded is India	Rule 7B(1A)	60% of such income	40% of such income
Income from sale of tea manufactured or grown in India	Rule 8	60% of such income	40% of such income

Income from Farm Building

Income arising from the use of farm building for any purpose (including letting for residential purpose or for the purpose of business or profession) other than agriculture would not be agricultural income.

Further, the income from farm building would be agricultural income only if the following conditions are satisfied:

(a) The building should be on or in the immediate vicinity of the land; and

(b) The receiver of the rent or revenue or the cultivator or the receiver of rent in kind should, by reason of his connection with such land require it as a dwelling house or as a store house.

In addition to the above conditions any one of the following two conditions should also be satisfied:

(i) The land should either be assessed to land revenue in India or be subject to a local rate assessed and collected by the officers of the Government as such or;

(ii) Where the land is not so assessed to land revenue in India or is not subject to local rate:-

a. It should not be situated in any area as comprised within the jurisdiction of a municipality or a cantonment board and which has a population not less than 10,000 or

b. It should not be situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder –

Sl. No.	***Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item a.***	***Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year***
(i)	≤ 2 kilometers	> 10,000 ≤ 1,00,000
(ii)	≤ 6 kilometers	> 1,00,000 ≤ 10,00,000
(iii)	≤ 8 kilometers	> 10,00,000

Illustration 5:

Whether income arising from transfer of agricultural land situated in urban area be agricultural income?

Solution:

No, as per Explanation 1 to section 2(1A), the capital gains arising from the transfer of urban agricultural land would not be treated as agricultural income under section 10 but will be taxable under section 45.

COMBINATION OF AGRICULTURAL AND NON-AGRICULTURAL INCOME

This is applicable to Individuals, HUF, AOP, BOI, and artificial juridical person.

Two conditions which need to be satisfied for partial integration of agricultural income with non-agricultural income are:

1) The net agricultural income must be > INR 5000 p.a.; and
2) The non-agricultural income must be > the maximum amount not chargeable to tax (which is INR 250,000 for all individuals / HUF's; INR 300,000 for senior citizens and INR 500,000 for very senior citizens)

The manner of computation of Income in such cases would be as under:

Compute the tax liability on non-agricultural income & net agricultural income combined (A) → Compute the tax liability on net agricultural income and maximum appropriate exemption limit (B) → Perform (A)-(B) → This sum would be reduced by relief u/s 87A if any and adjustment of surcharge if any. advance tax, TDS etc. and finally cess would be added

Illustration 6:

Income of Mr. A for the previous year 2022-23 is as follows: Compute Tax Liability for the Assessment year 2023-24.

Particulars	***INR***
Income from salary (computed)	2,50,000
Income from house property (computed)	1,25,000
Net Agricultural Income	1,00,000

Solution:

Particulars	***INR***
Income from salary (computed)	2,50,000
Income from house property (computed)	1,25,000
Net Agricultural Income	1,00,000
Total (A)	**4,75,000**

Tax Liability	11,250
Total (B)	3,50,000
Tax Liability	5,000
(A)-(B)	6,250
Less: Rebate 87A [12500 or tax payable i.e. 6,250 whichever is lower]	6,250
Total tax payable	Nil

Note:

1) The (A) would be the combined income and the tax liability is computed per the current slabs and rates
2) The (B) would be the net agricultural income as increased by the minimum exemption amount and the tax liability is computed per the current slabs and rates
3) The (A)-(B) would be the tax liability on which rebate 87A is allowed to determine the final total tax Liability.
4) It is assumed that the assessee has not opted for Section 115BAC of the Income tax Act, 1961.

LIST OF INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Sections	***Following Income exempt under section 10 of the Income Tax Act, 1961***
Section 10(1)	Agriculture Income
Section 10(2)	Amount received by a member of the HUF from the income of the HUF
Section 10(2A)	Share of profit received by a partner from the Firm
Section 10(4)	Interest to Non-Residents
Section 10(4B)	Interest on notified savings certificates
Section 10(4D)	Transfer of capital asset on a recognized in Stock exchange located in any International Financial Services Centre
Section 10(4E)	Income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts or offshore derivative instruments or over-the-counter derivatives, entered into with an offshore banking unit of an International Financial Services Centre
Section 10 (4F)	Income of a non-resident by way of royalty or interest , on account of lease of an aircraft or a ship
Section 10(4G)	Income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident

Sections	*Following Income exempt under section 10 of the Income Tax Act, 1961*
Section 10(5)	Leave Travel Concession
Section 10(6)	Remuneration received by individuals, who are not citizens of India
Section 10(6A)	Tax paid on behalf of foreign company deriving income by way of royalty or fees for technical services
Section 10(6B)	Tax paid on behalf of foreign company or non-resident in respect of other income
Section 10(6BB)	Tax paid on behalf of foreign Government or foreign enterprise deriving income by way of lease of aircraft or aircraft engine
Section 10(6C)	Technical fees received by a notified foreign company
Section 10 (6D)	Royalty or fees for technical services payment by NTRO to a non resident
Section 10(7)	Allowance / perquisites to Government employee outside India
Section 10(8)	Income of foreign Government employee under co-operative technical assistance programme
Section 10(8A), (8B)	Remuneration or fees received by a non-resident consultant/its foreign employees
Section 10(9)	Income of a family member of an employee serving under co-operative technical assistance programme
Section 10 (10)	Death-cum-Retirement Gratuity
Section 10(10A)	Commuted Pension
Section 10(10AA)	Leave Encashment
Section 10(10B)	Retrenchment compensation
Section 10(10BB)	Compensation for Bhopal Gas Leak Disaster
Section 10(10BC)	Compensation on account of any disaster
Section 10(10C)	Payment at the time of voluntary retirement
Section 10(10CC)	Tax on perquisites paid by the employer
Section 10(10D)	Amount paid on life insurance policy

Sections	*Following Income exempt under section 10 of the Income Tax Act, 1961*
Section 10(11A)	Payment from account opened in accordance with the Sukanya Samriddhi Account Rules, 2014
Section 10(12A)	Payment from the National Pension System Trust to an employee
Section 10(12B)	Partial withdrawal from NPS
Section 10(13)	Payment from approved superannuation fund in specified circumstances and subject to certain limits
Section 10(13A)	House Rent Allowance
Section 10(14)	Special Allowance
Section 10(15)	Interest Incomes
Section 10(16)	Educational scholarship
Section 10(17)	Daily allowance to a Member of Parliament
Section 10(17A)	Awards
Section 10(18)	Pension to gallantry award winner
Section 10(19)	Family pension received by the family members of armed forces
Section 10(20)	Income of Local Authority
Section 10(21)	Income of Research Association
Section 10(22B)	Income of a news agency
Section 10(23A)	Income of a professional association
Section 10(23AA)	Income received on behalf of Regimental Fund
Section 10(23AAA)	Income of a fund established for welfare of employees
Section 10(23AAB)	Income of Pension Fund
Section 10(23B)	Income from Khadi or village industry
Section 10(23C)	Income of Hospital
Section 10(23D)	Income of Mutual Fund

Sections	*Following Income exempt under section 10 of the Income Tax Act, 1961*
Section 10(23DA)	Income of a securitization trust from the activity of securitization
Section 10(23EA)	Income of notified Investor Protection Fund
Section 10(23EB)	Income of the Credit Guarantee Fund Trust for Small Industries
Section 10(23EC)	Income of the notified investor protection fund set-up by commodity exchange
Section 10(23ED)	Income of Investor Protection Fund set by a depository
Section 10(23EE)	Specified income of Core Settlement Guarantee Fund
Section 10(23FB)	Income of a venture capital fund or a venture capital company from investment in a venture capital undertaking
Section 10(23FBA)	Income of an Investment Fund
Section 10(23FBB)	Income referred to in section 115UB
Section 10(23FBC)	Income accruing or arising to, or received by, a unit holder from a specified fund or on transfer of units in a specified fund
Section 10(23FC)	Income of a Business Trust
Section 10(23FCA)	Income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust
Section 10(23FD)	Distributed income referred to in section 115UA
Section 10(23FE)	Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund
Section 10(23FF)	Income of the nature of capital gains, arising or received by a non-resident or a specified fund, which is on account of transfer of share of a company resident in India, by the resultant fund or a specified fund to the extent attributable to units held by non-resident (not being a permanent establishment of a non-resident in India)
Section 10(24)	Income of a Registered Trade Union

Sections	*Following Income exempt under section 10 of the Income Tax Act, 1961*
Section 10(25)	Income of Provident Fund
Section 10(25A)	Income of the Employees' State Insurance Fund
Section 10(26)	Income of a member of a Scheduled Tribe
Section 10(26AAA)	Specified income of a Sikkimese Individual
Section 10(32)	Income of Minor
Section 10(34A)	Income on Buyback of Shares
Section 10(37)	Income chargeable under the head "Capital gains" arising from the transfer of agricultural land
Section 10(39)	Income from international sporting event
Section 10(40)	Income received as grant by a subsidiary company
Section 10(41)	Income from transfer of asset of an undertaking engaged in the business of generation, transmission or distribution of power
Section 10(42)	Income of a body or authority set up by two countries
Section 10(43)	Reverse Mortgage
Section 10(44)	New Pension System Trust
Section 10(46)	Exemption of 'specified income' of certain bodies or authorities
Section 10(47)	Exemption of Income of notified 'Infrastructure debt fund'
Section 10 (48)	Exemption of Income of a foreign company from sale of Crude Oil in India
Section 10(48B)	Exemption of income of foreign company from sale of leftover stock of crude oil on termination of agreement or arrangement
Section 10(48C)	Income accruing or arising to Indian Strategic Petroleum Reserves Limited (ISPRL)
Section 10(49)	Exemption of income of National Financial Holdings Company
Section 10(50)	Any income arising from any specified service provided arising from any e-commerce supply or services made or provided or facilitated and chargeable to equalisation levy
Section 10A	Special provision in respect of newly established undertakings in free trade zone, etc
Section 10AA	Special provisions in respect of newly established Units in Special Economic Zones

Sections	*Following Income exempt under section 10 of the Income Tax Act, 1961*
Section 10B	Special provisions in respect of newly established hundred per cent export-oriented undertakings
Section 10BA	Special provisions in respect of export of certain articles or things
Section 10C	Special provision in respect of certain industrial undertakings in North- Eastern Region

These detailed provisions with respect to the various terms and conditions as well as situation on the basis of which exemptions are available is given in the respective provisions of the section. The weblink for reference to detailed provisions of various exemption are available at *https://incometaxindia.gov.in/pages/acts/income-tax-act.aspx*

Illustration 7:

Mr. P, a member of a HUF, received Rs. 5,000 as his share from the income of the HUF. Is such income includible in his chargeable income?

Solution:

No. Such income is not includible in Mr. P's chargeable income since section 10(2) exempts any sum received by an individual as a member of a HUF where such sum has been paid out of the income of the family.

Illustration 8:

HUF earned Rs. 5,00,000 during the previous year and paid tax on its income. Mr. A, a co-parcener is an employee and earns a salary of Rs. 20,000 p.m. During the previous year Mr. A also received Rs. 1,00,000 from HUF. What will be the tax treatment on the above receipt?

Solution:

Mr. A will pay tax on his salary income but any sum of money received from his HUF is not chargeable to tax in Mr. A's hands.

Illustration 9:

HUF earned Rs. 90,000 during the previous year 2022-23 and it is not chargeable to tax. Mr. A, a co-parcener is earning individual income of Rs. 20,000 p.m. Besides his individual income, Mr. A receives Rs. 30,000 from his HUF. What will be the tax treatment on the above receipt?

Solution:

Mr. A will pay tax on his individual income but any sum of money received by him from his HUF is not chargeable to tax in the hands of co-parcener whether the HUF has paid tax or not on that income.

Illustration 10:

Rajveer Turbines has 2 undertakings, one in a SEZ and one in a normal zone. The summarised results are as under:

Item	*SEZ*	*Normal*
Domestic turnover	50	125

Export turnover	200	0
Gross Profit	75	25
Expenses & Depreciation	15	10
Net profit	60	15

Compute the business income of the assessee.

Solution:

The treatment is as under:

Total profit	75
Less : Exempt u/s 10AA	48
Taxable profits	27

Note:

1. Total profits is the sum of the respective net profits for both the units
2. The exemption is in the proportion of the export turnover to total turnover
3. It is assumed that the current FY falls within the First 5 years commencing from the year of manufacture of goods / provision of services by the SEZ Unit, as the quantum of deduction available is 100% of export profits for the first 5 years and 50% for the next 5 years and 50% of the next 5 years as is credited to a special reserve a/c.

Illustration 11:

Whether the payment of Compensation on agreed terms in respect of land acquired would be entitled for exemption under section 10(37) of the Income tax Act, 1961?

Solution: Even if the amount of compensation is paid on agreed terms it would not change the character of the acquisition from that of compulsory acquisition to the voluntary sale and the exemption provided under the Income tax Act, 1961 would be available and such negotiations would be confined to the quantum of compensation only. [**Supreme Court decision in case of *Balakrishnan* v. *Union of India***]

CASE LAW

Retiring employees of ICICI under VRS was eligible for section 10(10C) exemption [Assessment year 2004- 05] [In favour of assesse]

R. Banumathy v. CIT [2018] (Madras High Court)

The assessee an employee of ICICI bank opted for Early Retirement Optional Scheme and received a consolidated payment. According to the Income Tax Department, Voluntary Retirement Scheme issued by the ICICI Bank was not in conformity with the Rules. Therefore, the employees were not entitled to any exemption under section 10(10CC) of the Income tax Act, 1961.

Held that the Supreme Court and the Bombay High Court have dealt with voluntary retirement scheme of the RBI and held that retiring employees are eligible for section 10 (10C) exemptions. Section 10(10C) and rule 2BA, do not specifically apply to the RBI alone and, therefore, benefit was applicable to the assessee also and thus, the assessee was entitled to section 10(10C) benefit.

CASE LAW

Merely because surplus earned by assessee educational institution was invested for expansion of school building, it could not be held that assessee did not exist solely for educational purpose so as to deny assessee exemption under section 10(23C)(vi) of the Income tax Act, 1961 [In favour of assesse]

Mallikarjun School Society v. Chief CIT [2018] (Uttarakhand)

The assesee, educational society, applied for exemption under section 10(23C)(vi) of the Income tax Act, 1961. Exemption was denied to the assessee on grounds that surplus of society was utilized for expansion/ addition of school building, thus, it did not apply its funds for purpose of education.

Held that it was noted that main purpose, aim and object, as stated in Memorandum of Association of the assessee, was to impart education along with ancillary objects. Merely because surplus earned by the assesse educational institution was used for expansion of school building etc. it could not be held that the assessee did not exist solely for educational purpose. Thus, the assessee was to be allowed exemption under section 10(23C)(vi) of the Income tax Act, 1961.

LESSON ROUND-UP

- **Exemptions:** An exemption is the income which is not charged to tax at all. Exemption means exclusion, i.e. if certain income is exempt from tax then it will not contribute to the total income of a person.
- **Deduction:** Deduction means subtraction i.e. an amount that is eligible to reduce taxable income.
- **Rebate** is a percentage amount reduced from total income tax payable. Tax rebate is allowed as a reduction to the total tax payable
- This Lesson list out the general exempted incomes enumerated under section 10 and other specific exempted income dealt under section 10A, 10AA, 10B, 10BA, 10C.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

Multiple Choice Questions (MCQs)

Choose the most appropriate answer from the given options in respect of the following:

1. Any rent or revenue derived from land may be treated as agricultural income if-
   (a) It is derived from land
   (b) The land is situated in India
   (c) The land is used for agricultural purpose
   (d) All the above conditions are satisfied.

   Answer: (d)
2. Which of the following income is agricultural income—
   (a) Rent received from agricultural land

(b) Income from dairy farm

(c) Income from poultry farm

(d) Dividend from a company engaged in agriculture.

Answer: (a)

3. Income of an assessee engaged in the business of growing and manufacturing tea in India is taxable to the extent of-

(a) 40% of such income

(b) 60% of such income

(c) 70% of such income

(d) 30% of such income.

Answer: (a)

4. If non-agricultural income is Rs. 2,02,000 and net agricultural income is Rs. 40,000, the tax liability of an individual assessee will be (assuming assessee has not opted for Section 115BAC of the Income tax Act, 1961:

(a) Nil (b) Rs. 200

(c) Rs. 206 (d) Rs. 4,326.

Answer: (a)

5. Which of the following additional incomes will not be treated as agricultural income under the Income- Tax Act, 1961:

(a) Additional income from selling ginned cotton as compared to unginned cotton

(b) Additional income from selling dried-up coffee as compared to raw coffee

(c) Additional income from selling cured tobacco as compared to green tobacco leaves

(d) Additional income from selling dried-up tea leaves as compared to raw tea leaves.

Answer: (a)

6. Pawan reports net income of Rs. 5 lakh from the activity of growing and manufacturing rubber. How much of such income is to be treated as non-agricultural income:

(a) Rs. 1,75,000 (b) Rs. 2,00,000

(c) Rs. 1,25,000 (d) Nil

Answer: (a) Rs.1,75,000

7. Mr. Vinayak derived income from sale of tea manufactured and grown in Coorg, Karnataka. His income for the previous year 2022-23 from the said activity is Rs. 20 lakhs. The amount exempt from tax by way of agricultural income is:

(a) Rs. 8 lakhs (40%) (b) Rs. 5 lakhs (25%)

(c) Rs. 12 lakhs (60%) (d) Rs. 7 lakhs (35%)

Answer: (c) Rs. 12 lakhs (60%)

8. Mr. Sankar received Rs. 50,000 as educational scholarship from Nehru Memorial Trust (a charitable trust). The scholarship is to assist Mr. Sankar for pursuing M.A. (History) at Jawaharlal Nehru University, New Delhi. The amount of scholarship liable to tax is:

   (a) Rs. 50,000 (b) Rs. 10,000

   (c) Rs. 25,000 (d) Nil

   Answer: (d) Nil

9. Mr. Chandan (age 70) received Rs. 30,000 every month during the financial year 2022-23 on reverse mortgage of his property with State Bank of India. The amount of receipt liable to tax in the hands of Mr. Chandan is:

   (a) Rs. 3,60,000 (b) Rs. 2,52,000

   (c) Rs. 40,000 (d) Nil

   Answer: (d) Nil

10. Mr. Menon having tea estate in Munnar (Kerala) earned Rs. 5 lakhs by way of growing tea leaves and manufacturing tea. The income chargeable to tax would be:

   (a) Rs. 2,00,000 (b) Rs. 1,75,000

   (b) Rs. 1,25,000 (d) None of the above

   Answer: (a) Rs. 2,00,000

11. Ms. Laxmi received Rs. 60,000 by way of family pension from State Government. The amount of family pension eligible for exemption under section 10(19) of the Income tax Act 1961 is:

   (a) Rs. 60,000 (b) Rs. 40,000

   (c) Rs. 20,000 (d) Nil

   Answer: As per section 10(19) family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including paramilitary forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed shall be fully exempted. Exemption is available only to union and not state, hence exemption under 10(19) is NIL.

12. A registered trade union earned income by way of interest on fixed deposit held with State Bank of India of Rs. 5,60,000. The interest income chargeable to tax in the hands of trade union would be:

   (a) Rs. 5,60,000 (b) Nil

   (c) Rs. 2,60,000 (d) Rs. 3,10,000

   Answer: (b) Nil

13. The income derived from growing, manufacturing and sale of Centrifuged latex or Cenex or Latex based cops as per Rule 7A of the Income-tax Rules, 1962 shall be taken as agricultural and non-agricultural income in the following ratio:

   (a) 75% and 25% (b) 60% and 40%

   (c) 65% and 35% (d) None of the above

   Answer: (c) 65% and 35%

Descriptive Questions

1. What is Agriculture Income? Explain its Tax Treatment under Income tax Act, 1961
2. What is the difference between Exemption and Deduction under the Income tax Act, 1961.
3. Justify the correctness of the statement "Exempt Income is not chargeable at all and therefore not to be included in Total Income of the Assessee".
4. Income of Mr. Arun for the previous year 2022-23 is as follows:

Particulars	INR
Income from salary (computed)	5,00,000
Income from house property (computed)	50,000
Net Agricultural Income	2,00,000

Compute Tax Liability for the Assessment year 2023-24 assuming assessee has not opted for section 115BAC of the Income Tax Act, 1961.

Answer: Rs. 54,600

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann
- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962. aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Income under the head Salary

Lesson 4

KEY CONCEPTS

■ Salary ■ Allowance ■ Perquisites ■ Profit in lieu of Salary ■ Standard Deduction

Learning Objectives

To understand:

- The Basis of Charge of Income under the head Salary
- Impact of Section 115BAC on the computation of income under the head Salary Income
- The computation of taxable value of Allowances, Perquisites, Profit in lieu of Salary.
- The various deduction allowable under the head Salary
- The Computation of Income under the head Salary

Lesson Outline

REGULATORY FRAMEWORK

Sections	*Income Tax Act, 1961*
Section 15	Basis of Charge
Section 17(1)	Salary
Section 10(5)	Leave Travel Concession
Section 10(13A)	House Rent Allowance
Section 10(14)	Special Allowances
Section 10(10A)	Commuted Pension
Section 10(10)	Gratuity
Section 10(10AA)	Leave Encashment
Section 17(2)	Valuation of Perquisites
Section 17(3)	Profits in lieu of Salary
Section 89	Relief when salary is paid in arrears or advance
Section 16(ia)	Standard Deduction
Section 16(ii)	Entertainment Allowance
Section 16(iii)	Professional Tax

INTRODUCTION

The pre-requisite of any Income to be chargeable under the head salary is the *employer-employee relationship* exists between payer and payee and that is the premise basis on which the Income can be charged as "Salaries". It is also important to note that the employment could be full time or part time, really doesn't matter, what matters is that the relationship should be *employer-employee*.

The question whether a particular person receives the income in his capacity as an employee or not has to be decided from the facts of each case. Let's examine the following cases, whether payments are chargeable under the head salaries:

1) **Professor**: The professor of university would be receiving income by way of monthly salary from the university which is chargeable to tax under this head. But this does not mean that every item of income received by the employee from his employer would be taxable under this head. Thus, income by way of examiner-ship fees received by a professor from the same university in which he is employed would not be chargeable to tax under this head but must be taxed as Income from other sources under Section 56. This is because of the fact that the essential condition that the income in question must be received for services rendered in the ordinary course of employment would not be fulfilled in the case of examiner-ship fees.

2) **Director**: A director of a company may, in some cases, be an employee of a company where there is a specific contract of employment between him and the company. The fact that the same person has dual capacity in his relationship with the company does not mean that he cannot be taxed under this head. Every item of income arising to such a director who is also an employee of the company (e.g. a managing director or other whole- time director) by virtue of his employment would be taxable as his

income from salary. Thus, income by way of remuneration received by a managing director would be taxable as his salary income whereas the income received by him as director's fees in his capacity as director for attending the meetings of the Board would be assessable under the head "Income from other sources".

3) **Official Liquidator**: An official liquidator appointed by the Court or by the Central government would also become an employee of the Central government under the Companies Act, and consequently the remuneration due to him would also be assessable under the head 'Salaries'.

4) **Manager**: Remuneration received by a manager of a company even if he is wrongly designated as a director or by any other name would be chargeable to tax under this head regardless of the fact that the amount is payable to him monthly or is calculated at a certain percentage of the company's profits.

5) **Partner of a Firm**: Salary paid to a partner by a firm is nothing but appropriation of profits. Any salary, bonus, commission, or remuneration by whatever name called due to or received by partner of a firm shall not be regarded as salary but has to be charged as income from business. It is because of the fact that the relationship between the firm and its partner is not of employer and employee.

6) **Member of Parliament**: According to a circular of the Board dated 22-5-1967, the salary received by a person as Member of Parliament will not be chargeable to income-tax under the head "Salaries" but as "Income from other sources" because a Member of Parliament is not an employee of the government but only an elected representative of the people.

7) **Treasurer of a Bank**: The income received by a treasurer of a bank would be taxable as his salary income if the treasurer is an employee of the bank. If he does not happen to be an employee, the income received by him would be taxable as "Income from other sources". for this purpose, the question whether in a particular case the treasurer is an employee or not has to be decided on the basis of the facts and circumstances of each case having due regard to his powers, responsibilities and functions.

8) **Person carrying on a Profession or Vocation**: Income derived by any person from carrying on a profession or vocation must be taxed as business income and not as salary income because employment is different from profession.

9) **Income from tips** would be chargeable in the hands of the employees as income from other sources, as such tips being received from customers and not from the employer, Section 192 (TDS on Salary Income) would not get attracted. ***ITC ltd.* Vs *Commissioner of Income-tax (TDS) (SC).***

10) **Salaries received by Judges** is taxable under the head salaries even though they have no employer. [***Justice Deoki Nandan Agarwala* Vs. *Union of India (SC)***]

But, if an employee receives any money from his employer as part of the terms of employment for not carrying on any profession, such income must be taxed as salary income. for instance, the allowance given by employer to a doctor employed by him for not carrying on a profession in addition to the employment would be income arising from employment in accordance with the terms and conditions of such employment and must, therefore, be taxed as salary income. If an employee gets money from persons other than his employer and if such money is not in any way related to the contract of services with the employer under whom he is working, the receipts, if taxable as income, must be assessed under the head "Income from other sources".

However, gratuity, bonus, commission or other items of payment made by the employer without any specific stipulation in the contract of employment to this effect, would still be taxable as salary, because they are paid by the employer for the services rendered by the employee. The fact that such payments are voluntary and in certain circumstances may qualify for exemption from income-tax in the hands of the employee, would not affect the income being computed under the head salary.

The provisions related to "Salaries" are contained as under:

- **Chargeability [Section 15]**
- **Deduction [Section 16]**
- **Constituents [Section 17]**

BASIS OF CHARGE [SECTION 15]

The charging section states that, salary is taxable on *"due" or "paid" basis* whichever is earlier. That is, if it is due, it is included in taxable salary, irrespective of whether it is paid or not, and if it is paid, it is taxable, irrespective of whether it is due or not. Therefore, it is only logical to note that if it has already been taxed on due basis, the same cannot be taxed again when it is paid. Similarly, if a salary which was paid in advance, if it has already been taxed in the year of payment, it cannot subsequently be taxed when it becomes due. The same is explained in the table given below:

Nature of salary	***Is it taxable as income of the previous year 2022-23***
Salary becomes due during the previous year 2022-23 (whether paid during the same year or not)	Yes
Salary is received during the previous year 2022-23 (whether it becomes due in a subsequent year)	Yes
Arrears of salary received during the previous year 2022-23 although it pertains to one of the earlier years and the same were not taxed earlier on due basis	Yes
Arrears of salary received during the previous year 2022-23 although it pertains to one of the earlier years but the same were taxed earlier on due basis	No

Accounting method of the employee not relevant – It is worthwhile to mention that salary is chargeable to tax on "due" or "receipt" basis (whichever matures earlier) regardless of the fact whether books of account, in respect of salary income, are maintained by the assessee on mercantile basis or cash basis. Method of accounting cannot, therefore, vary the basis of charge fixed by section 15.

Place of accrual of salary income [Section 9(1)] - Income under the head "Salaries" is deemed to accrue or arise at the place where the service (in respect of which it accrues) is rendered. Keeping in view the aforesaid general observation, the rules are given below:

- Under section 9(1)(ii), salary in respect of service rendered in India is deemed to accrue or arise in India even if it is paid outside India or it is paid or payable after the contract of employment in India comes to an end.
- Pension paid abroad is deemed to accrue in India, if it is paid in respect of services rendered in India.

Likewise, leave salary paid abroad in respect of leave earned in India is deemed to accrue or arise in India.

- Section 9(1)(iii), however, makes a departure from the aforesaid rule. By virtue of this section, salary paid by the Indian Government to an Indian national is deemed to accrue or arise in India, even if service is rendered outside India. Deeming provisions of section 9(1)(iii) are applicable only in respect of salary and not in respect of allowances and perquisites paid or allowed by the Government to Indian nationals working abroad, as such allowances and perquisites are exempt under section 10(7).

The provisions of section 9(1)(ii)/(iii) are summarized below (it is assumed that salary is paid at the place where service is rendered)

Situation	Who is employee	Who is employer	Is it taxable in India		
			Where service is rendered	Salary	Allowance/ perquisite
Case 1	Indian citizen (resident or non-resident)	Government of India	Outside India	Yes	No (exempt)
Case 2	Non-resident (but not covered by case 1)	Any	Outside India	No	No
Case 3	Resident and ordinarily resident (but other than case 1)	Any	Anywhere	Yes	Yes

IMPACT OF SECTION 115BAC UNDER THE HEAD SALARY

Finance Act, 2020 has introduced Optional Tax regime for Individuals and HUF to provide for concessional rate of Slab Rates to be applied on Total Income calculated without claiming specified deductions and exemptions. Hence, from AY 2021-22 or FY 2020-21, there are two operative tax systems as under:

1. One is the existing tax system where all the applicable deductions and exemptions are allowed and the tax rates are as per the normal slab rates.
2. The second one is section 115BAC which is a optional Tax System and under which many deductions and exemptions have not been allowed but lower slab tax rates are provided in the section 115BAC itself.

The deduction under Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA not available to the Individual and HUF opting to pay tax under concessional tax regime under section 115BAC of the Income Tax Act, 1961.

Many exemptions & deduction are not allowed under the new tax system. The below chart contains the exemptions and deduction not available under the new system related to Income under the head Salary. Similarly, deductions & exemptions not available under the new tax system and which are related to other heads are provided in respective chapters.

Sr. No.	*Nature of Exemption/Deduction Relating to Salaries*	*New System of Tax u/s 115BAC*	*Existing System of Tax*
A	**RETIREMENT BENEFIT EXEMPTIONS**		
	Leave Salary u/s 10(10AA)	Allowed	Allowed

Sr. No.	*Nature of Exemption/Deduction Relating to Salaries*	*New System of Tax u/s 115BAC*	*Existing System of Tax*
	Gratuity u/s 10(10)	Allowed	Allowed
	Commutation of Pension u/s 10(10A)	Allowed	Allowed
	Retrenchment Compensation u/s 10(10B)	Allowed	Allowed
	VRS Compensation u/s 10(10C)	Allowed	Allowed
	Leave Travel Concession u/s 10(5)	Not Allowed	Allowed
B	**ALLOWANCES**		
	Exemption u/s 10(13A) and Rule 2A from House Rent Allowance	Not Allowed	Allowed
1.	**Exemption u/s 10(14)(i) and Rule 2BB**		
	Travelling Allowance	Allowed	Allowed
	Conveyance Allowance	Allowed	Allowed
	Daily Allowance	Allowed	Allowed
	Helper Allowance	Not Allowed	Allowed
	Any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions	Not Allowed	Allowed
	Uniform Allowance	Not Allowed	Allowed
2.	**Exemption u/s 10(14)(ii) and Rule 2BB**		
	Children Education Allowance	Not Allowed	Allowed
	Hostel Expenditure Allowance	Not Allowed	Allowed
	Tribal Area Allowance	Not Allowed	Allowed
	Transport Allowance to Handicapped/Deaf/Dumb/Blind employee	Allowed	Allowed
	Transport Allowance to other than above employees	Not Allowed	Not Allowed
C	**Perquisites**		
	Free food and beverage through vouchers provided to the employee upto Rs. 50/meal/Tea & snacks	Not Allowed	Allowed
	Other exemptions from perquisites e.g. use of Computers, laptops etc	Allowed	Allowed
D	**Deductions u/s 16**		
	Standard Deduction u/s 16(ia)	Not Allowed	Allowed
	Entertainment Allowance u/s 16(ii)	Not Allowed	Allowed

Sr. No.	*Nature of Exemption/Deduction Relating to Salaries*	*New System of Tax u/s 115BAC*	*Existing System of Tax*
	Professional Tax u/s 16(iii)	Not Allowed	Allowed

Clarification in respect of TDS in case of Section 115BAC of the Income-tax act, 1961 [Notification no. 38/2020]

Representations expressing concern regarding tax to be deducted at source (TDS) have been received stating that as the option is required to be exercised at the time of filing of return, the deductor, being an employer, would not know if the person, being an employee, would opt for taxation under section 115BAC of the Act or not. Hence, CBDT clarifies that an employee, having income other than the income under the head "profit and gains of business or profession" and intending to opt for the concessional rate under section 115BAC of the Act, may intimate the deductor, being his employer, of such intention for each previous year and upon such intimation, the deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC of the Act. If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC of the Act.

It is also clarified that the intimation so made to the deductor shall be only for the purposes of TDS during the previous year and cannot be modified during that year. However, the intimation would not amount to exercising option in terms of sub-section (5) of section 115BAC of the Act and the person shall be required to do so along with the return to be furnished under sub-section (1) of section 139 of the Act for that previous year. Thus, option at the time of filing of return of income under sub-section (1) of section 139 of the Act could be different from the intimation made by such employee to the employer for that previous year.

Further, in case of a person who has income under the head "profit and gains of business or profession" also, the option for taxation under section 115BAC of the Act once exercised for a previous year at the time of filing of return of income under sub-section (1) of section 139 of the Act cannot be changed for subsequent previous years except in certain circumstances.

Accordingly, the above clarification would apply to such person with a modification that the intimation to the employer in his case for subsequent previous years must not deviate from the option under section 115BAC of the Act once exercised in a previous year.

CONSTITUENTS OF SALARY [SECTION 17]

Salary [Section 17(1)]:

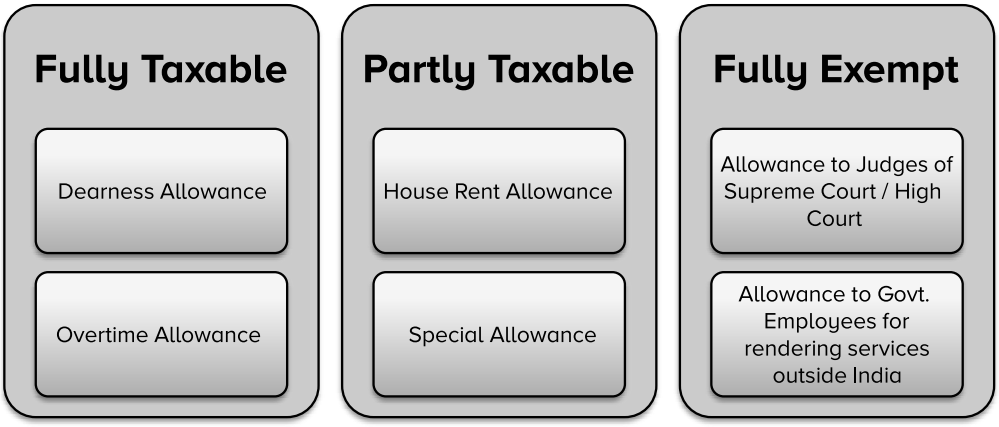
Salary is defined to include the following:

- wages ;
- any annuity or pension ;
- any gratuity ;
- any fees, commission, perquisites or profits in lieu of or in addition to any salary or wages;
- any advance of salary ;
- any payment received by an employee in respect of any period of leave not availed by him;
- the portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund to the extent it is taxable ;
- transferred balance in a recognised provident fund to the extent it is taxable; and

- the contribution made by the Central Government or any other employer to the account of an employee under a notified pension scheme referred to in section 80CCD.

ALLOWANCES

An allowance is defined as a fixed amount of money given periodically in addition to the salary for the purpose of meeting some specific requirements connected with the service rendered by the employee or by way of compensation for some unusual conditions of employment. It is taxable on due/accrued basis whether it is paid in addition to the salary or in lieu thereon. These allowances are generally taxable and are to be included in the gross salary unless a specific exemption has been provided in respect of allowances provided under the Act.



***Note*:** If the assessee opted concessional tax slab under section 115BAC of the Income tax Act, 1961, then assessee is not eligible to claim exemption from any allowances except:

1. Daily Allowances
2. Travelling and Conveyance
3. Transport Allowance (for blind, handicapped, deaf or dumb employee)

FULLY TAXABLE ALLOWANCES		
Sr. No.	**Heading**	**Details**
1.	Dearness Allowance, Additional Dearness Allowance and Dearness Pay	This is a very common allowance these days on account of high prices. Sometimes Additional Dearness Allowance is also given. It is included in the income from salary and is fully taxable. Sometimes it is given under the terms of employment and sometimes without it. When it is given under the terms of employment it is included in salary for purposes of determining the exemption limits of house rent allowance, recognised provident fund, gratuity and value of rent free house and is also taken into account for the purposes of retirement benefits.
2.	Fixed Medical Allowance	Fully Taxable.
3.	Tiffin Allowance	It is given for lunch and refreshments to the employees. It is taxable.

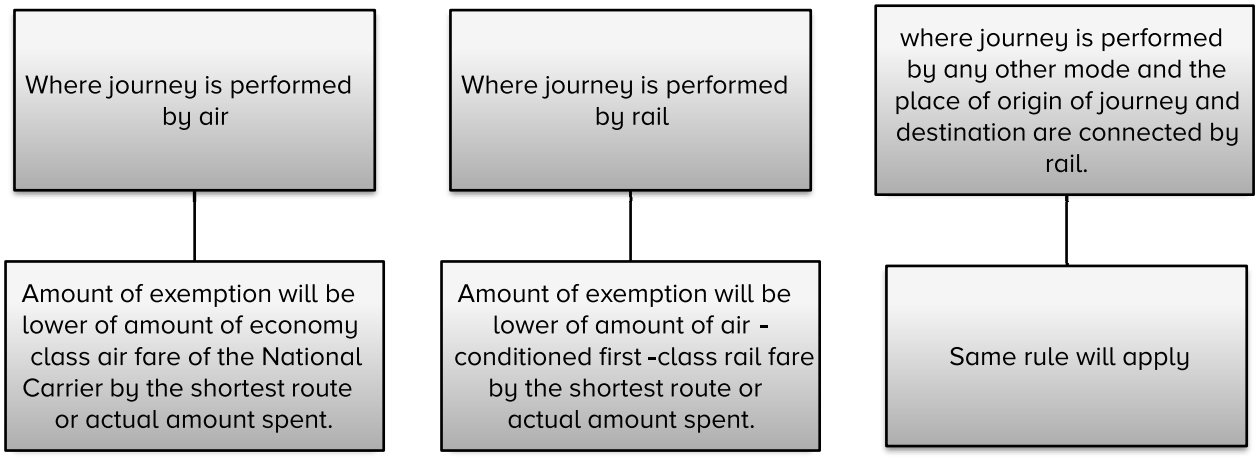
4.	Servant Allowance	It is fully taxable even if it is given to a low paid employee, not being an officer, i.e., it is taxable for all categories of employees.
5.	Non-practicing Allowance	It is generally given to those medical doctors who are in government service and they are banned from doing private practice. It is to compensate them for this ban. It is fully taxable.
6.	Hill Allowance	It is given to employees working in hilly areas on account of high cost of living in hilly areas as compared to plains. It is fully taxable, if the place is located at less than 1,000 metres height from sea level.
7.	Warden allowance and Proctor Allowance	These allowances are given in educational institutions for working as Warden of the hostel and/or working as Proctor in the institution. These allowances are fully taxable.
8.	Deputation Allowance	When an employee is sent from his permanent place of service to some other place or institution or organisation on deputation for a temporary period, he is given this allowance. It is fully taxable.
9.	Overtime Allowance	When an employee works for extra hours over and above his normal hours of duty he is given overtime allowance as extra wages. It is fully taxable.
10.	Other Allowances	Like family allowance, Project allowance, Marriage allowance, City Compensatory allowance, Dinner allowance, Telephone allowance etc. These are fully taxable.

PARTLY TAXABLE ALLOWANCES

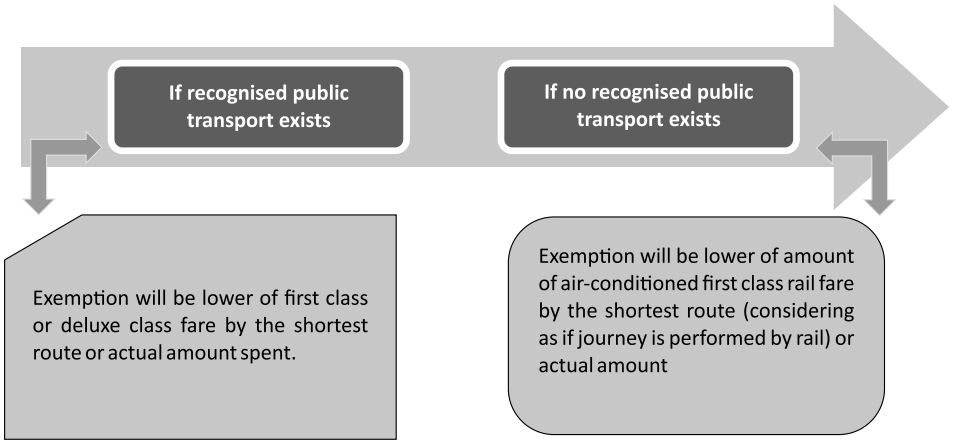
Leave Travel Concession [Section 10(5)]

An employee can claim exemption under section 10(5) in respect of Leave Travel Concession. Exemption under section 10(5) is available to all employees (i.e., Indian as well as foreign citizens). Exemption is available in respect of value of any travel concession or assistance received or due to the employee from his employer (including former employer) for himself and his family members in connection with his proceeding on leave to any place in India.

Other provisions to be kept in mind in this regard are as follows:



Where the place of origin and destination are not connected by rail and journey is performed by any mode of transport other than by air. The exemption will be as follows:



Block: Exemption is available for 2 journeys in a block of 4 years. The block applicable for current period is calendar year 2022-25. The previous block was of calendar year 2018-21.

Carry over: If an employee has not availed of travel concession or assistance in respect of one or two permitted journeys in a particular block of 4 years, then he is entitled to carry over one journey to the next block. In this situation, exemption will be available for 3 journeys in the next block. However, to avail of this benefit, exemption in respect of journey should be utilised in the first calendar year of the next block. In other words, in case of carry over, exemption is available in respect of 3 journeys in a block, provided exemption in respect of at least 1 journey is claimed in the first year of the next block. Exemption is in respect of actual expenditure on fare, hence, if no journey is performed, then no exemption is available.

Family: Family will include spouse and children of the individual, whether dependent or not and parents, brothers, sisters of the individual or any of them who are wholly or mainly dependent on him. Exemption is restricted to only 2 surviving children born after October 1, 1998 (multiple births after first single child will be considered as one child only), however, such restriction is not applicable to children born before October 1, 1998.

CASE LAW

21.01.2009	***Commissioner of Income tax & ANR v. M/s Larsen & Toubro Ltd.***	***Supreme Court***

Whether the assessee(s) was under statutory obligation under Income Tax Act, 1961, and/or the Rules to collect evidence to show that its employee(s) had actually utilized the amount(s) paid towards Leave Travel Concession(s)/Conveyance Allowance?

Judgement: The Honourable Supreme Court of India has considered the question whether the employer has any obligation under the Act/Rules to collect evidence to show that the employee had actually utilized the amount paid towards LTA. The Hon'ble Supreme Court of India observed that the beneficiary of exemption under Section 10(5) is the individual employee. It also referred to the annual circular issued by the CBDT under Section 192 where under guidance is given to employers on the manner in which tax is required to be deducted from salary paid to employees. The Court has held that the said Circular did not require an employer to examine the supporting evidence to the declaration submitted by an employee as far as LTA is concerned. Based on this, the Court has held that the employer has no obligation to collect such evidence or to verify the claim.

House Rent Allowance [Section 10(13A)]

House Rent Allowance (HRA) received by any employee is exempt to the extent of least of the following:

- 50% of Salary for Metro Cities (Delhi, Mumbai, Kolkata and Chennai), else 40% of Salary
- HRA actually received
- Rent paid minus 10% of Salary

Note: Salary for the purposes of HRA = Basic + DA (if forming part of salary/retirement benefit) + Commission as a fixed % of Turnover.

Illustration 1:

Vir is employed with happiness Solutions ltd. and during the FY 2022-23. He had a Basic Pay of INR 75000 per month. Owing to his good performance at workplace, he was given an annual increment in his Salary of 20% effective Feb 2023. He also received during the year, a Dearness Allowance of 100% of Basic (however only 50% of which was included as per his terms of employment). The Company also gave him HRA of INR 30000 per month, which was increased to INR 35000 per month effective Jan 2023. He stayed at his parental home in Ahmedabad for Apr and May 2022, post which he took up a Rented Accommodation at Surat at a monthly rental of INR 26000. Effective Nov 2022, he was moved to Mumbai to the Corporate office, and he took up an accommodation at Mumbai at a monthly rental of INR 36000. You are required to compute the HRA exempt from Tax and the gross Salary.

Solution:

The computation of HRA exempt from tax would have to be done on a monthly basis as the salary and rental figures changed during the year, in the manner provided below.

Item	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Basic	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	90,000	90,000	9,30,000
D.A.	37,500	37,500	37,500	37,500	37,500	37,500	37,500	37,500	37,500	37,500	45,000	45,000	-
Salary for HRA	1,12,500	1,12,500	1,12,500	1,12,500	1,12,500	1,12,500	1,12,500	1,12,500	1,12,500	1,12,500	1,35,000	1,35,000	-
Accom-moda-tion	Own	Own	Surat	Surat	Surat	Surat	Surat	Mumbai	Mumbai	Mumbai	Mumbai	Mumbai	-
40% or 50% of Salary	–	–	45,000	45,000	45,000	45,000	45,000	56,250	56,250	56,250	67,500	67,500	-
HRA Actu-ally Recd	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	35,000	35,000	35,000	3,75,000
Rent - 10% Salary	–	–	14,750	14,750	14,750	14,750	14,750	24,750	24,750	24,750	22,500	22,500	-
Min	–	–	14,750	14,750	14,750	14,750	14,750	24,750	24,750	24,750	22,500	22,500	1,93,000

Note:

(1) For the stay at Surat, 40% of Salary and for stay at Mumbai, 50% of Salary is considered for one of the parameters for exemption.

(2) DA, only to the extent of it being included per terms of employment, is included in Salary for the purposes of HRA.

Please note the gross Salary Computation below:

Particulars	***(Rs.)***	***(Rs.)***
Basic Salary (75000 x 10 + 90000 x 2)		9,30,000
Dearness Allowance (100% of Basic)		9,30,000
HRA	3,75,000	
Less : exempt	1,93,000	1,82,000
Gross Salary		**20,42,000**

Note: It is assumed that assessee has not opted u/s 115BAC, otherwise exemption u/s 10(13A) of Rs.1,93,000 will not be available. In that case, gross Salary would be Rs.22,35,000

Special Allowances [Section 10(14)]

i) All special allowances specifically granted to meet expenses, incurred, for the purposes of performance of duties

   a) Wholly

   b) Exclusively &

   c) Necessarily

   These are exempt to the extent such expenses are actually incurred or the amount received whichever is less. *Examples include, Travelling & Conveyance, Relocation, Helper & Uniform Allowances. (no cap or upper limit)*

ii) Special allowances granted to an assessee either to meet his personal expenses at the place of duty OR to compensate for increased cost of living. Allowances which are granted to meet personal expenses are exempt to the extent of amount received or the limits specified whichever is less.

   Examples include,

   a) Tribal Area Allowance capped to INR 200 per month is exempt.

   b) Children Education Allowance capped to INR 100 per month (per child, max 2 children) is exempt.

   c) Hostel Expenditure Allowance capped to INR 300 per month (per child, max 2 children) is exempt.

   d) Transport Allowance for handicapped capped at INR 3200 per month is exempt.

Besides the above there are compensatory allowances for hilly areas, and for work in difficult conditions too.

As per section 10(14), read with rule 2BB following allowances granted to an employee are exempt from tax subject to certain limit:

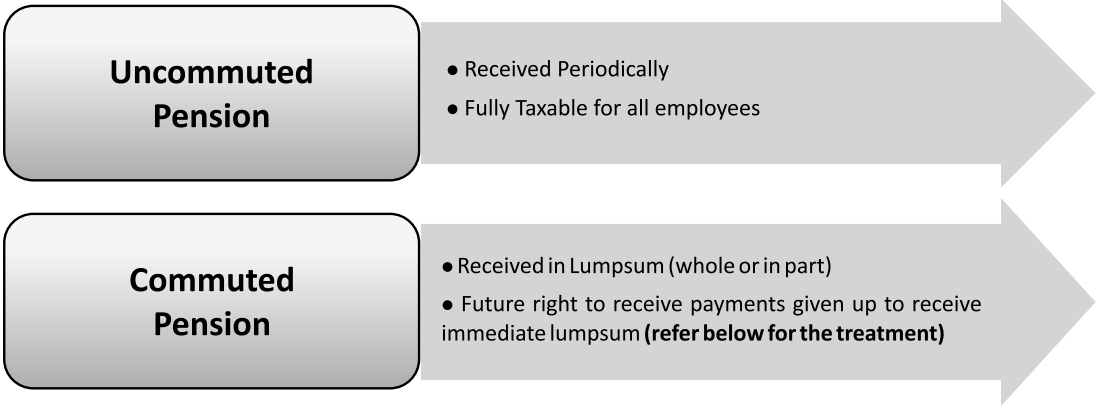
Allowances	*Exemption Limit*
Children Education Allowance	Up to Rs. 100 per month per child up to a maximum of 2 children is exempt
Hostel Expenditure Allowance	Up to Rs. 300 per month per child up to a maximum of 2 children is exempt
Transport Allowance granted to an employee to meet expenditure on commuting between place of residence and place of duty. Consequent to introduction of Standard Deduction under section 16, exemption of transport allowance of Rs. 1600 P.M. is withdrawn.	Only Rs. 3,200 per month for blind, handicapped, deaf and dumb employees is exempt
Allowance granted to an employee working in any transport business to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place provided employee is not in receipt of daily allowance	Amount of exemption shall be lower of following: a) 70% of such allowance; or b) Rs. 10,000 per month
Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office	Exempt to the extent of expenditure incurred for official purposes
Travelling Allowance to meet the cost of travel on tour or on transfer for official purpose	Exempt to the extent of expenditure incurred for official purposes
Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty	Exempt to the extent of expenditure incurred for official purposes
Helper/Assistant Allowance	Exempt to the extent of expenditure incurred for official purposes
Research Allowance granted for encouraging the academic research and other professional pursuits	Exempt to the extent of expenditure incurred for official purposes
Uniform Allowance	Exempt to the extent of expenditure incurred for official purposes
Special compensatory Allowance (Hilly Areas) (Subject to certain conditions and locations)	Amount exempt from tax varies from Rs. 300 to Rs. 7,000 per month
Border area, Remote Locality or Disturbed Area or Difficult Area Allowance (Subject to certain conditions and locations)	Amount exempt from tax varies from Rs. 200 to Rs. 1,300 per month.
Tribal area allowance in (a) Madhya Pradesh (b) Tamil Nadu (c) Uttar Pradesh (d) Karnataka (e) Tripura (f) Assam (g) West Bengal (h) Bihar (i) Orissa	Up to Rs. 200 per month

Allowances	*Exemption Limit*
Compensatory Field Area Allowance. If this exemption is taken, employee cannot claim any exemption in respect of border area allowance (Subject to certain conditions and locations)	Up to Rs. 2,600 per month
Compensatory Modified Area Allowance. If this exemption is taken, employee cannot claim any exemption in respect of border area allowance (Subject to certain conditions and locations)	Up to Rs. 1,000 per month
Counter Insurgency Allowance granted to members of Armed Forces operating in areas away from their permanent locations. If this exemption is taken, employee cannot claim any exemption in respect of border area allowance (Subject to certain conditions and locations)	Up to Rs. 3,900 per month
Underground Allowance to employees working in uncongenial, unnatural climate in underground mines	Up to Rs. 800 per month
High Altitude Allowance granted to armed forces operating in high altitude areas (Subject to certain conditions and locations)	a) Up to Rs. 1,060 per month (for altitude of 9,000 to 15,000 feet) b) Up to Rs. 1,600 per month (for altitude above 15,000 feet)

Annuity / Pension

Annuity is a yearly payment to an employee post his retirement on account of the funds that were saved by him by way of subscription to the annuity fund vide his salary when he was in employment. Annuity received from the *present employer is chargeable to tax as Salary and any amount received from the past employer is chargeable to tax as Profits In lieu of Salary.*

Pension however is generally paid by the Government or a Company to the employee for his past service and this too is payable after the retirement. This pension so received could be commuted / uncommuted, explained as under:



Treatment of Commuted Pension u/s 10(10A)

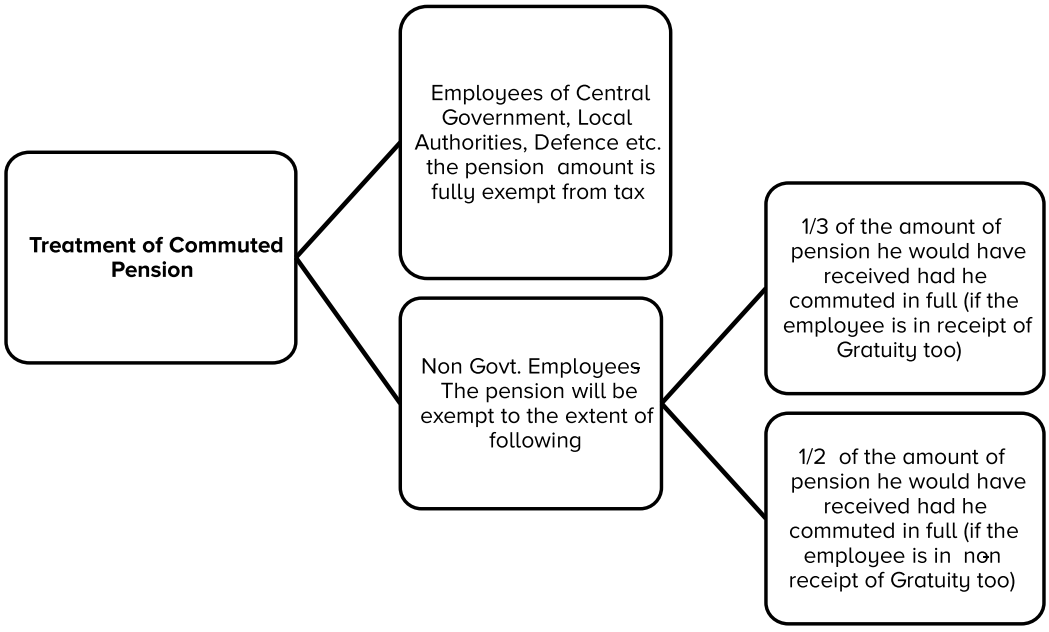


Illustration 2:

Arjun retired on 15-4-2022 from X Company ltd. He was entitled to a pension of Rs. 20,000 p.m. At the time of retirement, he got 75% of the pension commuted and received Rs. 4,50,000 as commuted pension. Compute the taxable portion of the commuted pension if:

1. He is also entitled to gratuity.
2. He is not entitled to gratuity.

Solution :

1. 75% of commuted pension is equal to Rs. 4,50,000. Hence commuted value of 1/3 of the pension would amount to Rs. 4,50,000 x 100 / 75 x 1/3 = Rs. 2,00,000; Rs. 2,00,000 would, therefore be exempt and balance Rs. 2,50,000 would be taxable.
2. 75% of commuted pension is equal to Rs. 4,50,000 hence commuted value of 50% of pension amount to 4,50,000 x 100 / 75 x ½ = Rs. 3,00,000. Therefore, Rs. 3,00,000 would be exempt and Rs. 1,50,000 would be taxable.

Gratuity [Section 10(10)]

Gratuity is normally paid in lieu of the long-term service of an employee (usually > 5 years). Gratuity is received by any employee while in employment then it is fully taxable in the hands of employee. While if gratuity is received in case of death or retirement or resignation, then exemption is available up to the following limits.

a) for the Central / State government employees and for the members of the Defence Services, any amount received as gratuity at the time of retirement/death is fully exempt.

b) for all other employees in the private sector:

- In case the employee is covered under the Payment of gratuity Act, 1972, any death-cum-retirement gratuity is exempt to the extent of least of the following:
  i. INR 20,00,000

ii. Gratuity actually received

iii. 15 days' salary based on salary last drawn for each year of service or part thereof in excess of 6 months.

For example – If you have put in 11 years and seven months in an organization, your service period will be taken to be 12 years. But if your service tenure is 11 years and five months, then for the purpose of this calculation your tenure will be taken to be 11 years only.

Note: Here Salary would mean (Basic + DA) and number of days in the month to be assumed to be 26.

- In case the employee is not covered under the Payment of gratuity Act, 1972, any death-cum-retirement gratuity is exempt to the extent of least of the following:

  i. INR 20,00,000

  ii. Gratuity actually received

  iii. Half months' Salary based on last 10 months' average salary drawn immediately preceding the month of retirement / death, for each completed year of service (fraction of year to be ignored).

  ***Note** : Here Salary would mean Basic + DA (only to the extent of forming part of the retirement benefits) + Commission as a % of Turnover and number of days in the month to be taken at 30.*

Important Points:

1. If employee has received gratuity from any of his past employer, then the amount of gratuity exempted earlier shall be reduced from Rs. 20,00,000.
2. If employee has not received gratuity from any of his past employer, then the period of past employment shall also be considered for calculating years of service.
3. In case of death of the employee, it has to be paid to the nominee or the legal heir of the employee. In this case, the exemption is calculated in the same manner as above and is taxed for the receiver under the head "Income from Other Sources".

Illustration 3:

A pensioner from Maharashtra State government retired in December 2015 receiving an amount of Rs. 10,00,000 as gratuity. But thereafter, he received a further amount of Rs. 1.20 lakhs in April 2018 consequent on revision of pay. At the time of his retirement the exemption limit was Rs. 10 lakh. Is he eligible for the higher exemption limit under Section 10(10) available at the time of receipt. The higher limit of Rs. 20 lakhs is raised by dated 29.03.2018 S.o. 1420(e) notification.

Solution:

Every time the limit has been raised, such limit has only referred to the retirement on or after the date on which it was raised. Hence the limit on the date of retirement time would alone have to be considered, so exemption with reference to the enhanced limit will not apply in this case. Since the assessee is a government pensioner. There is no ceiling for Central or State pensioners. If assessee is a retiree from the civil service of a State or held a civil post under a State or had even been an employee of a local authority, the gratuity amount, that is received, is totally exempt vide Section 10(10)(i) of the Income-tax Act irrespective of the date of retirement or the notification.

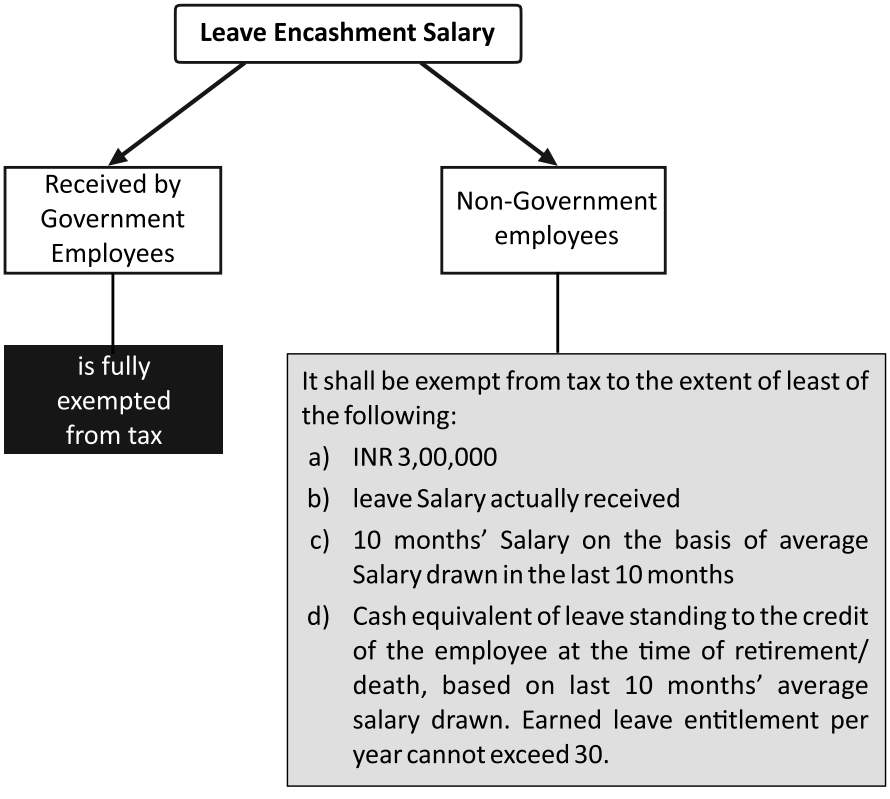
Further for government pensioners maximum gratuity amount was increased to Rs. 20 lakh with effect from 01/01/2016 under 7th Pay Recommendations as one of the employees Welfare Measures to compensate rising inflation over the period. Please note that this is Maximum amount which they can receive as gratuity but there is no ceiling on Tax exemption for gratuity for Central or State pensioners.

Leave Encashment [Section 10(10AA)]

Leave encashment means getting salary equivalent to the number of leaves which were entitled to an employee but not availed (i.e. earned). Leave encashment taken during employment is fully taxable for all employees. Leave encashment taken at the time of retirement is exempted as follows:

- Leave encashment Salary received by employees of the government, is fully exempt from tax.
- For the non-government employees, the leave encashment Salary so received is exempt from tax to the extent of least of the following:
  a) INR 3,00,000
  b) leave Salary actually received
  c) 10 month's Salary on the basis of average Salary drawn in the last 10 months
  d) Cash equivalent of leave standing to the credit of the employee at the time of retirement / death, based on last 10 month's average salary drawn. Earned leave entitlement per year cannot exceed 30.

***Note**: Here Salary would mean Basic + DA (only to the extent of forming part of the retirement benefits) + Commission as a % of Turnover and number of days in the month to be taken at 30.*



Compensation on Voluntary Retirement [Section 10(10C)

Refers to compensation received on voluntarily retirement or termination of service before the date of actual retirement. Voluntary retirement compensation to be included under the head Salary = Voluntary Retirement Compensation ***Less*** exemption **u/s 10(10C)**

Exemption u/s 10(10C)

Types of Employee	• Employees of Central or State government or local Authority or Statutory Corporation • Company or Co-operative Society • Declared university, IIT, notified IIM or notified institutions
Conditions to be satisfied	• Compensation received on Voluntary Retirement and • The scheme of Voluntary Retirement should be as per rule 2BA
Amount of exemption- least of following	• **Actual Compensation received/receivable** • **Rs. 5,00,000** • 3 months **Total Salary** * Completed years of service (Part of the service to be ignored • Current Salary per month * Balance months of service left **Salary = Basic + DA (retirement Benefits) + commission % of turnover**

Special Points:

[**Rule 2BA**]**:** Exemption under 10(10C) i.e. VRS can be claimed only **once in a life time** by the Assessee and the scheme of Voluntary Retirement should be framed in accordance with below guidelines.

i. Employee should have completed **10 years of service or 40 years of age**. [This condition is not applicable in the case of an employee of a public sector company].

ii. Scheme should be applicable to **all employees** (except Directors).

iii. Scheme should be drawn to result in **overall reduction in existing strength of employees.**

iv. **Vacancy** caused by voluntary retirement should not be **filled up.**

v. Retiring employee shall not be employed in other concern of same management.

If the guidelines are not followed, exemption shall not be available.

Illustration 4:

Mr. X received voluntary retirement compensation of Rs. 7,00,000 after 30 years 4 months of service. He still has 6 years of service left. At the time of voluntary retirement, he was drawing basic salary Rs. 20,000 p.m.; Dearness allowance (which forms part of pay) Rs. 5,000 p.m. Compute his taxable voluntary retirement compensation.

Solution:

Voluntary retirement compensation received Rs. 7,00,000

Less: Exemption under section 10(10C) [note 1] Rs. (5,00,000) Taxable voluntary retirement compensation Rs. 2,00,000

Note 1: Exemption is to the extent of least of the following:

(i) Compensation actually received = Rs. 7,00,000

(ii) Statutory limit = Rs. 5,00,000

(iii) last drawn salary × 3 × completed years of service
= (20,000 + 5,000) × 3 × 30 years = Rs. 22,50,000

(iv) last drawn salary × remaining months of service
= (20,000 + 5,000) × 6 × 12 months = Rs. 18,00,000

PERQUISITES [SECTION 17(2)]

Perquisite may be defined as any casual emolument or benefit attached to an office or position in addition to salary or wages. It also denotes something that benefits a man by going into his own pocket. Perquisites may be provided in cash or in kind. However, perquisites are taxable under the head "Salaries" only if they are:

a. allowed by an employer to his employee;

b. allowed during the continuance of employment;

c. directly dependent upon service;

d. resulting in the nature of personal advantage to the employee; and

e. derived by virtue of employer's authority.

It is not necessary that a recurring and regular receipt alone is a perquisite. Even a casual and non-recurring receipt can be perquisite if the aforesaid conditions are satisfied.

Any facility / benefit that is granted by the employer, the use of which is enjoyed by the employee or any member of the employee's household, is construed as a perquisite under the Income Tax Act, and hence attracts tax.

TAXABLE PERQUISITES

- Rent free Residential Accommodation
- Interest free / Concessional loan
- Use of movable assets by employee / any member of his household
- Transfer of movable assets
- Provision of gas / electricity / water
- Provision of free / concessional educational facilities
- Credit Card expenses
- Club expenditure
- Health Club, Sports, Similar facilities
- Sweat Equity
- Motar Car

Taxable perquisites: The Table appended below, summarises the taxable value of various perquisites in the hands of the employee assessees.

Sl. No.	*Perquisite*	*Category of Employee*	*Value of perquisites*
1.	Rent free Residential Accommodation	Government employee	License fee determined as per the Government Rules, as reduced by rent actually paid by the employee for unfurnished accommodation. *For a furnished accommodation,* 10% p.a. of the furniture cost is added to the value obtained above for unfurnished. In case the *furniture is hired,* the actual hire charges would be added to the value obtained above for unfurnished.
		Non-Government Employee	**For a *Unfurnished Accommodation*** a) If the accommodation is owned by the employer, the value would be based on the population, i.e., i. if in cities having a population of > 25 lacs (2001 Census) - 15% of Salary; ii. if the population is between 10 lacs up to 25 lacs – 10% of Salary; iii. else 7.5% of Salary. b) If the accommodation is taken on lease by the employer, the actual value of lease rentals paid by the employer subject to a maximum of 15% of Salary is considered as Value. **For a *furnished accommodation*** 10% p.a. of the furniture cost is added to the value obtained as above for unfurnished. **In case the *furniture* is hired**, the actual hire charges would be added to the value obtained above for unfurnished. In all cases, any amount recovered from the employee should be reduced to arrive at the taxable value of the perquisite. Where the accommodation is provided by the employer in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on the transfer from one place to another). The perquisites value would be 24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by the rent, if any, actually paid or payable by the employees.

Sl. No.	*Perquisite*	*Category of Employee*	*Value of perquisites*
2.	Interest free / Concessional Loan	All employees	Where the employer grants a loan to an employee, exceeding INR 20000, the interest at the rate charged by SBI, as on the first date of the relevant PY, at maximum outstanding monthly balance as reduced by the Interest actually charged to the employee; would be the taxable value of the perquisite. Known for medical purpose is exempted.
3.	Use of movable assets by employee / any member of his household	All employees	10% p.a. of the actual cost of the asset, if it is owned by the employer OR the actual hire charges incurred by the employer if the asset is hired as reduced by the amount, if any, paid or recovered from the employee for such use would be the taxable value of the perquisite. ***Note**: Use of laptops and computers wouldn't attract taxability as perquisites*.
4.	Transfer of movable assets	All employees	If Computers/electronic items are transferred, 50% Depreciation p.a. (WDV) for every completed year of usage; if Motor cars are transferred, 20% Depreciation p.a. (WDV) for every completed year of usage; and for all other assets transferred, 10% Depreciation p.a. (SIM) for every completed year of usage would be treated as the taxable value of perquisite net of any amount so recovered from the employee.
5.	Provision of gas/ electricity/ water	All employees	The value of benefit to the employee resulting from the supply of gas, electric energy or water for his household consumption shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water. Where such supply is made from the sources owned by the employer, without purchasing them from any other outside agency, the value of perquisites would be the manufacturing cost per unit incurred by the employer. Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value so arrived at.
6.	Provision of free/ concessional educational facilities	All employees	Amount actually expended by the employer net of the amount so recovered, however, if the educational institution is owned by the employer, and free educational facilities are provided to the employee's children, there wouldn't be any perquisite as long as the value of benefit in a month is < INR 1000. Any amount recovered from the employee would be reduced.
7.	Credit Card expenses	All employees	Membership fees/Annual fees incurred by the employer, on a card provided to the employee, would be the taxable value of perquisite net of the amount, if any, recovered from him.

Sl. No.	*Perquisite*	*Category of Employee*	*Value of perquisites*
8.	Club expenditure	All employees	Cost incurred by the employer at actual, net of recovery from the employee would be the taxable value of perquisite. However, in case the employee enjoys Corporate Membership in a club, the value of benefit wouldn't include the initial membership paid by the employer to acquire the corporate membership.
9.	Health Club, Sports, Similar facilities	All employees	No perquisite if provided uniformly by the employer to all employees.
10.	Sweat equity	All employees	***In case where, on the date of exercising the option, the share of the company is listed on a recognised stock exchange***, the fair market value (FMV) would be the average of the opening and closing price of the share on that date on the said stock exchange. If the shares of the company are listed on more than one stock exchange, the FMV would be the average of the opening and closing prices of the share on the recognised stock exchange which records the highest volume of trading in the share. In case, on the date of the exercising of the option, if there was no trading in the share, the FMV would be the closing price on the recognised stock exchange, on a date closest to exercising the option, immediately before that date, and if the shares of the company are listed on more than one stock exchange, the FMV would be the closing price of the share on the recognised stock exchange which records the highest volume of trading in the share. In case the shares of the company are not listed on any recognized stock exchange, the FMV would be that as determined by the Merchant Banker on the specific date, i.e., the date of exercising the option or any date earlier not exceeding 180 days prior to the date of exercise of the option.
11.	Motar Car	All Employee	The taxable value of perquisites are appended below separately in case of different scenario:

Valuation of Taxable Value of Perquisites in case of Motar Car ***Where the Expenses are met by the employer***		
Car is Owned / Hired	***Used by the employee***	***Value of Perquisites***
Car is owned/ hired by the employer	Wholly for Official Purposes	No Perquisites

Car is owned/ hired by the employer	Wholly for Personal Purposes	The running and maintenance charges / wear & tear / hire charges / driver's salary would be treated as the taxable value of the perquisite net of the amount so recovered from the employee. (Including Depreciation @ 10% p.a. on SlM basis)
Car is owned/ hired by the employer	Partly for Official and partly for Personal purposes	The taxable value of the perquisite would be based on the cc (cubic capacity) of the engine, as under: a) up to 1.6 litres, the taxable value of the perquisite would be INR 1800 pm b) > 1.6 litres, the taxable value of the perquisite would be INR 2400 pm if chauffer is also provided, INR 900 pm is to be added to either of the above, depending on the engine capacity. (In this case recovery is not deductible).
Car is owned/ hired by the employee	Wholly for Official Purposes	No Perquisites
Car is owned/ hired by the employee	Wholly for Personal Purposes	The actual expenditure so incurred would be treated as the taxable value of the perquisite.
Car is owned/ hired by the employee	Partly for Official and partly for Personal purposes	The taxable value of the perquisite would be the actual expenditure incurred by the employer as reduced by the taxable value of the perquisite determined above basis the engine capacity.

Valuation of Taxable Value of Perquisites in case of Motar Car ***Where the Expenses are met by the employee***		
Situation	**Used by the employee**	**Value of Perquisites**
Car is owned/ hired by the employer	Wholly for Official Purposes	No Perquisites
Car is owned/ hired by the employer	Wholly for Personal Purposes	The wear & tear / hire charges / driver's salary would be treated as the taxable value of the perquisite. (Including Depreciation @ 10% p.a. on SlM basis)
Car is owned/ hired by the employer	Partly for Official and partly for Personal purposes	The taxable value of the perquisite would be based on the cc of the engine, as under: a) up to 1.6 litres, the taxable value of the perquisite would be INR 600 pm

		b) > 1.6 litres, the taxable value of the perquisite would be INR 900 pm If chauffer is also provided, INR 900 pm is to be added to either of the above, depending on the engine capacity. (In this case recovery is not deductible).

Illustration 5:

ABC Ltd. provided the following perquisites to its employee Srinivasan, for the FY 2022-23.

1) Leased accommodation provided to the employee. hire Charges INR 50000 pm; recovered from employee INR 20000 pm
2) Accommodation was furnished and the actual hire charges paid by the employer was INR 4050 pm
3) He was also provided a Hyundai Santro with Chauffer and a gift Voucher worth INR 9000.

Salary for the purposes of valuation of perquisites is INR 25,00,000. Compute the taxable value of the perquisites assuming assesses had not opted for section 115BAC of the Income Tax Act, 1961.

Solution:

Accommodation on lease	***Amount (Rs.)***	***Amount (Rs.)***
Salary for the purposes of Valuation of Perquisites	25,00,000	
Actual lease Charges	6,00,000	
15% of the above (Cap)	3,75,000	
Hence, Gross Taxable Value of the Perquisite		3,75,000
Less: Amount recovered from the employee		(2,40,000)
Taxable value of unfurnished leased accommodation		1,35,000
Add: Actual hire charges of furniture hired		48,600
Taxable value of Furnished Accommodation		1,83,600
Car used partly for Official & partly for Personal		
Engine Capacity is within 1.6 (Santro)		
Taxable Value of Perquisite @ 1800 pm		21,600
Chauffer @ 900 pm		10,800
Taxable value of Motor Car provided		32,400
Gift Voucher		9,000
Total Value of perquisites		**2,25,000**

Note:

1. Refer to the valuation rules for perquisites – taxable value of perquisite for a hired accommodation is the actual hire charges incurred by the employer subject to max. 25% of salary reduced by the amount recovered from the employee.
2. Since the accommodation is furnished, the actual hire charges are added to the above.
3. Gift Vouchers are taxable as perquisites too if received by the employer and more than 5000.

Tax-free perquisites (in all cases)

- Medical facilities
- Refreshment
- Subsidized lunch or dinner
- Recreational facilities
- Telephone facility
- Transport facility
- Personal accident insurance
- Refresher Course
- Free rations
- Computer/laptops
- Rent free houses / conveyance
- Employer's Contribution to Group Insurance Scheme

Medical Facilities in India (Provided by Employer to Employees/Family Members)			
Hospital maintained by Employer	In Government Hospital or local authority hospital or Government approved hospital or Hospital approved by CCIT (for *prescribed disease* only)	Premium paid for Health Insurance under approved scheme	Other case
Fully Exempt	Fully Exempt	Fully Exempt	Fully Taxable

Medical Facilities outside India (Provided by Employer to Employees/Family Members)		
Medical Expenses of Patient	Stay Expenses of Patient and One attendant (*total two persons*)	Travel Expenses of Patient with One attendant (*total two persons*)
Tax free to the extent permitted by RBI	Tax free to the extent permitted by RBI	Tax free if employee's Gross Total Income upto Rs. 2,00,000 *(before including such travel expenses)*

Sr. No.	Other Tax Free Perquisites	Details
1.	Refreshment	The value of refreshment provided by the employer during office hours and in office premises is fully exempt. [Not available for assessee opted for section 115BAC].
2.	Subsidized lunch or dinner	Subsidized lunch or dinner provided by employer is exempt.
3.	Recreational facilities	The value of recreational facilities provided is exempt. However, the facility should not be restricted to a selected few.
4.	Telephone facility	Telephone facility provided at the residence of the employee is exempt to the extent of the amount of telephone bills paid by the employer when it is used for official and personal purposes of the employee.
5.	Transport facility	Transport provided by the employer to the employees for the journey between office and residence and back at free of charge or at concessional rate.
6.	Personal Accident Insurance	Personal accident insurance, i.e., payment of annual premium by employer on personal accident policy effected by him to his employee.
7.	Refresher Course	Where the employee attends any refresher course in management and the fees are paid by the employer, the amount spent by employer for the purpose.
8.	Free Rations	The value of free rations given to the armed forces personnel.
9.	Computer / Laptops	Computer/laptops provided only for use, ownership is retained by the employer.
10.	Rent free houses/ conveyance	Rent free houses/conveyance to high Court & Supreme Court Judges.
11.	Employers' Contribution to group Insurance Schemes	Employers' Contribution to group Insurance Schemes, to recognized Provident funds [Subject to Amendment by Finance Act, 2020].

PROFITS IN LIEU OF SALARY [SECTION 17(3)]

Section 17(3) of the Income tax Act, 1961 gives an inclusive definition of "Profits in lieu of salary". As the name suggests, these payments are received by the employee in lieu of or in addition to salary or wages. These payments include the following:

Sr. No.	Heading	Details
1.	Compensation received on termination of employment	The amount of any compensation due to or received by an assessee from the employer or former employer at or in connection with the termination of his employment. The termination of employment means retirement, premature termination of employment, termination by death or voluntary resignation. Generally, under the Income- tax Act, the income that is chargeable to tax is only a receipt which is revenue in nature; receipts of a capital nature

Sr. No.	Heading	Details
		are not chargeable to tax but this provision constitutes an exception to this rule because compensation received by an employee for termination of his employment would be a capital receipt since it is received in replacement of the sources of income itself. Still it is chargeable to tax because of the specific provision in the Act. However, relief under Section 89(1) would be available to the assessee in cases where he gets money which represents a profit in lieu of salary.
2.	Compensation received on modification of terms of employment	The amount of any compensation due to or received by any assessee from his employer in connection with the modification of the terms and conditions relating to employment. For example, where an employer wants to cut down the salary payable to the employee, the lump sum paid to compensate the employee shall be treated as profit in lieu of salary. In the same way, where the remuneration for services is paid at the end of the period of employment or a lump sum remuneration is paid at the beginning of employment for a number of years, such payment shall be treated as profit in lieu of salary.
3.	Amount received before joining / after cessation of employment	Any amount due to or received, whether in lump sum or otherwise, by any assessee from any person – (a) before his joining any employment with that person; or (b) after cessation of his employment with that person.
4.	Payment received by employee from Provident fund or other fund	Any payment other than the following payment due to or received by assessee from an employer or a former employer or from a provident or other fund, **other than** gratuity [Section 10(10)], Pension [Section 10(10A)], HRA [Section 10(13A)], Provident fund / Public Provident fund/ Recognised Provident fund.
5.	Compensation received under Keyman insurance policy	Any sum received under Keyman Insurance Policy including Bonus from such policy.
6.	Any other sum	Any other sum received by the employee from the employer

PROVIDENT FUNDS - TREATMENT OF CONTRIBUTIONS TO AND MONEY RECEIVED FROM THE PROVIDENT FUND

For purposes of Income-tax, provident funds are grouped under three heads as follow:

- Statutory Provident Fund
- Recognized Provident Fund
- Un-recognized Provident Fund

Fund	*Meaning*	*Tax Treatment*
Statutory Provident Fund	All provident funds which are set up under the Provident funds Act, 1925 are called Statutory Provident funds. Provident funds of institutions such as universities, Colleges or other educational Institutions, Reserve Bank of India, State Bank of India, the Central government and State government would constitute Statutory Provident funds.	In case of Statutory Provident fund, the entire amount of employer's contribution without any limit or restriction whatsoever and the interest thereon received by the employee shall not be includible in the total income of the employee both at the time when the contribution is made and at the time when the money is received by or on behalf of the employee on his retirement, death or otherwise. This exemption is specifically conferred by Sub-section (11) of Section 10 of the Income-tax Act.
Recognised Provident Fund	All Provident funds recognised by the Commissioner of Income-tax under Rule 3 of Part 'A' of the fourth Schedule to the Income-tax Act, 1961 and also Provident funds established under a scheme framed under the employees Provident funds Act, 1952 are known under the Income-tax Act as Recognised Provident funds. For the purposes of being treated as Recognised Provident fund, the fund in question must be recognised by the Commissioner of Income-tax at the time of its setting up and must continue to be so recognised even subsequently. The moment the recognition is withdrawn by the Commissioner, the fund ceases to be a Recognised Provident fund. The Provident funds of various Public Sector undertakings, Semi- government bodies and other institutions and organisations including companies which are recognised by the Commissioner for income-tax purposes, would be treated as Recognised Provident funds.	**Employer Contribution & Interest** **Tax Treatment upto 31.03.2020**: In the case of a Recognised Provident fund, the employer's contribution to the Provident fund is not treated as the employee's income so long as the contribution by the employer does not exceed 12% of the salary of the employee. But if the contribution of the employer exceeds 12% of the employee's salary, the excess of the contribution over 12% of the salary of the employee is to be treated as part of the taxable income from salaries in the hands of the employee. Interest on the contributions to the Provident fund, only an amount exceeding a sum calculated at 12% per annum on the balance standing to the credit of the employee would be treated as part of the taxable income of the employee. In other words, so long as the amount of interest does not exceed this limit, the interest does not become chargeable to tax in the hands of the employee. **Tax Treatment w.e.f. 01.04.2020 [Amendment vide Finance Act, 2020]**: Apart from the limit of 12% for employer contribution and 9.5% p.a. for Interest, there was no monetary limit above which such amount was taxable. Now these two have been combined with employer contribution to Approved Superannuation fund and NPS along with annual interest thereon within

Fund	*Meaning*	*Tax Treatment*
		ceiling of Rs.7,50,000. If total exceeds Rs.7,50,000, then excess will also be taxable under the head Salary. **Tax Treatment of Employee Contribution** Employee's own contribution qualifies for deduction under Section 80C of the Income-tax Act. [Salary for this purpose, includes basic salary; dearness allowance/pay (if the terms of employment so provide) and commission (if based on a fixed percentage of turnover achieved by the employee)].
Un-Recognised Provident Fund	The Provident fund which is neither Statutory nor recognised by the Commissioner of Income-tax nor Public Provident fund, would be an unrecognised Provident fund for income-tax purposes.	In the case of an unrecognised Provident fund, the employee's own contribution to the fund would not be allowed as a deduction. The employer's contribution and the interest thereon would, however, be exempt from tax as and when the contributions are being made. But when the money in lump sum is received back by the employee, that part of the amount attributable to the employer's contribution would be taxable as income from salaries and the interest on the employer's contribution would also be taxable as salary income in the hands of the employee. The employee's own contributions when received back would not be taxable because they do not contain an element of income. However, the interest thereon would be chargeable to tax as income from other sources and not as income from salaries.

Illustration 6:

Mr. X, working in MNO ltd., draws the following amount of emoluments from the company:

Particulars	*Amount (in lakhs)*
Basic Pay	50
Commission	15
Employer's contribution to recognized provident fund	10
Employer's contribution to NPS	7

Employer's contribution to the superannuation fund	5
Total	**87**

Solution:

Amount (in lakhs)

Particulars	***Before Amendment***	***After Amendment***
Basic Pay	50	50
Commission	15	15
Employer's contribution to recognized provident fund (in excess of 12% of basic pay) [Rs. 10 lakh (less) Rs.6 lakh (Rs. 50 lakh * 12%] [Section 17(1)]	4	4
Employer's contribution to NPS	7	7
Employer's contribution to the superannuation fund in excess of Rs. 1.5 lakhs [old Section 17(2)(vii)]	3.50	-
Perquisite arising from employer's contribution to the superannuation fund, RPF and NPS in excess of Rs. 7.5 lakhs [new Section 17(2)(vii)]	-	14.50
Income chargeable to tax under the head "Salary"	79.50	90.50

RELIEF WHEN SALARY IS PAID IN ARREARS OR ADVANCE [SECTION 89]

Tax is calculated on total income earned or received during the year. If any portion received 'salary in arrears or in advance', or have received a family pension in arrears, assessee is allowed some tax relief under section 89(1) of the Income Tax Act, 1961.

Relief under section 89(1) for arrears of salary are available in the following cases:

- Salary received in advance or as arrears
- Gratuity
- Compensation on Termination of employment
- Commutation of Pension

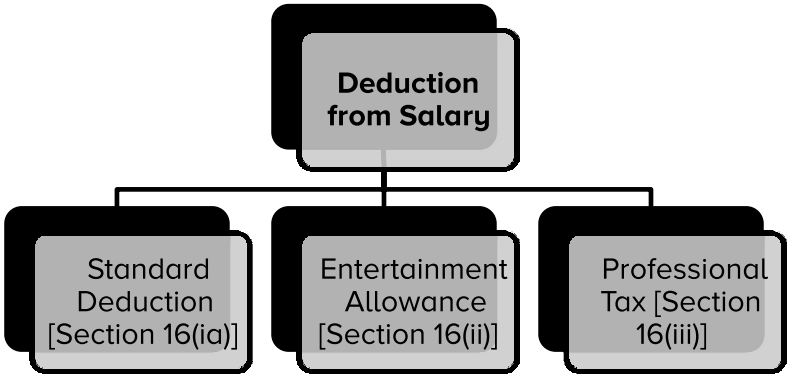
Steps to be followed to calculate relief under section 89(1)

Step 1	Calculate the tax payable on his total income including arrears of the relevant previous year in which the same is received. (ex: X)
Step 2	Calculate the tax payable on his total income excluding arrears. (ex: Y)

Step 3	Subtract the value obtained in step 1 from the value obtained in step 2. (e., A-B) and keep the result value as Z.
Step 4	Calculate the tax payable on the total income (including arrears) of the year to which the arrears are related. (ex: "A")
Step 5	Calculate tax payable on the total income (excluding arrears) of the year to which the arrears are related. (ex: "B")
Step 6	Subtract the value obtained in step 5 from the value obtained in step 4 (i.e., A – B). (ex: "C").
Step 7	Excess of tax computed at step 3 over tax computed at step 7 is the amount of relief allowable under section 89. If tax computed at step 3 is less than tax computed at step 7 the taxpayer will not be eligible for any relief.

Tax Liability in the PY in which adv / arrears are received	
a) Incl. adv / arrears	A
b) excl. adv / arrears	B
Differential	A-B
Tax Liability of the PY to which such addl salary relates	
a) Incl. adv / arrears	C
b) excl. adv / arrears	D
Differential	C-D
Relief u/s 89	**(A-B)-(C-D)**

DEDUCTIONS FROM SALARY



Standard Deduction [Section 16(ia)]	*Entertainment Allowance [Section 16(ii)]*	*Profession Tax [Section 16(iii)]*
Standard deduction of Rs. 50,000 (fifty thousand) or the amount of the salary, whichever is less is allowed as deduction in computing the Income under the head Salary.	Fully taxable in case of Non-Govt. Employees. In case of Government Employees, the deduction is available, which would be lower of: a) 1/5th of Basic Salary or b) INR 5000 or c) Actual entertainment Allowance received.	Allowed as a deduction when paid by the employee (recovered from salary) during the previous year
Note: The deduction u/s 16(ia), 16(ii), 16(iii) are not available for assesses opted for section 115BAC of the Income tax Act 1961.		

COMPUTATION OF SALARY INCOME

Particulars	*(Rs.)*
Income from Salary	
Salary	xxxxx
Allowances received (taxable allowances)	xxxxx
Taxable value of perquisite	xxxxx
Gross Salary	xxxxx
Less: Deduction under section 16	
Standard Deduction	(xxxxx)
Professional Tax	(xxxxx)
Entertainment allowance	(xxxxx)
Income from Salary	xxxxxx

Illustration 7:

Nitin is an employee of XYZ ltd. he was appointed on 1st Mar 2022 at a scale of 50000 – 5000 – 70000. He is paid DA (which forms part of retirement benefits) @ 15% of Basic Pay and Bonus equivalent to 2 month's salary at end of FY. He contributes 18% of his Basic + DA to a recognised provident fund, and the contribution is matched by the employer.

He is provided rent free accommodation, hired by the employer, @ 25000 pm. He is also provided the following benefits / amenities:

a) Medical Treatment of his dependant spouse INR 40000.

b) Monthly salary to housekeeper INR 4000.

c) Telephone Allowance INR 1200 pm.

d) Gift Voucher of INR 4500 on account of his marriage anniversary.

e) Medical Insurance Premium for Nitin, paid by his employer INR 15000.

f) Motor Car owned and driven by Nitin, and engine capacity within 1.6 liters; used partly for official and partly for personal purposes. Running & maintenance expenses borne by the employer INR 36,600.

g) Lunch during office hours valued at INR 2200.

He was also allotted 2000 sweat equity shares in September 2022. The shares were allotted @ INR 227 per share against the FMV of INR 377 per share as on the date of exercise of the option.

Compute the Salary income chargeable to tax.

Option 1 : Assessee has not opted for Section 115BAC

Option 2 : Assessee has opted for Section 115BAC

Solution:

Option 1 : Assessee has not opted for Section 115BAC

Particulars	***Amount INR***
Basic	6,05,000
DA	90,750
Bonus	1,10,000
Employers' Contribution to Pf > 12%	41,745
Taxable Allowances	
Telephone	14,400
Taxable Perquisites	
Medical Reimbursement (fully Taxable)	40,000
Housekeeper	48,000
Motor Car	15,000
Rent free Accommodation	1,23,023
Sweat equity	3,00,000
Gross Salary	13,87,918
Less: Standard Deduction under section 16(ia)	(50,000)
Taxable Salary	13,37,918

Note:

1) Employer's Contribution to Provident fund in excess of 12% is chargeable to Income Tax.
2) Rent free Accommodation is valued as under:
   a. Since the accommodation is hired, the actual hire charges subject to a cap of 15% of "salary" is considered;
   b. "Salary" for this purpose is Basic + DA + Bonus + all Taxable Allowances = INR 8,20,150.
3) Medical Treatment is chargeable to Tax, as no more tax free perquisite.
4) Since the value of the gift voucher is below INR 5000, it is not taxable as perquisite.
5) Lunch during office hours is also not taxable as perquisite assuming cost of meal upto Rs.50 per meal.
6) Medical Insurance Premium paid by the employer on behalf of Nitin is also not taxable as perquisite.
7) The motor car is chargeable as under:

   If the Car is owned / hired by the employee; expenses met by the employer & is used by the employee partly for official and partly for Personal purposes, the taxable value of the perquisite would be the actual expenditure incurred by the employer as reduced by the taxable value of the perquisite determined basis the engine capacity, i.e., INR 36600 – INR (1800*12) = INR 15000.

Option 2 : Assessee has opted for Section 115BAC

Particulars	***Amount (INR)***
Basic	6,05,000
DA	90,750
Bonus	1,10,000
Employers' Contribution to Pf > 12%	41,745
Taxable Allowances Telephone	14,400
Taxable Perquisites Medical Reimbursement (fully Taxable)	40,000
Housekeeper	48,000
Motor Car	15,000
Rent free Accommodation	1,23,023
Sweat equity	3,00,000
Meals	2,200
Gross Salary	13,90,118
Less: Standard Deduction under section 16(ia)	(NA)
Taxable Salary	13,90,118

Note:

- Employer's Contribution to Provident fund in excess of 12% is chargeable to Income Tax.
- Rent free Accommodation is valued as under:
  a) Since the accommodation is hired, the actual hire charges subject to a cap of 15% of "salary" is considered;
  b) "Salary" for this purpose is Basic + DA + Bonus + all Taxable Allowances = INR 8,20,150.
- Medical Treatment is chargeable to Tax, as no more tax free perquisite.
- Since the value of the gift voucher is below INR 5000, it is not taxable as perquisite.
- Lunch during office hours is taxable as perquisite.
- Medical Insurance Premium paid by the employer on behalf of Nitin is also not taxable as perquisite.
- The motor car is chargeable as under:

  If the Car is owned / hired by the employee; expenses met by the employer & is used by the employee partly for official and partly for Personal purposes, the taxable value of the perquisite would be the actual expenditure incurred by the employer as reduced by the taxable value of the perquisites determined basis the engine capacity i.e. INR 36600 - INR (1800X12) = INR 15000.
- Deduction u/s 16 is not allowed

Illustration 8 :

Mr. Ram is employed at Bombay. His basic Salary is Rs. 5,000 per month. He receives Rs. 5,000 p.a. as house rent allowance. Rent paid by him is Rs. 12,000 p.a. find out the amount of taxable house rent allowance. Assuming assessee has not opted u/s 115BAC.

Solution:

As per Rule 2A, the least of the following is exempt from tax:

(i) the actual house rent allowance;

(ii) excess of rent paid over 10% of salary;

(iii) where the accommodation is situated at Bombay, Delhi, Calcutta or Madras, one-half of the amount of salary due to the assessee for the relevant period;

(iv) Where the accommodation is situated at any other place, two-fifth of the salary due to the assessee for the relevant period.

Accordingly, Mr. Ram would be entitled to the least of:

(i) Rs. 5,000; or

(ii) Rs. 6,000 being excess of rent over 1/10th of salary; or

(iii) Rs. 30,000 (being one-half of the salary of the assessee).

Rs. 5,000, being the least, would not be included in the total income of Mr. Ram. So the entire amount of HRA would be exempt from tax.

Salary for this purpose includes basic salary as well as dearness allowance if the terms of employment so provide. It also includes commission based on a fixed percentage of turnover achieved by an employee as per terms of contract of employment but excludes all other allowances and perquisites and these are determined on due basis for the period during which rental accommodation is occupied by the employee in the previous year.

Illustration 9:

Mr. Shyam, employed at Mumbai, receives the following from his employer during the previous year:

Particulars	***Rs.***
Basic Salary	60,000
Bonus	1,800
Entertainment allowance (taxable)	6,000
Electricity expenses	2,000
Professional tax paid by the employer	2,000
Rent free house (owned by Employer):	
Fair rent	48,000
Salary of gardener	2,400
Garden Maintenance	1,200
Salary of watchman	1,800

Determine the value of taxable perquisites in respect of rent free house assuming (a) Mr. Shyam is a government officer and the fair rent as arrived at by the government is Rs. 6,000 p.a. (b) Mr. Shyam is a semi-government employee, and (c) Mr. Shyam is employed by a private company.

Solution:

(a) **If Mr. Shyam is a Government Officer:** As per Rule 3(1) of Income-tax Rules, Rs. 6,000 p.a. being the rent of the house as per government rules, will be the taxable value of the perquisite.

(b) **If Mr. Shyam is a semi-Government employee:** As per Rule 3(1) of the Income-tax Rules, the value of the perquisite in respect of rent free accommodation is taken at 15% of salary of the employee (as the house is owned by the employer and provided in Mumbai).

Salary = Rs. 67,800 (Rs. 60,000 + 1,800 + 6,000)

15% of salary = Rs. 10,170 and

Therefore, Rs. 10,170 is taxable value of the perquisite.

Further, the value of electricity expenses and Professional Tax paid by the employer, being perquisites, are not included in the salary for valuation of Rent free house Accommodation.

(c) **If Mr. Shyam is employed in Private Company:** The value of perquisite in this case shall also be Rs. 10,170. under the new rules there is no difference between the semi-govt. and other employees.

***Note*:** The Solution is provided assuming assessee has not opted for section 115BAC. However, even if he would have opted for section 115BAC, the solution would be same.

Illustration 10:

Mr. Ramamoorthy, an employee of M/s. Gopal Krishnan & Co. of Chennai receives during the previous year ended March 31, 2023 the following payments:

Particulars	*(Rs.)*
Basic Salary	40,000
Dearness allowance	3,000
Leave Salary	5,400
Professional tax paid by employer	1,000
Fair rent of the flat provided by employer	6,000
Rent paid for furniture	1,000
Rent recovered by employer	3,000
Contribution to Statutory Provident fund	4,000
Employer's contribution to Statutory Provident fund	4,000

Compute his taxable income for the Assessment Year 2023-24.

Option 1: Assessee has not opted for Section 115BAC

Option 2: Assessee has opted for Section 115BAC

Solution:

Option 1: Assessee has not opted for Section 115BAC

Computation of taxable income of Mr. Ramamoorty for the Assessment Year 2023-24

Particulars	*Amount (Rs.)*
Basic Pay	40,000
Dearness allowance	3,000
Leave salary	5,400
Professional tax paid by employer	1,000
Perquisite for house :	
15% of salary (Rs. 40,000 + 3,000 + 5,400) 7,260 *Add*: furniture rent 1,000 *Less:* Rent recovered (-) 3,000	5,260

	54,660
Less: Standard Deduction under section 16(ia)	(50,000)
Less: Professional tax u/s 16	1,000
Gross Total Income	3,660
Less: Deduction under Section 80C	(3,660)
Total income	Nil
Total tax payable	Nil

Note: Assumed that dearness allowance forms part of the salary for the purpose of computation of superannuation or retirement benefits.

Option 2: Assessee has opted for Section 115BAC

Computation of taxable income of Mr. Ramamoorty for the Assessment Year 2023-24

Particulars	***Amount (Rs.)***
Basic Pay	40,000
Dearness allowance	3,000
Leave salary	5,400
Professional tax paid by employer	1,000
Perquisite for house :	
15% of salary (Rs. 40,000 + 3,000 + 5,400) 7,260 Add: furniture rent 1,000 less: Rent recovered (-) 3,000	5,260
	54,660
Less: Standard Deduction under section 16(ia)	(NA)
Less: Professional tax u/s 16	(NA)
Gross Total Income	54,660
Less: Deduction under Section 80C	(NA)
Total income	54660
Total tax payable	Nil

Note:

(i) Assumed that dearness allowance forms part of the salary for the purpose of computation of superannuation or retirement benefits.

(ii) Deduction u/s 16 & 80C is not allowed as the assessee has opted for section 115BAC

Illustration 11:

Raman, an employee of the gas Supply ltd., Agra, receives the following emoluments during the previous year 2022-23.

Particulars	***(Rs.)***
Basic pay	10,000
Project allowance	1,800
Arrears of project allowance of May, 2018	150
Professional tax paid by the employer	200
Rent free furnished house	
- Fair rent of the house	2,000
- Rent of furniture	500
Free gas supply	400
Service of sweeper	600
Services of gardener	1,000
Service of cook	800
Free lunch	2,400

Free use of chauffeur driven fiat car which is used partly for official and partly for private purposes.

He is a member of recognized provident fund to which he contributes Rs.1,500. His employer also contributes an equal amount. He deposits Rs. 600 per month in 10 year account under the Post office Savings Bank (CTD) Rules.

Determine his taxable income and tax payable thereon for the assessment year 2023-24.

(a) If Raman is a director in the employer company and the rent-free house is owned by it,

(b) If Raman is neither a director nor a shareholder in the employer company and the rent-free house is not owned by it.

Option 1: Assessee has not opted for Section 115BAC

Option 2: Assessee has opted for Section 115BAC

Solution:

Option 1: Assessee has not opted for Section 115BAC.

His taxable income will be computed as under:

Particulars	*If Raman is a director and rent-free house is owned by the company 'A'*	*If Raman is neither a director nor a shareholder and rent- free house is not owned by the company 'B'*
(1)	*(2)*	*(3)*
	Rs.	*Rs.*
Basic Pay	10,000	10,000
Project allowance	1,800	1,800
Arrears of project allowance of May, 2018	150	150
Professional tax paid by the employer	200	200
Rent free furnished house:		
– 15% of Salary	1,770	1,770
– Rent of furniture	500	500
Free gas supply	400	Nil
Service of sweeper	600	Nil
Service of gardener	1,000	Nil
Service of cook	800	Nil
Free lunch	Nil	Nil
Excess of employer's contribution towards provident fund over 12% of salary (1,500 - 12% of Rs. 10,000)	300	300
Gross salary	17,520	14,720
Deduction : Standard Deduction (Maximum Rs. 50,000)	17,520	14,720
Net Salary Income	Nil	Nil
Tax on total income	Nil	Nil

Notes:

(1) It is assumed that the arrears of project allowance are taxable on receipt basis.

(2) Perquisite in respect of Rent free house is taxable in the hands of all the assessees. In this case fair market value has no relevancy and assumed that the house is owned by the employer. Since the house is provided in Agra, population is assumed as exceeding 25 lakhs. Salary for valuation of perquisite is (10,000 + 1,800).

(3) The free sweeper, gardener, cook, lunch, car etc. are not taxable in the second case, because Raman

does not fall in the category of specified employee under Section 17(2)(iii) of the Act i.e., he is neither a director nor his salary is Rs. 50,000 p.a. or more.

(4) Free lunch provided is not taxable to the extent of Rs. 50 per day.

(5) Since Raman is employed in a gas supply company, the value of gas supplied is taxable as cost to the employer. And it is assumed that the cost of supply is same as Rs. 400 as given.

Option 2: Assessee has opted for Section 115BAC his taxable income will be computed as under:

Particulars	***If Raman is a director and rent-free house is owned by the company 'A'***	***If Raman is neither a director nor a shareholder and rent- free house is not owned by the company 'B'***
(1)	***(2)***	***(3)***
	Rs.	***Rs.***
Basic Pay	10,000	10,000
Project allowance	1,800	1,800
Arrears of project allowance of May, 2018	150	150
Professional tax paid by the employer	200	200
Rent free furnished house:		
– 15% of Salary	1,770	1,770
– Rent of furniture	500	500
Free gas supply	400	Nil
Service of sweeper	600	Nil
Service of gardener	1,000	Nil
Service of cook	800	Nil
Free lunch	2400	2400
Excess of employer's contribution towards provident fund over 12% of salary (1,500 - 12% of Rs. 10,000)	300	300
Gross salary	19,920	17,120
Deduction : Standard Deduction	Nil	Nil

Net Salary Income	19,920	17,120
Tax on total income	Nil	Nil

Notes:

(1) It is assumed that the arrears of project allowance are taxable on receipt basis.

(2) Perquisite in respect of Rent free house is taxable in the hands of all the assessees. In this case fair market value has no relevancy and it is assumed that the house is owned by the employer. Since the house is provided in Agra, population is assumed as exceeding 25 lakhs. Salary for valuation of perquisite is (10,000 + 1,800).

(3) The free sweeper, gardener, cook, lunch, car etc. are not taxable in the second case, because Raman does not fall in the category of specified employee under Section 17(2)(iii) of the Act i.e., he is neither a director nor his salary is Rs. 50,000 p.a. or more.

(4) Free lunch provided is taxable as the assessee is opted for Section 115BAC.

(5) Since Raman is employed in a gas supply company, the value of gas supplied is taxable as cost to the employer. And it is assumed that the cost of supply is same as Rs. 400 as given.

(6) No deduction is allowed u/s 16 as the assessee is opted for Section 115BAC.

Illustration 12:

For the financial year 2021-22, 'A', a Central government officer receives salary of Rs. 77,000 (including dearness allowance of Rs. 42,000) and entertainment allowance of Rs.18,000. his contribution to provident fund during this period is Rs. 7,200. In addition, he has purchased national Savings Certificates (VIII Issue) for Rs. 6,000. he has been provided with accommodation by the government for which the rent determined is Rs. 375 per month and this is recovered from A's salary. Compute A's tax liability for the assessment year 2023-24 assuming that he has no other income.

Option 1: Assessee has not opted for Section 115BAC

Option 2: Assessee has opted for Section 115BAC

Solution:

Option 1: Assessee has not opted for Section 115BAC

Mr. A

Assessment Year: 2023-24

Status: Resident Individual

Statement of Assessable Income

Particulars	***(Rs.)***	***(Rs.)***
Salary from Central government		77,000
Entertainment allowance	18,000	

Less: Entertainment Allowance u/s 16(ii) Rs. 5,000 or [1/5th of salary exclusive of any allowance, benefit or perquisite]	(5,000)	(13,000)
Less: Standard Deduction u/s 16(ia)		(50,000)
Gross Total Income		14,000
Less: Deduction u/s 80C (7,200 + 6,000)		(13,200)
Total Income		800
Tax liability		Nil
Net tax payable		Nil

Option 2: Assessee has opted for Section 115BAC

Name of Assessee: Mr. A Assessment Year : 2022-23

Status: Resident Individual

Statement of assessable income

Particulars	***(Rs.)***
Salary from Central government	77,000
Entertainment allowance	18,000
Less: Deduction u/s 16	Nil
Gross Total Income	95,000
Less : Deduction u/s 80C	Nil
Total Income	95,000
Tax liability	Nil
Net tax payable	Nil

Illustration 13:

Mr. X is employed in ABC ltd. getting basic pay Rs. 60,000 p.m. and dearness allowance Rs. 10,000 p.m. (forming part of salary). Employer has paid bonus Rs. 20,000 during the year. Commission was allowed @ 2% of sales turnover of Rs. 50,00,000. The employer and employee both are contributing Rs. 11,000 (each) to the recognised provident fund. During the year interest of Rs. 1,00,000 was credited to the RPF @ 10% p.a.

Compute tax liability of Mr. X for A.Y. 2023-24.

Option 1: Assessee has not opted for Section 115BAC

Option 2: Assessee has opted for Section 115BAC

Solution:

Option 1: Assessee has not opted for Section 115BAC

Particulars	***Amount (INR)***
Basic Pay (60,000 x 12)	7,20,000
Dearness allowance (10,000 x 12)	1,20,000
Bonus	20,000
Commission (50,00,000 x 2%)	1,00,000
Employer's contribution to RPF >12% Salary	19,200
Interest credited in excess of 9.5% p.a. (1,00,000 / 10% x 0.5%)	500
Gross Salary	9,79,700
Less: Standard Deduction u/s 16 (ia)	(50,000)
Income under the head Salary	9,29,700
Gross Total Income	9,29,700
Less: Deduction u/s 80C	(1,32,000)
Total Income	7,97,700
Computation of Tax liability	
Tax on Rs. 7,97,700 at slab rate	72,040
Add: HEC @ 4%	2,882
Tax liability Rs. 74,922 (R/o)	74,920

Option 2: Assessee has opted for Section 115BAC

Particulars	***Amount (INR)***
Basic Pay (60,000 x 12)	7,20,000
Dearness allowance (10,000 x 12)	1,20,000
Bonus	20,000
Commission (50,00,000 x 2%)	1,00,000
Employer's contribution to RPF >12% Salary	19,200
Interest credited in excess of 9.5% p.a. (1,00,000 / 10% x 0.5%)	500
Gross Salary	9,79,700

Less: Standard Deduction u/s 16 (ia)	(Nil)
Income under the head Salary	9,79,700
Gross Total Income	9,79,700
Less: Deduction u/s 80C	(Nil)
Total Income	9,79,700
Computation of Tax liability	
Tax on Rs. 9,79,700 at slab rate [Section 115BAC note 1]	71,955
Add: HEC @ 4%	2,878
Tax liability Rs. 74,833 (R/o)	74,830

Note:

1. Computation of Tax liability Tax on Rs. 9,79,700 at new slab rate [Section 115BAC]

   0 to 2,50,000 : Nil

   >2,50,000 to 5,00,000 @5%: 12,500

   >5,00,000 to 7,50,000 @10% : 25,000

   >7,50,000 to 9,79,700 @15% : 34,455

   Total = 71955

2. Salary for RPF= 7,20,000 + 1,20,000 + 1,00,000 = 9,40,000 @12% = 1,12,800

   Employer's contribution = 11,000 x 12 = 1,32,000

   1,32,000 – 1,12,800 = 19,200

CASE LAWS

2012	*CIT v. Shankar Krishnan*	*Bombay High Court*

Issue: Can notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent- free accommodation given to the employee?

Fact of the Case: The taxpayer was provided with rent free accommodation facility by his employer which was taxed as perquisites in his hands. The return of income filed by the taxpayer taken up for scrutiny. The assessing officer assessed the income with an addition for notional interest @ 12% on security deposit paid by the employer to the landlord in respect of the accommodation provided to the taxpayer.

On an appeal by the taxpayer, the CIT (appeal) upheld the order of assessing officer. Aggrieved by the CIT(appeal) 's order, the taxpayer preferred an appeal before the tribunal that such notional interest would not be taxable.

Judgement: On appeal by the Revenue, the Bombay high Court held that the Assessing officer is not right in adding the notional interest on the security deposit given by the employer to the landlord in valuing the perquisite of rent- free accommodation, since the perquisite value has to be computed as per Rule 3 and Rule 3 does not require addition of such notional interest. Thus, the perquisite value of the residential accommodation provided by the employer would be the actual amount of lease rental paid or payable by the employer, since the same was lower than 10% (now 15%) of salary.

2011	*CIT (TDS) v. Director, Delhi Public School*	*Punjab and Haryana High Court*

Can the limit of INR 1,000 per month per child be allowed as standard deduction, while computing the perquisite value of free or concessional education facility provided to the employee by the employer?

Fact of the Case: The assessee is running a public school and was liable to deduct tax at source from salary and remuneration paid to its teaching staff. The person responsible (the assessee herein) is the director of the School who filed the return of salaries on 28.11.2003. At the time of checking of form 12BA annexed along with form no.16 relating to various employees, it was found that the assessee had been providing free/concessional educational facilities to the wards of teachers and other staff members of the school. However, while calculating the amount of perquisite taxable in the hands of teachers/staff qua free/ concessional educational facilities provided to their wards, the assessee had been allowing a deduction of Rs.1000 per month per child from the total amount of educational facilities provided free of cost to them.

The Assessing officer held that the assessee had wrongly allowed a deduction of Rs.1000 per month per child while calculating the amount of taxable perquisite and added an amount of Rs.12,000 per annum per child to the value of perquisites on account of free educational facilities provided to the wards of the employees/staff of the school and calculated short deduction to that extent and treated the assessee to be in default. The Assessing officer also charged interest. Accordingly, during the assessment year 2003- 04, the demand was raised at Rs.3,93,586 (i.e. short deduction of tax at Rs.2,97,606 plus Rs.95,980 as interest).

Judgement: The Punjab and Haryana high Court held that on a plain reading of Rule 3(5), it flows that, in case the value of perquisite for free/concessional educational facility arising to an employee exceeds Rs. 1,000 per month per child, the whole perquisite shall be taxable in the hands of the employee and no standard deduction of INR 1,000 per month per child can be provided from the same. It is only in case the perquisite value is less than INR 1,000 per month per child, the perquisite value shall be nil. Therefore, INR 1,000 per month per child is not a standard deduction to be provided while calculating such a perquisite.

2018	*Sun Outsourcing Solution (P.) Ltd v. CIT*	*T & AP High Court*

Where lump sum payment made to deputed employee was by way of conferring additional advantage in order to make them to meet high cost towards accommodation and other personal expenditure, same would fall within definition of perquisite under section 17(2) of the Income tax act, 1961.

Fact of the Case: The assessee was engaged in the business of software development, with office at Hyderabad and branch office at London. U.K. In the course of execution of software projects in the UK, the assessee had deputed some local persons of Hyderabad to London to work in its branch office and also employed local personnel (NRIs) in U.K. The assessee did not deduct tax on allowances paid to the staff deputed to U.K. and the salary payments made to the local personnel engaged in UK.

Judgement: It has been held that it was not doubtful that the lump sum payment made to the employees was by way of conferring additional advantage in order to make them to meet the high cost towards accommodation and other personal expenditure. Such expenditure could not be treated as having been incurred in connection with discharge of their duties within the meaning of section 10(14). further, as found by both the fora below, neither any break-up of the amounts payable to the employees in U.K. had been given nor was it envisaged that the expenses so incurred are reimbursable. Therefore, that amount in disputes attracted the definition of perquisite in section 17(2) and they did not fall within the exception of section 10(14).

2008	*CIT v. Shyam Sundar Chhaparia*	*High Court*

Whether the amount received by the employee on cessation of employment with his Employer will be exempted from tax under section 17(3)(i) of the Income-tax Act?

Facts of the Case: The assessee after his retirement was granted an amount of Rs. 27,50,000 as a special Compensation in lieu of an agreement for refraining from taking up any employment activities Or consultation which would be prejudicial to the business/interest of his employer.

The assessee claimed that it was a non-taxable receipt being the compensation for not taking up any competitive employment under a restrictive covenant. The Assessing Officer did not accept the claim of the assessee on the grounds that (i) the decision of the Supreme Court relied on by the assessee was that of an agency whereas the case of the assessee was that of one who was in service, and (ii) section 17(3)(i) was squarely applicable to the case of the assessee.

The Commissioner (Appeals) held that as there was restriction for the assessee not to work in business of any type and anywhere, the compensation was received in lieu of loss of future work and was a capital receipt. The Tribunal held in favour of the assessee.

Judgement: The High Court held that the assessee retired from service on attaining the age of superannuation and hence there was severance of the master-servant relationship and there was no material to suggest that there existed a service contract providing therein a restrictive covenant preventing thereby the assessee from taking up any employment or activities on consultation which would be prejudicial to the business/ interest of his employer.

Therefore, it could not be termed as profit in lieu of salary because it was not compensation due to or received by the assessee from his employer or partner- employer at or in connection with the termination of his employment. Thus, the Commissioner (Appeals) and the Tribunal rightly held that the amount could not be added for the purpose of income-tax.

2008	*CIT v. Shiv Charan Mathur*	*High Court*

Can reimbursement of expenditure on medical treatment taken by the assessee, who was a member of the Legislative Assembly, be taxed as perquisite under section 17(2)(iv)?

Facts of the Case: Notice under section 148 was issued to the assessee, at the relevant time a sitting MLA and former Chief Minister of the State, for the reason that he received a sum from the State Government as reimbursement of medical expenses which amount was liable to be taxed under section 17 but had not been offered for taxation. The contention of the assessee was that the amount received by MPs and MLAs was not taxable under the head “Salary” but under the head “Income from other sources”.

Judgement: The High Court held that MLAs and MPs are not employed by anybody rather they areelected by the public, their election constituencies and it is consequent upon such election that they acquire constitutional position and are in charge of constitutional functions and obligations. The remuneration received by them, after swearing in, cannot be said to be" salary" within the meaning of section 15 of the Income-tax Act, 1961.

The fundamental requirement for attracting section 15 is that there should be a relationship of employer and employee whether in existence or in the past. This basic ingredient is missing in the cases of MLAs and MPs. When the provisions of section 15 were not attracted to the remuneration received by the assessee, section 17 could not be attracted as section 17 only extends the definition of "Salary" by providing certain items mentioned therein to be included in salary.

Thus, the reimbursement of medical treatment taken by the assessee, who was a member of the Legislative Assembly for open heart surgery conducted abroad was not taxable as perquisite under section 17(2)(iv).

2021	*State Bank of India v. ACIT*	*ITAT Mumbai*

No denial of LTC exemption even if travel is not undertaken through shortest route

The Mumbai ITAT held that a plain reading of Section 10(5) read with Rule 2B does not indicate any requirement of taking the shortest route for travelling to any place in India. It does not restrict the route to be adopted for going to such a destination. However, the statutory provisions do envisage the possibility of someone taking a route other than the shortest route. It is implicit in the restriction that only an amount not exceeding the air economy fare of the national carrier by the shortest route to the place of destination is eligible for exemption under section 10(5).

There is no specific bar in the law on the travel, eligible for exemption under Section 10(5), involving a sector of overseas travel. In the absence of such a bar, the assessee couldn't be faulted for not inferring such a bar. The reimbursement was restricted to airfare, on the national carrier, by the shortest route, as was the mandate of Rule 2B. As part of that composite itinerary involving a foreign sector as well, the employee had travelled to the destination in India.

The guidance available to the assessee indicates that, in such a situation, the exemption under section 10(5) was available to the employee. Such exemption shall be available only to the extent of farthest Indian destination by the shortest route, and that was what assessee had allowed.

LESSON ROUND-UP

- **Basis of Charge:** As per section 15, salary is taxable on due or receipt basis whichever is earlier. Under Section 15 the income chargeable to income tax under the head salaries would include any salary due to an employee from an employer or a former employer during the previous year irrespective of the fact whether it is paid or not.
- **Different forms of salary:**
  - (A) **Basic Salary:** Basic salary is taxable in the hands of an employee.
  - (B) **Allowance:** An allowance is defined as a fixed amount of money given periodically in addition to the salary for the purpose of meeting some specific requirements connected with the service rendered by the employee or by way of compensation for some unusual conditions of employment. It is taxable on due/accrued basis whether it is paid in addition to the salary or in lieu thereon.

(C) **Perquisites:** The term "perquisites" includes all benefits and amenities provided by the employer to the employee in addition to salary and wages either in cash or in kind which are convertible into money. These benefits or amenities may be provided either voluntarily or under service contract. for income-tax purposes, the perquisites are of three types:

(i) Tax-free perquisites

(ii) Taxable perquisites

(iii) Perquisites taxable under specified cases.

- **Valuation of perquisites:** The lesson covers the principles governing valuation of perquisites. The value of perquisite is included in the salary income only if the perquisite is actually provided to the employee. Perquisite which is not actually enjoyed by the employee (though the terms of employment provide for the same) cannot be valued and taxed in the employee's hands. Therefore, where the employee waives his right of perquisite, he cannot be taxed thereon.
- **Allowable deductions under the head Salaries:** The following amounts shall be deducted in order to arrive at the chargeable income under the head "Salaries" subject to certain conditions.

(A) Standard deduction: Rs. 50,000 or salary whichever is less.

(B) Entertainment Allowance

(C) Tax on employment or Professional Tax

TEST YOURSELF

Multiple Choice Questions (MCQs)

1. Conveyance Allowance is exempt to the extent of per month?

   a) INR 800

   b) INR 1600

   c) Nil

   d) None of the above

   Answer: (c)

2. Uncommuted pension is always taxable irrespective of whether the assessee is a Private Sector or a Public-Sector employee?

   a) Yes

   b) Yes, like commuted pension

   c) It depends on whether the person is in receipt of gratuity

   d) false

   Answer: (a)

3. For the purposes of taxability of Commuted Pension, this is independent of whether you have received gratuity or not as these are anyways taxed separately?
   (a) Incorrect, it depends on whether you are a government employee or not
   (b) Incorrect, it depends on whether you are in receipt of gratuity
   (c) Both a & b
   (d) none of the above

   Answer: (c)

4. No. of days in a month for purposes of computing taxable gratuity in case the employee is covered under the Payment of gratuity Act, 1972, are?
   a) 26
   b) 25
   c) 30
   d) 31

   Answer: (a)

5. ..... allowance deduction is allowed only to Government employees.
   a) Entertainment
   b) House Rent
   c) Travel
   d) None of these

   Answer: (a)

6. Arrears of salary are taxable in the year of .....
   a) payment
   b) Receipt
   c) Accrual
   d) None of the above

   Answer: (b)

7. Telephone provided at the residence of an employee by employer is ..... perquisite.
   a) Non-taxable
   b) Taxable
   c) Exempt
   d) None of the above

   Answer: (a)

8. An employer has paid medical insurance premium of Rs. 12,000 in respect of a salaried employee drawing annual salary of Rs. 6 lakhs. The amount of perquisite charged in the hands of employee towards medical insurance premium is:

(a) Nil

(b) Rs. 6,000

(c) Rs. 12,000

(d) None of the above

Answer: (a)

Descriptive Questions:

1. Illustrate with examples the difference between Allowances and Perquisites while computing Income under the head Salary.
2. Employer and Employee relationship is the pre-requisite between payer and payee for the income to be chargeable under the head Salary. Explain with reason.

Practical Questions

1. Mr. Ram resides in Chennai and gets Rs. 10,000 per month as basic salary Rs. 8,000 per month as DA (entering service benefits), Rs.12,000 per month as HRA. He pays Rs. 10,000 per month as rent. Calculate taxable HRA.

   Answer: Rs. 98,400

2. The Following are the particulars of Mr. Priyan who is employed in Chennai.

   i. Basic Salary Rs.4000 p.m

   ii. DA (60% of Basic Salary)

   iii. CCA Rs.250 p.m

   iv. House Rent Allowance Rs.450 p.m (Rent paid Rs.500 p.m)

   v. During the year he paid professional tax Rs.550

   vi. Education allowances Rs.150 p.m (Per Child)

   Calculate Salary Income.

   Answer: Rs. 35,250

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann

- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961 :** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962 :** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx*
- **Circulars :** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Income under the head House Property

Lesson 5

KEY CONCEPTS

■ House Property ■ Gross Annual Value ■ Net Annual Value ■ Unrealized Rent ■ Arrear of Rent ■ Self-Occupied Property ■ Deemed to be let out Property ■ Co-ownership ■ Deemed Owner

Learning Objectives

To understand:

- The conditions to be satisfied for income to be chargeable under the head house property
- How to determine the annual value of different type of house properties?
- Admissible deductions and inadmissible deductions from annual value
- Tax treatment of unrealized rent
- Who are deemed owners?
- What is meant by co- ownership and what is its tax treatment etc.?
- How to compute Income under the head 'House Property'

Lesson Outline

- Basis of Charge
- Deemed Ownership
- Property held as Stock in trade
- Concept of Composite Rent
- Impact of Section 115BAC under the head 'House Property'
- Determination of Annual Value
- Deductions from Net Annual Value
- Inadmissible deductions
- Treatment of unrealized rent/Arrear of rent
- Properties owned by Co- owners
- House Property Income Exempt from Tax
- Case Law
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

Sections	*Income Tax Act, 1961*
Section 22	Basis of Charge
Section 23(1)	Annual Value of House Property
Section 23(2)	Annual Value where property is self- occupied / unoccupied
Section 23(3)	Annual Value where the property is partly let out and partly self- occupied
Section 23(4)	Deemed to be let-out property
Section 23(5)	Notional income from house property held as stock in trade
Section 24	Deduction from Net Annual Value
Section 24(a)	Standard Deduction
Section 24(b)	Interest on borrowed capital
Section 25	Inadmissible Deductions
Section 25A	Treatment of Unrealized Rent / Arrear of Rent
Section 26	Income from Co-Owned Property
Section 27	Deemed Ownership

BASIS OF CHARGE [SECTION 22]

The **annual value** of property consisting of any **buildings or lands appurtenant thereto** of which the assessee is the **owner,** other than such portions of such property as he may occupy **for the purposes of any business or profession carried on by him,** the profits of which are chargeable to income-tax, shall be chargeable to income- tax under the head Income from House Property.

In other words a house property is taxable under this head if following conditions are satisfied:-

1. **There should be a property consisting of any buildings or lands appurtenant thereto;**

   The term **'buildings'** includes any building- office building, godown, storehouse, warehouse, factory, halls, shops, stalls, platforms cinema halls, auditorium etc. as long as they are not used for business or profession by owner.

   Land appurtenant includes land adjoining to or forming a part of the building It would depend on the nature of the land, whether it is appurtenant to the residential building, factory building, hotel building, club house, theatre etc. and will include courtyards, compound, garages, car parking spaces, cattle shed, stable, drying grounds, playgrounds and gymkhana.

2. **Assessee should be the owner of such property**

   a) The Assessee must be the Owner of the House Property during the P.Y. It is not material whether he is the owner in the A.Y.

   b) Ownership includes both Free-hold and Lease hold rights.

c) Ownership includes **Deemed Ownership (Section 27).**

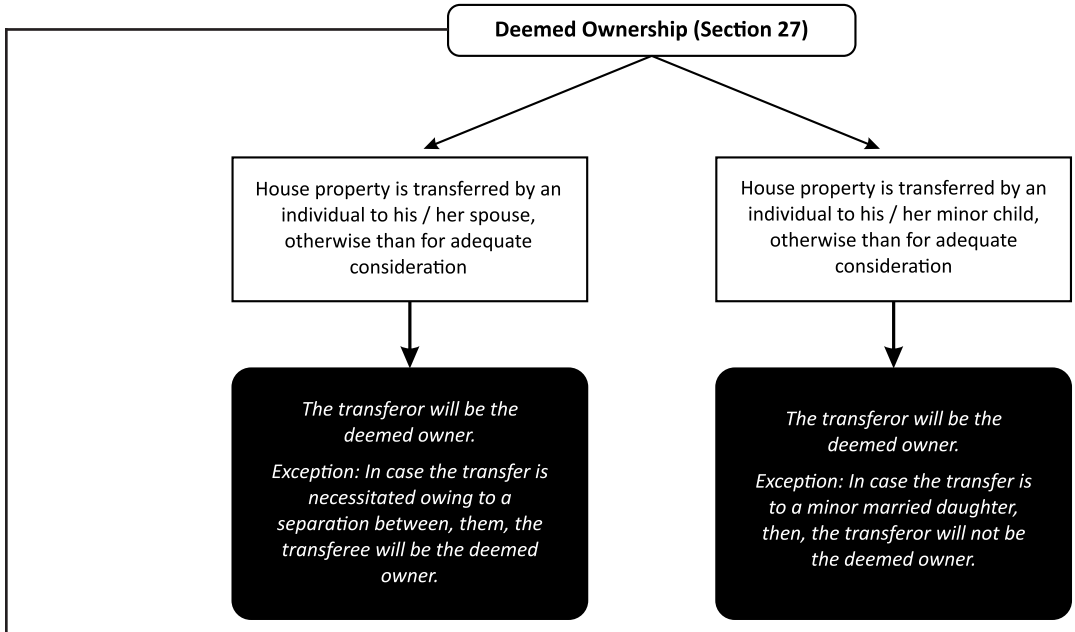
d) The person who owns the Building need not also be the Owner of the Land upon which it stands.

e) If the title of the Ownership of the property is under dispute in a Court of Law, the decision as to who will be the owner chargeable to tax u/s 22 will be that of the Income Tax Department till the Court gives its decision on the matter.

f) An Owner is a person who is entitled to receive Income from the Property in his own right. The requirement of registration of the sale deed is not warranted.

3. **Such property should not be occupied by the assessee for the purposes of any business or profession carried on by him, the profits of which are chargeable to income tax.**

DEEMED OWNERSHIP [SECTION 27]



1. The holder of an impartibel estate, i.e., one that is not legally divisible, shall be deemed to be the owner of all the properties in the estate.
2. A member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a House Building Scheme of a society/ company/association, shall be deemed to be owner of that building or part thereof allotted to him although the co-operative society/company/association is the legal owner of that building.
3. Person in possession of a property: A person who is allowed to take or retain the possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act shall be deemed owner of that house property.

   This would cover cases where the

   (a) Possession of property has been handed over to the buyer,

   (b) Sale consideration has been paid or promised to be paid to the seller by the buyer,

(c) Sale deed has not been executed in favour of the buyer, although certain other documents like power of attorney/agreement to sell/will etc. have been executed. The buyer would be deemed to be the owner of the property although it is not registered in his name.

3. Person having right in a property for a period not less than 12 years: A person who acquires any right in or with respect to any building or part thereof, by virtue of any transaction as is referred to in section 269UA(f) i.e. transfer by way of lease for not less than 12 years shall be deemed to be the owner of that building or part thereof. This will not cover the case where any right by way of a lease is acquired from month to month basis or for a period not exceeding one year.

Important Practical Issues

The House Property is owned by the Assessee, but it is used by the Firm in which he is a Partner, and he has not derived any benefit from the Firm. It is deemed that the Partner is using the property for his own business, and hence **not taxable under Income from House Property.**	**PM Thomas 181 ITR 256 (Ker.), Sri Champalal Jeevaraj 215 ITR 289 (Mad.), D Srinivasan 248 ITR (Kar.), Mustafa Khan 145 Taxman 522 (AH.)**
Where IT Authorities found that the Assessee had leased out his property to his own family members to show lesser income in his hand and family members had in turn sub-leased it to outsiders on much higher rentals, Assessing Authorities could tax the said income in hands of the assessee.	**[*Maneklal Agarwal* vs. *DCIT* [*2017*] (SC)**

PROPERTY HELD AS STOCK IN TRADE

If the property constitutes **Stock-in-Trade** of a business or the business of the Assessee is to let- out house properties, the Income is to be charged only under the head **"Income from House Property".**

However, the annual value of property being held as stock in trade would be treated as NIL for a period of two years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority, if such property is not let-out during such period [Section 23(5)]

Exceptions:

1. **Letting out is a supplementary to the main business:** If the property is let out with the object of carrying on the business of the Assessee in an efficient manner, then Rental Income is taxable as Business Income. Deductions or allowances have to be calculated as relating to Profits/Gains of Business, and not relating to House Property.
2. **Sublet receipts:** In case of sub-letting, since the assessee is not the owner of the building sublet, hence the income derived therefrom shall not be taxable as income from house property, but shall be taxable as 'income from other sources'.
3. **Assessee's property used for his partnership firm :** In case any property is owned by an assessee and the same is given by him to the partnership firm, in which he is a partner, for carrying on the business of such firm, then it will be treated as if the property is used by the assessee for his own business and thus, the income from such property will not be taxable under this head. However, if property owned by HUF is given on rent to a firm in which members of HUF are partners in their personal capacity, then the rental income from such property shall be taxed as 'income from house-property in the hands of HUF.

Principle of Mutuality: When the assessee is governed by principle of mutuality, then the income from property will also be governed by the said principle and hence, not taxable under the head 'Income from House Property'. *E.g.* - Annual value of property of a social club will be outside the scope of the levy of income tax.

CONCEPT OF COMPOSITE RENT

- Property is let out by the Assessee.
- Together with Services (e.g. electricity, gas, water etc.) or Assets (e.g plant, machinery or furniture).
- Rent charged by the assessee is a consolidated sum (i.e. Rent for property + Rent for services/assets).

Treatment of Composite Rent

<table>
<tr><td colspan="2">where rent of property and rent of services / assets can be separated</td><td>where rent of property and rent of services / assets cannot be separated</td></tr>
<tr><td>Rent of letting of property</td><td>Rent of service, assets</td><td rowspan="2">Taxable under Other sources or Business income</td></tr>
<tr><td>Taxable under House property</td><td>Taxable under Other sources</td></tr>
</table>

Illustration 1:

State the head of income in the following cases under which the receipt is to be assessed and comment.

a) Atin uses his property for his own business. Can he claim depreciation?

b) Ashni lets out his property to Preeti. Preeti sublets it. How is sub-letting to be assessed in the hands of Preeti?

c) Sachin has built a house on a leasehold land. He has let out the property and claims the rent as income from house property and deducted expenses on repairs, security charges, insurance and collection charges totalling to 40% of receipts.

Solution:

The taxability of income under various heads is as under-

a) Yes, even if property is used for assessee's own business depreciation is allowed u/s 32 of Income-tax Act, 1961.

b) Income from sub-letting is taxable under the head income from other sources.

c) Even if property is built on a leasehold land, the assessee will be regarded as owner of such house property and rental income will be taxed under Income from house property. However, standard deduction of 30% of net annual value is allowed while computing income from house property. Hence, he will not be entitled deduction on repairs, security charges, insurance and collection charges totalling to 40% of receipts.

IMPACT OF SECTION 115BAC UNDER THE HEAD HOUSE PROPERTY

Finance Act, 2020 has introduced a New Optional Tax System for Individuals and HUFs u/s 115BAC of the Income Tax Act, 1961 w.e.f. AY 2021-22 to provide for concessional rate of Slab Rates to be applied on Total Income calculated without claiming specified deductions and exemptions.

Hence, from AY 2021-22 or FY 2020-21, there are two operative tax systems–

1. One is the Existing tax system where all the applicable deductions and exemptions are allowed and the tax rates are as per the Slab rates of tax specified in the Finance Act, 2020.

2. The second one is section 115BAC which is a Optional Tax System and under which many deductions and exemptions have not been allowed but lower slab tax rates are provided in the section 115BAC itself.

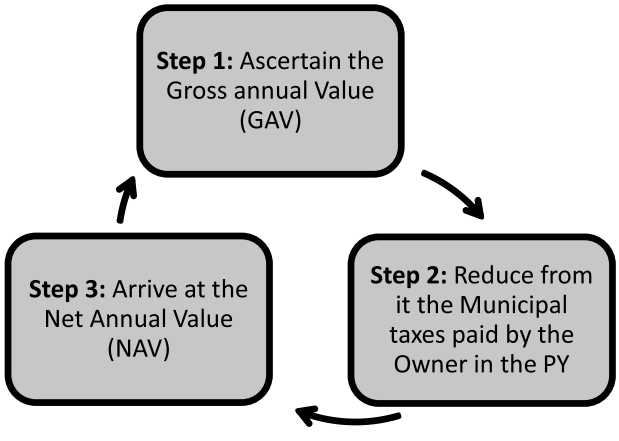
Individual and HUF opting for connectional tax regime under section 115BAC: The deduction under Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA; not available to the Individual and HUF opting to pay tax under concessional tax regime under section 115BAC of the Income Tax Act, 1961.

Many exemptions & deductions are not allowed under the new tax system. The below chart contains the exemptions and deductions not available under the new system related to Income under the head house property. Similarly, deductions & exemptions not available under the new tax system and which are related to other heads are provided in other chapters.

Sr. No.	*Nature of Exemption/Deduction Relating to House Property*	*New System of Tax Section 115BAC*	*Existing System of Tax*
1.	Deduction of Municipal Tax from GAV	Allowed	Allowed
2.	Standard Deduction u/s 24(a) from NAV	Allowed	Allowed
3.	Interest Deduction u/s 24(b) from NAV		
	(a) Let out properties u/s 23(1)	Allowed	Allowed
	(b) Self Occupied Property u/s 23(2)	Not Allowed	Allowed
	(c) Property which is stock in trade u/s 23(5)	Allowed	Allowed
4.	Set off of brought forward House Property losses & brought forward Depreciation from Current year House Property Income	Not Allowed if related to disallowed deduction & exemptions	Allowed
5.	Set off current year House Property loss from other Heads	Not Allowed	Allowed

DETERMINATION OF ANNUAL VALUE

The process of determination of Annual Value is exhibited below:



Annual Value: The measure of charging income-tax under this head is the annual value of the property, i.e., the inherent capacity of a building to yield income. The expression 'annual value' has been defined in Section 23(1) of the Income-tax Act as per which the annual value of any property shall be deemed to be:

(a) the sum for which the property might reasonably be expected to be let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable.

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him, i.e., municipal taxes will be allowed only in the year in which it was paid.

Explanation: for the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include the amount of unrealized rent.

Actual rent received or receivable: Actual rent received/receivable is an important factor in determining the annual value of a property though this is not the only decisive factor. The actual rent could be dependent upon various considerations. There could be circumstances where the owner agrees to bear certain obligations of the tenant e.g. the water and electricity bills of the tenant may be payable by the owner. In this case, the de facto rent (i.e. what should have been the actual rent) will be calculated by reducing from the rent received/ receivable, the amount spent by the owner on meeting the obligation of water and electricity bills of the tenant as we have to tax rent from house property under this head and not the amount recovered for other services provided in the nature of electricity and gas bills. On the other hand, if any obligation of water and electricity bills of the owner is met by the tenant, the de facto rent will be computed by adding to the rent received/ receivable, the amount spent by the tenant in discharging the obligation of the landlord.

Some Important Terms:

1. **Municipal Value** is the value that the Municipal Authorities deem as the value of the property for the purpose of assessment of Property Taxes. Municipal authorities normally charge house tax/municipal taxes on the basis of annual letting value of such house property, which is determined by it based upon many considerations.
2. **Fair Rent** of the property is the rent fetched by a similar property, in same or similar locality, with same facilities.
3. **Standard Rent:** The standard rent is fixed under the Rent Control Act. If the standard rent has been fixed for any property under the Rent Control Act, the owner cannot be expected to get a rent higher than the standard rent fixed under the Rent Control Act. Therefore, this is also an important factor in determining the annual value.

Further, where the property consists of a house or part of a house-

1. which is in the occupation of the owner for the purposes of his own residence;
2. or cannot actually be occupied by the owner by reason of the fact that owing to his employment,

business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house or part of the house shall be taken to be nil.

However, the above provisions i.e. (1) and (2) shall not apply if:

(a) the house or part of the house is actually let during the whole or any part of the previous year; or

(b) any other benefit there from is derived by the owner.

Further also, where the property referred to in point (1) and (2) as mentioned above consists of more than two houses:

(a) the provisions of that sub-section shall apply only in respect of two of such houses, which the assessee may, at his option, specify in this behalf;

(b) the annual value of the house or houses, other than the house or houses in respect of which the assessee has exercised an option considering it as self occupied property, shall be determined under as if such house or houses had been let.

Unrealized Rent: The amount of rent which the owner cannot realise shall be equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrevocable only if following conditions under **Rule 4** are satisfied:]

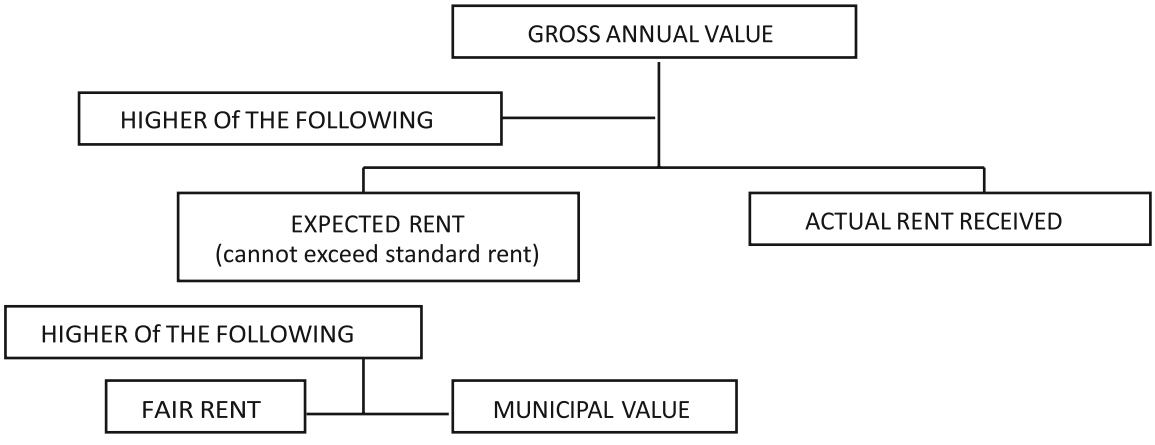
(a) tenancy is *bonafide*;

(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(c) the defaulting tenant is not in occupation of any other property of the assessee;

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfied the Assessing Officer that legal proceedings would be useless.

Where the property is let out for the whole year [Section 23(1)]



The Gross Annual value (GAV) is the higher of

a) Expected Rent (ER) and

b) Actual Rent received / receivable (AR)

Note: The Expected Rent is the higher of Fair Rent (FR) and the Municipal Value (MV), but capped to Standard Rent (SR).

Municipal Taxes: The taxes including service taxes (fire tax, conservancy tax, education, water tax, etc.) levied by any municipality or local authority in respect of any house property to the extent to which such taxes are borne and paid by the owner, and include enhanced municipal tax finally determined on appeal and payable by assessee - *Clive Buildings Cola Ltd. v. CIT* (1989) 44 Taxman 160. However, deduction in respect of municipal taxes will be allowed in determining the annual value of the property only in the year in which municipal taxes are actually paid by the owner.	
Paid by Owner	Municipal Tax borne by the Owner and paid by him during the previous year, shall be allowed as deduction. [Note: Municipal Taxes met by Tenant are not allowed as deduction.]
Property let out	Municipal Tax can be claimed as a deduction only in respect of let-out or deemed to be let-out properties (i.e. more than one property self-occupied).
Year of payment:	Municipal Tax relating to earlier previous years, but paid during the current previous year can be claimed as deduction only in the year of payment.
Advance Payment	Advance Municipal Tax paid shall not be allowed as deduction in the year of payment, but can be claimed in the year in which it falls due, because it is not a tax levied and incurred as liability.
Foreign Property	For a property situated outside India, Municipal Tax levied by Foreign Local Authority can be claimed as a deduction.
Enhanced Municipal Tax demand	Where the tax on property is enchanced with retrospective effect by municipal or local authorities ahnd the enhanced tax relating to the prior year is demanded during the assessment year, the entire demand is deductible in the assessment year *[C.I.T. v. L. Kuppu Swamy Chettiar (1981) 132 ITR 416 (Mad.)]*.

Illustration 2:

Mr. X is the owner of four houses, which are all let out and are covered by the Rent Control Act. From the following particulars find out the gross annual value in each case, giving reasons for your answer:

Particulars	*House I*	*House II*	*House III*
Municipal Value	30,000	20,000	35,000
Actual (*De facto*) Rent	32,000	28,000	30,000
Fair Rent	36,000	24,000	32,000

Solution:

Gross Annual Value (GAV): Higher of Expected or Actual Rent Expected Rent: Higher of Municipal Valuation or Fair Rent

House I: Rs. 36,000

House II: Rs. 24,000

House III: Rs. 35,000

Actual Rent (given) GAV:

House I: Rs. 36,000 House II: Rs. 28,000 House III: Rs. 35,000

Illustration 3:

Mr. x is the owner of three houses, which are all let out and not governed by the Rent Control Act. From the following particulars find out the gross annual value in each case:

Particulars	*House I*	*House II*	*House III*	*House IV*
Municipal Value	30,000	26,000	35,000	30,000
Actual (*De Facto*) Rent	40,000	30,000	32,000	32,000
Fair Rent	36,000	28,000	30,000	36,000
Standard Rent	30,000	35,000	36,000	40,000

Solution:

As all the houses are covered by the Rent Control Act, their gross annual value will be higher of Expected Rent or Actual Rent. Expected Rent shall be higher of Municipal Value or Fair Rent but subject to Standard Rent:

Particulars	*House I*	*House II*	*House III*	*House IV*
Expected Rent	30,000	28,000	35,000	36,000
Actual (*De Facto*) Rent	40,000	30,000	32,000	32,000
Gross Annual Value (GAV)	40,000	30,000	35,000	36,000

- Annual letting value of self occupied property, subject to Rent Control Act is to be fixed on basis of standard rent and not on basis of open market *Tilak Raj v. CIT (1989) 45 Taxman 279/178 ITR 327 (Punj. & Har.)*.
- In determining annual value salary paid to caretaker cannot be taken into account *CIT v. Smt. Sreelekha Banerjee (1989) 45 Taxman 358/179 ITR 46 (Cal.)*.
- Loss relating to self occupied house property could be set off against income from other sources *CIT v. K.K. Dhanda (HUF) (1989) 45 Taxman 346/178 ITR 602 (Punj. & Har.)*.

Where let out property is vacant for part of the year

In a scenario of vacancy for a part of the year, it is quite probable that the Actual Rent received / receivable would fall lower than Expected Rent and in such an eventuality; therefore the Actual Rent becomes the Gross Annual Value.

Illustration 4:

(i.e. No vacancy but there is unrealized rent)

Mr. A owns two houses. The expected rent of the house one is Rs. 65,000. This house was let out for Rs. 7,500 per month but the rent for the months of February and March, 2023 could not be realized.

The expected rent of another house is Rs. 1,50,000. This house was let out for Rs.12,000 per month but the rent for the last three months could not be realized.

In the both cases, Mr. A fulfills the conditions of Rule 4. You are required to compute the Gross Annual Value of both the houses.

Solution:

Particulars	*House I*	*House II*
Expected Rent	65,000	1,50,000
Annual Rent	90,000	144000
Unrealized Rent	15,000	36,000

Computation of Gross Annual Value

Particulars	*House I*	*House II*
Step 1: Expected Rent	65,000	1,50,000
Step 2: Actual Rent (After deducting unrealized rent) if higher than Expected Rent then Actual rent otherwise Expected rent	75,000	N.A.
Step 3: Applicable only in case of vacancy	N.A.	N.A.
Gross Annual Value	75,000	1,50,000

Illustration 5:

(There is vacancy but no unrealized rent)

Find out the gross annual value in the case of the following properties for the Assessment year 2023-24

Rs. in thousands

Particulars	*P*	*Q*	*R*	*S*
Expected Rent	70	55	85	125
Rent Per Month (if let out)	7	5	8	8
Let out period (in months)	11	0	9	10
Vacancy (in months)	1	12	3	2

Further all the rent were realized for the year by the assessee.

Solution:

Calculation of Gross Annual Value for A.Y. 2023-24 ***Rs. in thousands***

Particulars	*P*	*Q*	*R*	*S*
Annual Rent (If let out for 12 months)	84	60	96	96
Loss due to vacancy	7	60	24	16
Unrealized rent	Nil	Nil	Nil	Nil
Actual Rent (for let out period)	77	Nil	72	80
Calculation of Gross Annual Value				
Step 1: Expected Rent	70	55	85	125
Step 2: If annual rent is more than Expected Rent then annual rent otherwise expected Rent	84	60	96	125
Step 3: If property remain vacant then decline due to vacancy shall be considered	(7)	(60)	(24)	(16)
Gross Annual Value	77	0	72	109

Illustration 6:

(Vacancy and unrealized rent both exist)

Mr. X is the owner of a house property. He lets the property during the previous year 2022-23 for Rs. 7,000 p.m. The house was occupied from 1.4.2022 to 31.1.2023 . From 1.2.2023 , it remained vacant. Mr. X fails to realize Rs. 10,000 from the tenant. The Expected rent of the house is Rs. 82,000 p.a.

Calculate the Gross Annual Value of the house.

Solution:

Particulars	*Rs.*
Expected Rent	82,000
Annual Rent (Actual for the whole year - 7000 x 12)	84,000
Actual Rent (7,000 x 10)	70,000
Unrealized rent	10,000
Realized rent (70,000 - 10,000)	60,000
Loss Due to vacancy (7,000 x 2)	14,000
Decline due to vacancy (82,000 - 14,000) but not less than actual rent received	68,000

Calculation of Gross Annual Value

Step 1: Expected Rent	82,000
Step 2: If actual rent is more than expected rent than actual rent otherwise expected rent	84,000
Step 3: Decline due to vacancy in Expected Rent (i.e. Expected Rent minus Loss due to vacancy but not less than actual rent received)	14,000
Gross Annual Value	68,000

Where property is self-occupied / unoccupied [Section 23(2)]

Where the property consists of a house or part of a house in the occupation of the owner for his own residence, and is not actually let out during any part of the previous year and no other benefit is derived therefrom by the owner, the annual value of such a house or part of the house shall be taken to be nil. The only deduction available in respect of such house is towards interest on borrowed capital but subject to a ceiling of Rs. 30,000 or Rs. 2,00,000 as the case may be. In other words, to this extent there could be a loss from such house.

Concession for Two Houses Only:

Where the assessee has occupied more than two houses for the purposes of residence for himself and family members, he has to make a choice of two houses only in respect of which he would like to claim exemption. Other self-occupied houses will be treated as if they were let out and their annual value will be determined in the same manner as we have discussed in the case of let out property.

- Annual Value would be taken as Nil
- It is imperative that the property is self-occupied OR unoccupied for the whole year
- This benefit is for two houses
- This benefit is for Individual / HUF only
- No deduction is allowed for Municipal Taxes for such property.

Note: The Deduction of Rs. 30,000 / Rs. 2,00,000 with respect to Interest paid on borrowed capital u/s 24(b) not allowed in case of Self occupied Property, if assessee opted for section 115BAC of the Income Tax Act, 1961

Illustration 7:

Mr. R owns a house which uses for residential purposes throughout the previous year 2022-23. Municipal Value: Rs. 2,40,000. Fair Rent: Rs. 3,00,000. Compute income from house property assuming following expenditure are incurred by him:

Municipal taxes paid: Rs. 15,000

Repairs: Rs. 12,000

Depreciation: Rs. 10,000

Interest on borrowed capital: Rs. 2,00,000 (loan taken on 1.1.2015). House was purchased on 1.5.2018.

Option 1: Assessee has not opted for Section 115BAC

Option 2: Assessee has opted for Section 115BAC

Solution:

Option 1: Assessee has not opted for Section 115BAC

Particulars	*Rs.*
Net Annual Value	Nil
Less: Interest on borrowed capital	2,00,000
(lower of actual interest or 2,00,000; as conditions are satisfied)	
Loss from House Property	(2,00,000)

Option 2: Assessee has opted for Section 115BAC

Particulars	*Rs.*
Net Annual Value	Nil
Less: Interest on borrowed capital	NA
Income from House Property	Nil

Where the property is partly let out and partly self-occupied during the PY [Section 23(3)]

(a) Property let out partially:

When a portion of the house is self-occupied for the full year and a portion is let-out for whole year, the annual value of the house shall be determined as under:

(i) From the full annual value of the house, the proportionate annual value for self-occupied portion for the whole year shall be deducted.

(ii) The balance under (i) shall be the annual value for let out portion for a part of the year.

Illustration 8:

Mr. R. owns a house. The Municipal value of the house is Rs. 50,000. He paid Rs. 8,000 as local taxes during the year. He uses this house for his residential purposes but lets out half of the house @ Rs. 3,000 p.m. Compute the annual value of the house.

Solution:

Particulars	*Rs.*
Gross Annual rent or Municipal valuation (higher)	72,000
Less: Local taxes paid	8,000
Net Annual value of House Property	64,000
Less : Half of annual value regarding self occupied portion for the whole year	(32,000)
Net Annual Value of let out portion	32,000

(b) House let out during any part of the previous year and self occupied for the remaining part of the year:

In this case, the benefit of Section 23(2) is not available and the income will be computed as if the property is let out.

Illustration 9:

M is the owner of a house. The municipal value of the house is Rs. 40,000. He paid Rs. 8,000 as local taxes during the year. He was using this house for his residential purposes but let out w.e.f. 1.1.2023 @ Rs. 4,000 p.m. Compute the annual value of the house.

Solution:

Particulars	***Amount (Rs.)***
Gross annual value : Actual rent or Expected Rent (whichever is higher)	48,000
Less: Local taxes	8,000
Net Annual value of the House	40,000

(No benefit shall be given for self occupied period as the house did not remain vacant during the previous year)

Note: If fair rent is not given, then assume actual rent as fair rent.

(c) Self-occupied House remaining vacant:

If the assessee has reserved any two houses (owned by him) for his residence or he is the owner of two houses, one of which is meant for his own residence but could not be occupied by him for residential purposes in the previous year owing to the fact that he had to live at some other place in a house not belonging to him, then he can claim non- occupation or vacancy allowance during the previous year for the period during which house remained vacant. The reason for his living at a different place might be for business or professional purposes or for a salaried employee due to transfer etc. The annual value of the house, which remained vacant in these circumstances, shall be nil.

The above mentioned concession will be granted to the assessee only if he has neither let out the said house nor has derived any benefit from it during the period for which it remained vacant. Only deduction for interest on borrowed capital upto a maximum of Rs. 2,00,000 is allowed if following conditions are satisfied:-

1. Capital is borrowed for Purchase/Construction of property;
2. Capital borrowed on or after the 1st day of April 1999 and such acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed.

If any of above conditions are not met then maximum deduction allowed shall be limited to Rs. 30,000 only.

***Note*: The Deduction of Rs. 30,000 / Rs. 2,00,000 with respect to Interest paid on borrowed capital u/s 24(b) not allowed in case of Self occupied Property, if assessee opted for section 115BAC of the Income Tax Act, 1961**

Deemed to be let-out property [Section 23(4)]

- Assessee given the choice of any two houses to be construed as self-occupied and for that the Annual Value would be NIL. Others house property would be treated as deemed to be let out.

- The assessee is allowed the flexibility to change the option to suit his needs / benefits.
- In such as case, therefore, the Expected Rent becomes the Gross Annual Value
- Municipal Taxes paid by the owner for the whole year allowed as a deduction

Notional Income from House Property held as stock in trade [Section 23(5)]

Annual value of house property held by a person as stock in trade shall be taken as NIL if the Property (consisting of buildings or land appurtenant thereto) is held as stock in trade by the owner of the property and the property (or any part of property) is not let out during whole or any part of the previous year.

However, the above benefit/concession is available only for 2 years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent Authority.

DEDUCTIONS FROM NET ANNUAL VALUE [SECTION 24]

Standard deduction: 30% of Net Annual Value

a. This is not available when the Annual Value is NIL

b. This is a flat deduction irrespective of the actual expenditure incurred.

Interest on Borrowed Capital

a. Interest on borrowed capital for purchase/construction/repair/renewal/re-construction is allowed as a deduction from gross annual value.

b. Pre-construction period interest is also allowed as a deduction. Pre-construction period refers to the period starting from the date of taking of loan and ending with the end of financial year immediately preceding the previous year in which construction is completed (or the date of repayment of loan; whichever is earlier). This can be claimed for a period of 5 equal installments starting from the year of acquisition / completion of construction.

Deductions for Principal and Interest Repayment:

Nature	***Loan From***	***Allowability***
Principal	Specified Person u/s 80C	Allowed as a deduction u/s 80C
	Any Other Person	Not allowed as a deduction u/s 80C
Interest	Any Person	Allowed as a deduction u/s 24(b)

Assessee paid the purchase price in installments. The unpaid purchase price shall be treated as amount borrowed for acquiring property & interest thereon shall be eligible for deduction.	**Sunil Kumar Sharma (P&H) 122 Taxman 159**
Interest payable on unpaid purchase price qualifies for deduction in computation of Income from House Property.	**RP Goenka & JP Goenka ITR 123 (Cal.)**

Computation of Prior Period Interest if the date of completion of construction is before the date of repayment of loan

Step 1: Identify the Date of Borrowal of Loan.

Step 2: Identify the Date of Completion / Acquisition.

Step 3: Identify Last Date of the Financial Year immediately preceding the date of Completion / Acquisition.

Step 4: Prior Period = Period calculated from Step 1 to Step 3.

Step 5: Prior Period Interest = Interest will be calculated from the date of borrowing till the end of the previous year prior to the previous year in which the house is completed and not till the date of completion of construction.

Step 6: Allowable Prior Period Interest = Prior Period Interest as per Step 5 /5 Years.

Computation of Prior Period Interest if the date of repayment of loan is before the date of completion of construction

Step 1: Identify the Date of Borrowal of Loan.

Step 2: Identify the Date of Completion / Acquisition.

Step 3: Identify Last Date of the Financial Year immediately preceding the date of Completion / Acquisition.

Step 4: Prior Period = Period calculated from Step 1 to Step 3.

Step 5: Prior Period Interest = Interest will be calculated from the date of borrowing till the end of the previous year prior to repayment of loan.

Illustration 10:

X has a house which has two identical units. One of the units is self-occupied throughout the previous year and the other unit is let out throughout the previous year on a rent of Rs. 50,000 p.m. Municipal taxes for the complete house amounting to Rs. 60,000 have been paid during the previous year. The construction of the property was completed on 1.1.1995. Determine the income from house property for assessment year 2023-24, if X:

(a) Does not opt to be taxed under section 115BAC

(b) Opts to be taxed under section 115BAC

Solution:

Particulars	***Unit I (Let out)***		***Unit II (Self-occupied)***	
	Does not opt to be taxed u/s 115BAC	***Opts to be taxed u/s 115BAC***	***Does not opt to be taxed u/s 115BAC***	***Opts to be taxed u/s 115BAC***
Gross Annual Value	6,00,000	6,00,000	Nil	Nil
Less: Municipal Taxes	30,000	30,000	—	—
Net Annual Value	5,70,000	5,70,000	Nil	Nil
Less: Statutory deduction @ 30%	1,71,000	1,71,000	Nil	Nil
	399,000	399,000	Nil	Nil

No deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Summary of Allowability of Deduction

A) Let out / Deemed to be let out property

1) Standard deduction of 30% of NAV is fully allowed [Section 24(a)]
2) Interest on borrowed capital is fully allowed [Section 24(b)].

B) Self-occupied Properties

1) Since the Annual Value is nil, there is no Standard deduction available
2) In case the capital is borrowed
    a. for repairs / renewals / reconstruction, the maximum allowable deduction on account of interest is limited to INR 30000.
    b. for acquisition / construction, the deduction would depend on whether the loan was taken prior to or later
        i. In case capital borrowed prior to 1.4.99; the maximum allowable deduction on account of interest is limited to INR 30000;
        ii. In case capital borrowed post 1.4.99; as long as the acquisition / construction was completed within 5 years from the end of the FY in which the capital was borrowed, and the assessee is in possession of a certificate on interest payable from the lender, the maximum allowable deduction on account of interest is limited to INR 200,000.

where the assessee has opted for two houses to be treated as self occupied, the combined total deduction of the amount of interest given above shall in aggregate remain maximum to Rs. 30,000 or Rs. 2,00,000 as the case may be.

Note: **The Deduction of Rs. 30,000 / Rs. 2,00,000 with respect to Interest paid on borrowed capital u/s 24(b) not allowed in case of Self occupied Property, if assessee opted for section 115BAC of the Income Tax Act, 1961**

Points to Remember:

1. Interest on overdue interest is not allowed u/s 24(b) Income tax Act, 1961. *[Shew Kissen Bhatter* v. *CIT (SC)]*
2. Even interest on unpaid purchase price is allowed as deduction u/s 24(b) of the Income tax Act, 1961 [*CIT* v. *Sunil Kumar Sharma (Punjab & Haryana)*]
3. Where a fresh loan has been raised to repay the original loan if the second borrowing has really been used merely to repay the original loan and this fact is proved to the satisfaction of the Income Tax Officer, the interest paid on the second loan would also be allowed as a deduction under section 24(l)(vi). (Circular No. 28, dated 20.8.1969).
4. Any amount paid for brokerage or commission for arrangement of the loan will not be allowed as deduction. [Circular No. 28, dated 20.8.1969].

Illustration 11:

The assessee took a loan of Rs. 6,00,000 on 1.4.2020 from a bank for construction of a house on a piece of land owns in Indore. The loan carries an interest @ 10% per annum. The construction is completed on 15.8.2022. The entire loan is still outstanding. Compute the interest allowable for the assessment year 2023-24.

Solution:

Particulars	*Amount (Rs.)*
(i) Interest for the previous year 2022-23 on ₹6,00,000 @ 10%	60,000
(ii) Interest for the pre-construction period i.e. from 1.4.2020 to 31.3.2022 (1/5th of ₹60,000)	12,000
Total interest allowable	72,000

Note: Although the property is completed on 15.8.2022, the interest for the entire previous year i.e. 1.4.2022 to 31.3.2023 will be treated as current year's expenditure.

SUMMARY OF COMPUTATION OF INCOME FROM HOUSE PROPERTY

A) Computation of Income in case of Let out Property	*Amount (Rs.)*
Gross Annual Value	xxx
Less: Deduction u/s 23(1) for Municipal Taxes (to the extent actually paid and borne by the owner during previous year)	(xxx)
Net Annual Value (NAV)	xxx
Less: Standard Deduction u/s 24(a)-@ 30% of NAV	(xxx)
Deduction for Interest on Borrowed Capital u/s 24(b)	(xxx)
Income from House Property	xxx
B) Computation of Income in case of Self Occupied Property	
Gross Annual Value	xxx
Less: Deduction for Municipal Taxes (even if paid and borne by the owner during previous year)	(xxx)
Net Annual Value	xxx
Less: Deduction u/s 24(a) Standard Deduction	(xxx)
Less: Deduction u/s 24(b) for Interest on Borrowed Capital	(xxx)
Income/Loss from House Property	xxx

Illustration 12:

Nikhil has a property whose Municipal Valuation is INR 500,000 p.a. The Fair Rent of the property is INR 400,000 p.a. and the Standard Rent fixed by Rent Control Act is Rs. 4,50,000 p.a. The property was let out for a Rent of INR 35,000 pm and the tenant vacated the same on 31st Jan 2023. Unrealised Rent was INR 35000 and the conditions are fulfiled with respect to the same. He paid municipal taxes worth INR 15000 during the PY and the Interest on Loan was INR 60000. Please exhibit the computation and advise the income from house property.

Solution:

Computation of GAV (Gross Annual Value)	**INR**	**INR**
ER (Expected Rent)		
Higher of:		
1) Fair Rent	4,00,000	
2) Municipal Value	5,00,000	
Limited to Standard Rent		4,50,000
AR (Actual Rent)	3,50,000	
Less: Unrealised Rent	(35,000)	
		3,15,000
GAV (as falls Vacant)		3,15,000
Less: Municipal Taxes paid by the owner during the PY		(15,000)
NAV (Net Annual Value)		***3,00,000***
Less: ***Deductions u/s 24***		
30% NAV	90,000	
Interest on borrowed capital	60,000	
		(1,50,000)
Income from House Property		**1,50,000**

Illustration 13 :

Smt. Shanti Devi has a house property in Kolkata. The Municipal Valuation for the same is INR 10,00,000. The Fair Rental for the property is INR 750,000. The Standard Rent per the Rent Control Act is INR 800,000. She let out the property until 30th November, 2022 for a monthly rent of Rs. 75,000 per month. Thereafter, the tenant vacated the property and she used the house for self-occupation. Rent for the months of Oct & November 2022 could not be realised despite all efforts, and all the conditions for unrealised rent were satisfied. She paid Municipal Taxes @ 12% during the year. She also paid Interest of INR 25,000 during the year for amount borrowed for repairs. Compute the Income from House Property for AY 2023-24.

Solution:

Computation of GAV	***INR***	***INR***
ER		
Higher of:		
1) Fair Rent	7,50,000	
2) Municipal Value	10,00,000	
Limited to Standard Rent		8,00,000

Annual Rent	6,00,000	
Less: Unrealised Rent	(1,50,000)	4,50,000
GAV (partly let out and partly self occupied)		8,00,000
Less: Municipal Taxes paid by the owner during the PY		1,20,000
NAV		***6,80,000***
Less: ***Deductions u/s 24***		
30% NAV	2,04,000	
Interest on borrowed capital	25,000	(2,29,000)
Income from House Property		**4,51,000**

Inadmissible deductions [Section 25]

- Interest under the Act, which is payable outside India, shall not be allowed as a deduction, if tax has not been deducted from such Interest and there is no person in India, who could be treated as an agent.

Treatment of Unrealized Rent / Arrear of Rent [Section 25A]

- Arrears of Rent and the unrealised rent received subsequently from a tenant by an assessee, shall be deemed to be the income from House Property in the FY in which such rental is received and shall be included in the Income from House Property of that year; irrespective of whether he is the owner of the property any more or not, in that FY.
- 30% of such arrears or unrealised rent received subsequently is allowed as a deduction.

Income from Co-Owned Property [Section 26]

- The share of each co-owner should be determined in accordance with Section 22–25 and included in the respective individual assessments.
- In a scenario, where the house property owned by co-owners is self-occupied by them, the Annual Value for each of them will be construed as NIL. Each Co-Owner shall be allowed a deduction of INR 30000 / INR 200,000 as the case may be *vis-à-vis* Interest on Borrowed Capital. [Provided not opted for Section 115BAC]
- In a scenario, where the house property owned by the co-owners is let out, the income from the property will be computed as if the property is owned by one owner, and thereafter such computed income would be apportioned amongst each of them as per their respective share.

HOUSE PROPERTY INCOMES – EXEMPTED FROM TAX

There are certain cases where the Incomes from the house property are tax-free. They are neither taxable nor included in the total income for taxation. The incomes that are exempted from tax are described below.

1. The revenue generated from the buildings in and around the agricultural land that forms a part of agricultural income is exempted from tax as per section 10(1). Eg. Renting or leasing of a farmhouse, storehouse.
2. Income from property confined to local authorities is tax-exempted as per section 10(20).
3. House property income of a political party is free from tax under section 13A.
4. Revenue earned from a property belonging to an approved scientific research association is exempted from tax under section 10(21).
5. Property income of educational organizations, medical institutions are free from tax as per section 10(23C).
6. Income from property subjected to charitable or religious purpose is tax-exempted as per section 11.
7. Property income of Certified trade union is exempted from tax under section 10(24).
8. The annual value of one palace possessed by an ex-ruler of Indian states is free from tax as per section 10(19A) where other palaces come under taxation.
9. The annual value of two self-occupied properties for own residence is exempted from tax under section 23(2).
10. Income from property used for one's own business or profession is also tax-exempted under section 22.

Illustration 14:

Mrs. Ruchika has a house which has two identical units. One of the units is self-occupied throughout the previous year and the other unit is let out throughout the previous year on a rent of ₹50,000 p.m. Municipal taxes for the complete house amounting to ₹60,000 have been paid during the previous year. The construction of the property was completed on 1.1.1995.

Determine the income from house property for assessment year 2023-24, if Mrs. Ruchika:

(a) Does not opt to be taxed under section 115BAC

(b) Opts to be taxed under section 115BAC

What if the self-occupied portion was let out for three months then what will be the income from house property?

Solution:

Particulars	***Unit I (Let out)***		***Unit II (Self-occupied)***	
	Does not opt to be taxed u/s 115BAC	***Opts to be taxed u/s 115BAC***	***Does not opt to be taxed u/s 115BAC***	***Opts to be taxed u/s 115BAC***
Gross Annual Value	6,00,000	6,00,000	Nil	Nil
Less: Municipal Taxes	30,000	30,000	—	—
Net Annual Value	5,70,000	5,70,000	Nil	Nil

Less: Statutory deduction @ 30%	1,71,000	1,71,000	Nil	Nil
Income under the head House Property	399,000	399,000	Nil	Nil

In this case, the self-occupied property has been let out for part of the year and as such annual value shall not be nil. It will be determined as if the property is let, as per provisions of section 23(1).

Particulars	***Does not opt to be taxed u/s 115BAC***	***Opts to be taxed u/s 115BAC***	***Does not opt to be taxed u/s 115BAC***	***Opts to be taxed u/s 115BAC***
	Unit I	***Unit I***	***Unit II***	***Unit II***
Gross Annual Value	6,00,000	6,00,000	6,00,000	6,00,000
Less: Municipal value	30,000	30,000	30,000	30,000
Net Annual Value	5,70,000	5,70,000	5,70,000	5,70,000
Less: Statutory deduction @ 30%	1,71,000	1,71,000	1,71,000	1,71,000
Income from house property	3,99,000	3,99,000	3,99,000	3,99,000

Illustration 15:

Two sisters, Seema and Rashmi, are co-owners of a house property, with 50% share each in the property. The property was constructed prior to 1st April 1999. The property has 7 equal units and is situated in Bangalore. During the FY 2022-23, each co-owner occupied one unit each and the balance were let out at a rental of INR 20000 per unit per month. The Municipal Valuation (MV) was INR 7,00,000 and the Municipal Taxes were @ 10% of the MV. Interest payable on loan taken for construction was INR 400,000. One of the let-out units was vacant for 6 months in the year.

Compute the Income from House Property for each of the sisters. Assuming they have not opted for section 115BAC.

Solutions:

Computation of GAV	***INR***	***INR***
Estimated Rent		
Higher of:		
1) Fair Rent	-	
2) Municipal Value	5,00,000	
Limited to Standard Rent		5,00,000
Annual Rent	12,00,000	
Less: Unrealised Rent	(1,20,000)	
		10,80,000

GAV (partly let out and partly self occupied)		10,80,000
Less: Municipal Taxes paid by the owner during the PY		(50,000)
NAV		10,30,000
Less: ***Deductions u/s 24***		
30% NAV	3,09,000	
Interest on borrowed capital	2,85,714	
		(5,94,714)
Income from House Property		**4,35,286**
Share of each Co-owner		2,17,643
Loss from House Property (self occupied portions)		(30,000)
Income from House Property (each co-owner)		**1,87,643**

Notes:

1) Observe that the computation has been done for the 5 let out and 2 self-occupied portions separately and commensurately.
2) The Interest on Borrowed Capital for let out proportions is fully allowable as deduction without any cap.
3) The Annual Value for the Self Occupied Portion is NIL and the Interest on Borrowed Capital is restricted to INR 30,000 for each co-owner.

Illustration 16:

Mr. X is the owner of four houses. The following particulars are available:

Particulars	***House 1***	***House 2***	***House 3***	***House 4***
Municipal valuation	16,000	20,000	24,000	5,600
Rent (Actual)	—	14,000	20,000	6,800
Municipal taxes	400	1,000	1,200	300
Repairs and collection charges	200	2,500	1,040	460
Interest on mortgage	—	—	—	1,000
Ground rent	—	100	—	60
Fire premium	140	—	200	—
Annual charges	—	—	360	—

House No. 1 is self-occupied.

House No. 2 is let out for business; construction was completed on 1.3.91 and consists of two residential units. House No. 3 is 3/4 used for own business 1/4 let out to the manager of the business.

House No. 4 is let out for residential purposes.

His other income is Rs. 30,000. Find out the income of X from house property for the assessment year 2023-24. Assuming he has not opted for section 115BAC of the Income Tax Act, 1961.

Solution:

House No. 1 **Rs.**

Municipal valuation	16,000
Annual Value deemed	NIL

House No. 2 **Rs.**

Fair rental value	20,000
Less: Municipal taxes	1,000
Net Annual Value	19,000
Less: 30% of Net Annual Value	(5,700)
	13,300

House No. 3

Since the house is used for own business, the income from this house is not taxable under the head 'Income from house property' but will be assessed under 'Profit and gains of business or profession'. 1/4 of the house occupied by the Manager is presumed to be incidental to the business and hence not assessable under the head 'Income from house property'.

House No. 4 ***Rs.***

Rent Received	6,800
Less: Municipal taxes	300
Net annual Value	6,500
Less: 30% of Net Annual Value	(1,950)
	4,550

Income from House Property: Rs. NIL + Rs. 13,300 + Rs. 4,550 = Rs. 17,850. It is presumed that House No. 4 has not been mortgaged for purposes of acquiring or repairs on the house property.

Illustration 17:

Mr. Lal is the owner of a house property. Its municipal valuation is Rs. 80,000. It has been let out for Rs. 1,20,000 p.a. The local taxes payable by the owner amount to Rs. 16,000 but as per agreement between the tenant and the landlord, the tenant has paid the amount direct to the municipality. The landlord, however, bears the following expenses on tenant's amenities:

Particulars	*(Rs.)*
Extension of water connection	3,000
Water charges	1,500
Lift maintenance	1,500
Salary of gardener	1,800
Lighting of stairs	1,200
Maintenance of swimming pool	750

The landlord claims the following deductions:

Repairs and Collection charges	7,500
Land revenue paid	1,500

Compute the taxable income from the house property for the assessment year 2023-24.

Solution:

Computation of income from house property for the Assessment Year 2023-24

Particulars	*Rs.*	*Rs.*
Gross annual value: to be higher of the following:		
Municipal valuation or	80,000	
De facto rent (1,20,000 less value of amenities)	1,20,000	
Rent Received		1,20,000
Less: Value of the amenities provided by the assessee:		
(i) Extension of water connection not deductible as it is capital expenditure		–
(ii) water charges	(1500)	
(iii) Lift maintenance	(1500)	
(iv) Salary of gardener	(1,800)	
(v) Lighting of stairs	(1,200)	
(vi) Maintenance of swimming pool	(750)	
		(6,750)
Gross Annual Value		1,13,250
Less: Local tax Rs.16,000: No deduction is permissible as the taxes have been paid by the tenant		-

Net Annual Value		1,13,250
Less: Standard deduction from Net Annual Value: 30% of Net Annual Value		(33,975)
Income from House Property		79,275

Illustration 18:

For the assessment year 2023-24, Sonu submits the following information:

Income from business (speculative)		**40,000**
Property Income	***House I***	***House II***
	Rs.	***Rs.***
Municipal valuation	35,000	80,000
Rent received	38,000	68,000
Municipal taxes paid by tenant	3,000	4,000
Repairs paid by tenant	500	18,000
Land revenue paid	2,000	16,000
Insurance premium paid	500	2,000
Interest on borrowed capital for payment of municipal tax of house property	200	400
Nature of occupation	Let out for Residence	Let out for Business
Date of completion of construction	1.4.1996	1.7.1994

Determine the taxable income of Sonu for the assessment year 2023-24.

Solution:

Computation of Taxable Income of Sonu for Assessment year 2023-24

House I	***Rs.***
Gross Annual Value	38000
Less: Municipal Taxes - not deductible since paid by tenant	NIL
Net Annual Value	38000
Less: 30% of Net Annual Value Taxable Income	(11,400)
Total	**26,600**
House II	

Gross Annual Value	80000
Less: Taxes - not deductible, paid by tenant	NIL
Net Annual Value	80,000
Less: 30% of Net Annual Value Taxable Income	(24,000)
Total	**56,000**

Total Income = Rs. 26,600 + Rs. 56,000 + Rs. 40,000 (income from speculative business) = Rs. 1,22,600.

Note: Interest on borrowed capital for payment of municipal tax is not allowed as deduction under Section 24 of the Act.

Illustration 19:

Mr. X has taken a loan of Rs. 5,00,000 on 01.10.1999 @ 10% p.a. for construction of a house which was completed on 01.10.2021 and the house remained self-occupied throughout the previous year 2022-23. The assessee has income under the head salary Rs. 4,00,000. Mr. X has paid life insurance premium of Rs. 20,000. Compute tax liability for assessment year 2023-24 .

Option 1: Assessee has not opted for Section 115BAC

Option 2: Assessee has opted for Section 115BAC

Solution: Option 1 Assessee has not opted for Section 115BAC

Particulars	***Rs.***
Net Annual Value	Nil
Less: Interest on capital borrowed u/s 24(b)	(30,000)
Loss under the head House Property	(30,000)
Income under the head Salary	4,00,000
Gross Total Income	3,70,000
Less: Deduction u/s 80C	(20,000)
Total Income	3,50,000
Computation of Tax Liability Tax on Rs. 3,50,000 at slab rate	5,000
Less: Rebate u/s 87A	(5,000)
Tax Liability	Nil

Working Notes:

Current period Interest from 01.04.2022 to 31.03.2023	
5,00,000 x 10% =	50,000
Prior period interest from 01.10.1999 to 31.03.2021	

5,00,000 x 10% x 258/12 =	10 ,75,000
Installment = 10 ,75,000 /5 =	215000
Total Interest = Rs. 50,000 + Rs.215000 =265000 Subject to maximum Rs. 30,000	

Solution: Option 2 Assessee has opted for Section 115BAC

Net Annual Value	Nil
Less: Interest on capital borrowed u/s 24(b)	(NA)
Income under the head House Property	Nil
Income under the head Salary	4,00,000
Gross Total Income	4,00,000
Less: Deduction u/s 80C	(NA)
Total Income	4,00,000
Computation of Tax Liability	
Tax on Rs. 4,00,000 at slab rate	7,500
Less: Rebate u/s 87A	(7,500)
Tax Liability	Nil

Illustration 20:

Mr. Rohit has a house property in Delhi whose particulars are as under:

Particulars	*Rs.*
Municipal value	4,00,000
Standard rent	4,50,000
Municipal taxes paid	50,000
Interest on Money borrowed for acquiring the house	1,60,000

Period of occupation for own residence

Actual rent for 10 months

Compute the income from house property assuming he has opted for Section 115BAC of the Income tax Act, 1961.

Solution:

Computation of income from House Property
Gross annual value shall be higher of following two

(a) Expected rent (Municipal value Rs. 4,00,000 or FRV Rs. 5,40,000 whichever is higher i.e., Rs. 5,40,000 but restricted to standard rent i.e., Rs. 4,50,000) 4,50,000

(b) Actual rent received or receivable (45,000 x 10)	4,50,000
Less: Municipal taxes paid	(50,000)
Net Annual Value	4,00,000
Less: Deduction u/s 24	
(a) Statutory deduction @ 30%	(1,20,000)
(b) Interest on money borrowed for acquisition houses	(1,60,000)
Income from House Property	1,20,000

Illustration 21:

Prakash owns a house property in Delhi which is let out for Rs. 15,000 p.m. The municipal value of which is Rs. 2,00,000 and municipal taxes were 20% of municipal valuation. He paid during the previous year municipal tax of 6 year which relate to past 5 years as well as for the current year. The other expenses of the property were as under:

	Amount (Rs.)
Repair	8,000
Insurance premium	4,000
Interest for purchase of house	25,000
Ground rent due	4,000

Compute the Income from Prakash from house property assuming he has opted for Section 115BAC of the Income Tax, 1961

Solution:

Gross Annual value higher of the following two	***Rs.***
(a) Expected rent	2,00,000
(b) Actual rent received or receivable	1,80,000
Gross Annual Value	2,00,000
Less: Municipal taxes paid	(2,40,000)
Net annual value	(40,000)
Less: Deduction u/s 24	
(a) Statutory deduction @ 30%	Nil
(b) Interest	(25,000)
Income from House Property	(65,000)

CASE LAWS

2015	***Chennai Properties and Investments Ltd. v. CIT***	***Supreme Court***

Would income from letting out of properties by a company, whose main object as per its memorandum of association is to acquire and let out properties, be taxable as its business income, or as income from house property, considering the fact that the entire income of the company as per its return of income was only from letting out of properties?

Judgment: The Supreme Court opined that the judgment in *Karanpura Development Co. Ltd.'s* case squarely applied to the facts of the present case, where letting of the properties is in fact the business of the assessee. The main objective of the company as per its memorandum of association is to acquire and hold properties in Chennai and let out these properties. Therefore, holding of the properties and earning income by letting out these properties is the main objective of the company. Further, in the return of income filed by the company and accepted by the AO, the entire income of the company comprised of income from letting out of such properties. The Supreme Court, accordingly, held that the assessee had rightly disclosed the income derived from letting out of such properties under the head "Profits and gains of business or profession".

2010	***Nutan Warehousing Company Limited v. Dy. Commissioner of Income Tax***	***Mumbai High Court***

Income from letting of warehouse would constitute Business or Property Income?

Judgment: The question before the Bombay High Court was whether the income from warehousing activity received by the assessee was assessable as "Income from House Property" or "Income from Business". The High Court held that the question has to be resolved on the basis of the well settled decisions laid down by the Law in decided cases. The primary object of the assessee while exploiting the property is material. If the dominant intention to exploit commercial assets by carrying on a commercial activity, the income would be treated as Income from Business and whether letting out of the property constitutes a dominant aspect of the transaction or whether it was subservient to the main business of the assessee.

On the facts of the case before the Lordship it was found that the transactions of the warehousing agreements were not considered by the Tribunal. Merely styling an agreement as warehousing agreement would not be conclusive of the nature of the transaction. The question that is to be answered by the Tribunal, it was noted, whether the transaction was a bare letting out of the asset or whether the assessee was carrying on a commercial activity involving warehousing operations. The matter was remanded to consider these aspects.

What is to be noted from the aforesaid decisions is that the transactions of the leasing deed and also the dominant intention of the assessee was to exploit commercial asset by carrying out commercial activity. If the answer is in the positive, it is to be assessed as business income subject to examination of the terms of warehousing agreements.

Please also refer to the decision of the Madras High Court in *C.I.T.* v. *Indian Warehousing Industries Ltd.* and also the judgement of the Karnataka High Court in *C.I.T v. Karnataka State Warehousing Corporation*.

2012	CIT v. Hariprasad Bhojnagarwala	Gujarat High Court

Can benefit of self-occupation of house property under section 23(2) be denied to a HUF on the ground that it, being a fictional entity, cannot occupy a house property?

The Gujarat High Court observed that a firm, which is a fictional entity, cannot physically reside in a house property and therefore a firm cannot claim the benefit of this provision, which is available to an individual owner who can actually occupy the house. However, the HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity.

Also, it was observed that since singular includes plural, the word "owner" would include "owners" and the words "his own" used in section 23(2) would include "their own". Therefore, the Court held that the HUF is entitled to claim benefit of self-occupation of house property under section 23(2).

Letting out is subservient and incidental to the main business

CIT v. Delhi Cloth & General Mills Co. Ltd

If an assessee constructs residential quarter's & lets them out to his employees & letting out of residential quarter's is only related to business, i.e., it is not main business of assessee, then income is taxable as business income & not income from house property.

In the same way it was held in *CIT* v. *National News prints & Paper Mills Ltd.*, that if the assessee makes its accommodation available to Govt. for locating a branch of nationalised bank, post office, police station, central excise office etc., with the aim of carrying on its business efficiently and smoothly, rent collected is taxable as business income and not as house property income.

2018	Principal CIT v. Karia Can Co. Ltd.	Mumbai High Court

Once interest on interest free security deposits received by assessee from tenant was offered to tax as income from other sources, adding notional interest on interest free security deposits to determine 'Annual letting value' of property under section 23(1)(b) of the Income tax act, 1961 would amount to double taxation [Assessment year 2004-05 to 2007-08] [In favour of assessee]

Once an interest on interest free security deposits received by the assessee from tenant was offered to tax as income from other sources, adding notional interest on interest free security deposits to determine 'Annual letting value' of property under section 23(1)(b) would amount to double taxation.

2018	Ansal Holding & Construction Ltd. v. Asstt. CIT	Delhi High Court

Where flats constructed by assessee were held as stock-in-trade and same were not at all let out for any previous years, there would be no question of availing vacancy allowance under section 23(1)(c); assessee would be liable to pay tax on ALV of said that under section 23(1)(a) [Assessment year 2005-06 and 2006-07] [In favour of revenue]

The assessee was engaged in business of construction of house property. Some flats constructed by the assessee were not let out during year. The Tribunal assessed Annual Letting Value 'ALV' of those flats as 'income from house property'. The assessee contended that said flats were its Stock in trade and that provision of section 23(1)(c) would be applicable to its case and, therefore, ALV of flats could not be brought to tax under the head income from house property.

Held that where properties held as stock in trade were not let out for any previous years, there would be no question of availing vacancy allowance given in section 23(1)(c) and the assessee would be liable to pay tax on ALV of those flats under section 23(1)(a) of the Income tax Act, 1961.

LESSON ROUND-UP

- **Charging Section:** Section 22 of the Act provides that the annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him, the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head Income from House Property.
- **Deemed Owner:** As per section 27, the following persons though not the legal owners of a property are deemed to be the owners for the purposes of sections 22 to 26:
  - (a) Transfer to a spouse or minor child
  - (b) Holder of an impartible estate
  - (c) Member of a co-operative society
  - (d) Person in possession of a property
  - (e) Person having right in a property for a period not less than 12 years
- The measure of charging income-tax under this head is the annual value of the property, i.e., the inherent capacity of a building to yield income. The expression 'annual value' has been defined in Section 23(1) of the Income-tax Act as, the annual value of any property shall be deemed to be:
  - The sum for which the property might reasonably be expected to be let from year to year; or
  - where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or
  - where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable.
- Gross annual value shall be higher of
  - (a) Expected Rent
  - (b) Actual rent received or receivable.

  The higher of Municipal value and fair rental value shall be Expected rent. However, expected rent shall not exceed the Standard rent.
- Net Annual Value shall be computed in the following manner:

  Determine the Gross Annual Value

  Deduct municipal tax actually paid by the owner during the previous year from the Gross Annual Value.

- Deduction from Annual Value (Section 24): w.e.f. Assessment year 2002-03, income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:

  (a) Standard deduction: a sum equal to 30% of the annual value;

  (b) Interest on borrowed capital: where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital. The interest on borrowed money pertaining to pre-construction period is available in 5 equal installments commencing from the previous year in which house is acquired or constructed. for this purpose the pre-construction period means the period commencing on the date of borrowing and ending on 31st March immediately prior to the date of completion of construction/date of acquisition or date of repayment of loan, whichever is earlier. Interest for current year is deductible upto Rs. 30,000/ Rs. 2,00,000 as the case may be.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)*

Multiple Choice Questions (MCQs)

1. The Gross Annual Value is the higher of Actual Rent and?

   (a) Municipal Valuation

   (b) Fair Rental Value

   (c) Standard Rent

   (d) Expected Rent

   Answer: d

2. Expected Rent is always the higher of Fair Rental Value and Municipal Valuation?

   (a) True

   (b) True but limited to Standard Rent

   (c) True but limited to INR 250,000

   (d) False

   Answer: b

3. Standard Rent is the rent fetched by a similar property in the neighbourhood?

   (a) Yes

   (b) Yes, but not limited to neighbour hood

   (c) Yes, but with a Cap

   (d) No

   Answer: d

4. If the assessee has more than two house that is self-occupied, the choice of the houses that should be construed as self-occupied for the others to be considered as deemed to be let out lies with?

   (a) Assessing Officer

   (b) Assessee

   (c) Either

   (d) Neither

   Answer: b

5. Section 24 (a) prescribes the standard deduction from NAV of a sum equal to?

   (a) 33% of NAV

   (b) 30% of NAV

   (c) 1/3rd of NAV

   (d) Actual cost of repairs

   Answer: b

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann

- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Profits and Gains from Business and Profession

Lesson 6

KEY CONCEPTS

■ Business or Profession ■ Speculative Transaction ■ Depreciation ■ Block of Assets ■ Written Down Value 'WDV' Deemed Profits ■ Presumptive Taxation

Learning Objectives

To understand the:

- What are the constituent of Business or Profession?
- Which incomes are chargeable under the head PGBP?
- Computation of Taxable Income under the head PGBP?
- Which are admissible/inadmissible expenses while computing the income from business and profession?
- When are certain receipts deemed to be income chargeable to tax under the head PGBP?
- Which are the deductions allowable on actual payment basis?
- Which assessees are required to compulsorily maintain books of account?
- When is audit of accounts compulsory?
- Who are the assessees to whom presumptive tax provisions apply?

Lesson Outline

- 'Business' or 'Profession'
- Income Chargeable to Tax under the head Business or Profession
- Speculation Business
- Key Points for consideration
- Computation of Profits from Business or Profession
- Admissible Deductions
- Expenses Restricted/ Disallowed
- Deemed Profits
- Special provision in case of Income of Public Financial Institution
- Special provisions related to Insurance Business
- Compulsory Maintenance of Books of Accounts
- Compulsory Audit of Books of Accounts
- Presumptive Tax provisions to compute Income from eligible Business or Profession
- Presumptive Taxation for Professionals
- Special Provision for computing Profit & Gains of Business of Plying Hiring & Leasing Goods Carriages
- Question and Answers
- Case Laws
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

Sections	*Income Tax Act, 1961*
Section 28	Income chargeable to tax under the head Business or Profession
Section 43(5)	Speculation Transaction
Section 145	Method of Accounting
Section 145A	Method of Accounting in Certain Cases
Section 145B	Taxability of Certain Income
Section 30-37	Admissible Deduction
Section 2(11)	Block of Assets
Section 43(1)	Actual Cost
Section 43(6)	Written Down Value (WDV)
Section 40A	Expenses Disallowed
Section 43B	Disallowance of unpaid Statutory Liability
Section 43A	Changes in Rate of Exchange
Section 41	Deemed Profits
Section 43CA	Transfer of Immovable Property
Section 43D	Special provision in case of Income of Public Financial Institutions
Section 44AE	Special provisions for computing profits and gains of business of plying, hiring or leasing goods carriages
Section 44	Special provisions related to Insurance Business
Section 44AA	Compulsory maintenance of Books of Account
Section 44AB	Compulsory Audit of Books of Account
Section 44AD	Special provision for computing profits and gains of business on Presumptive Basis
Section 44ADA	Presumptive Taxation for Professionals
Rules	***Income Tax Rules, 1962***
Rule 5	Conditions for Allowability of Depreciation
Rule 6ABBA	Prescribed Electronic Modes

'BUSINESS' OR 'PROFESSION'

The concept of business pre-supposes the carrying on of any activity for profit. The definition of term '**business'** given in the Act does not make it essential for any taxpayer to carry on his activities constituting business for a considerable length of time.

The term 'Business, has been defined in Section 2(13) of the Income-tax Act to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

The definition of business given in Section 2(13) being an inclusive definition and not being exhaustive, is wide enough to cover every case of transaction entered into with the idea of earning income.

Example: If a person purchases a piece of land, gets it surveyed, lays down a scheme of development, divides it into a number of building plots and sells some of the plots from time to time, he would be chargeable to tax not only on the notional profits made on individual sale of plots but also on the surplus, if any, remaining after the sale of all plots and after the venture had come to an end.

According to the generally accepted principles, the meaning of the term **'profession'** involves the concept of an occupation requiring either intellectual skill or manual skill controlled and directed by the intellectual skill of the operator.

For instance, an auditor carrying on his practice, the lawyer or a doctor, a painter, an actor, an architect or sculptor, would be persons carrying on a profession and not a business.

The term 'Profession' has been defined in Section 2(36) of the Act to include any vocation. In the case of a profession, the definition given in the Act is very much inadequate since it does not clearly specify what activities constitute profession and what activities do not.

The common feature in the case of both profession as well as business is that the object of carrying them out is to derive income and to make profit.

Vocation simply means any type of activity in which a person is engaged and he earns his livelihood from such activity. Any gain or receipt arising out of vocation is certainly taxable under business and profession.

Example: Writing of articles in the magazines is also vocation. Vocation also refers to any work performed on the strength of one's natural ability for that work. Regularity and profit motive are not necessary for an activity to be called a vocation.

The distinction between business, profession and vocation is not however material because income from all these activities is taxable under the same head.

INCOME CHARGEABLE TO TAX UNDER THE HEAD BUSINESS OR PROFESSION [SECTION 28]

The scope of income chargeable under this head is covered by Section 28 of the Act which lays down the following:

(i)	**Profits and gains of any Business or Profession:** The profits and gains of any business or profession which was carried on by the assessee at any time during the previous year.
(ii)	**Compensation:** Any compensation received or receivable by any person; 1. For managing the whole or substantially the whole of the affairs of an Indian company or any other company or in connection with the termination of his agreement or the modification of the terms and conditions relating thereto.

	2. For holding an agency in India for any part of the activities relating to the business of any other person or in connection with the termination of the agency or the modification of the terms and conditions relating thereto. 3. For or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, of the management of any property or business. 4. Any compensation received or receivable by any person at or in connection with the termination or the modification of the terms and conditions, **whether revenue or capital** of any contract relating to his business.
(iii)	**Income derived by a trade, professional or similar association from specific services performed for its members:** Income derived by a trade, professional or similar association from specific services performed for its members. This is an exception to the general principle of mutuality that no one can make profit out of himself. Therefore any surplus arising to the mutual associations such as Labour Welfare Association, Chamber of Commerce etc. by performing specific services to its members is deemed as income earned as carrying on business in respect of these services and accordingly chargeable to tax.
(iv)	**Export Incentives:** Profits on sale of a Import entitlement licence granted under the Imports (Control) Order. Cash compensatory assistance against export and Duty Drawback of Customs and Central excise Duties. Profit on the transfer of the Duty Entitlement Pass Book Scheme. Profit on the transfer of the Duty Free Replenishment Certificate.
(v)	**Value of any benefit or Perquisite:** The value of any benefit or perquisite, whether convertible into money or not arising from business or profession. For example, value of a rent free accommodation secured by an assessee from a company in consideration of his professional services to the company will be assessable in the hands of the assessee.
(vi)	**Any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm** from such firm to the extent under section 40(b). **For example:** A firm pays interest to a partner at 18% simple interest p.a. The allowable rate of interest is 12% p.a. Hence the excess 6% paid will be disallowed in the hands of the firm. Since the excess interest has suffered tax in the hands of the firm, the same will not be taxed in the hands of the partner. The interest taxable in the hands of the partner shall be 12% only.
(vii)	Any sum, whether received or receivable, in cash or kind, under an agreement for – (a) not carrying out any activity in relation to any business or profession, provided it is not taxable as capital gains. **For example**: Non-compete Fees. (b) not sharing any know-how, patent, copyright, trade-mark, licence, franchise etc.
(viii)	**Keyman Insurance Policy:** Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.
(ix)	**Fair market value of inventory as on the date of Conversion:** The fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner.
(x)	**Any sum received from transfer or destruction of any Capital Asset:** Any sum received from transfer or destruction of any capital asset (other than land or goodwill or financial instrument) whose cost has been allowed as a deduction under section 35AD.

SPECULATION BUSINESS

Section 43(5) defines the expression "speculative transaction" as "a transaction in which a contract for the purchase or sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips". Where any part of the business of a company consists in the purchase and sale of the shares of other companies, such a company shall be deemed to be carrying on speculation business to the extent to which the business consists of the purchase and sale of such shares.

However as per the Explanation to Section 73, this deeming provision does not apply to the following companies:

(a) Where a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources", or

(b) A company, the principal business of which is:

(i) the business of trading in shares or

(ii) banking business or

(iii) the granting of loans and advances

Accordingly, if these companies carry on the business of purchase and sale of shares of other companies, the income from such business is not treated as income from speculative business.

Forms of transactions specifically excluded from the scope of speculative transactions

A **contract in respect of raw-materials or merchandise** entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

A **contract in respect of stocks and shares** entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

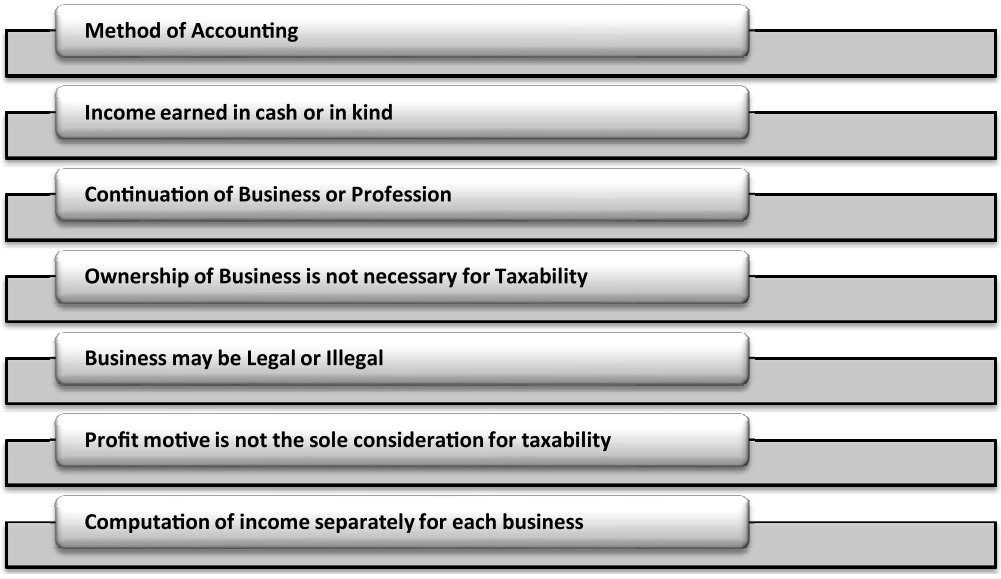
A **contract entered into by a member of a forward market** or a stock exchange in the course of any transaction which is in the nature of jobbing or arbitrage to guard against any loss which may arise in the ordinary course of his business as such member.

An eligible transaction in respect of **trading in derivatives** referred to in Clause (aa) of Section 2 of the Securities Contracts (Regulation) Act, 1956 carried out in a recognized stock exchange.

An eligible transaction in respect of **trading in commodity derivatives** carried out in a recognized association and chargeable to commodities transaction tax. In case of agricultural commodity derivatives the requirements of chargeability of commodities transaction tax shall not apply.

KEY POINTS FOR CONSIDERATION

The provisions of the Income-tax Act contained in Sections 28 to 44D regulate the method of computing income from business. The income from business to which a person is chargeable under this head represents not the gross receipts from the business but the profits and gains derived from there.



Method of Accounting [Section 145]

Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting has not been regularly followed by the assessee, or where the income has not been computed in accordance with the Income Computation and Disclosure Standards (ICDS) as notified, the Assessing Officer may make a best judgement assessment as provided in section 144 of the Income tax Act, 1961.

The Central Government vide Notification No. 87/2016 dated 29.09.2016 has notified ten Income Computation and Disclosure Standards (ICDS) to be applicable with effect from 1st April, 2017 onwards for the purpose of computation of income under the head "Profits and gains of business or profession" and "Income from other sources" and not for maintaining books of accounts. Some key features of ICDS are as under:

(i) ICDS applies to all tax payers except Individual and HUF who are not covered under the tax audit provisions under section 44AB.

(ii) ICDS applies only to tax payers following mercantile system of accounting.

(iii) In case of conflict between the provisions of the Income Tax Act or Income Tax Rules and the ICDS, the provisions of the Act or the Rules shall prevail to that extent.

(iv) In case of conflict between the judicial pronouncements/ judgements and the ICDS, the provisions of the ICDS shall prevail to that extent.

(v) ICDS shall apply irrespective of the accounting standards adopted by companies, i.e., either Accounting Standards or Ind-AS.

(vi) The provisions of ICDS shall not apply for computation of MAT. However it shall apply for computation

of AMT as AMT is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act.

(vii) ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the receipts or turnover, as the case may be.

Method of Accounting in Certain Cases [Section 145A]

For the purpose of determining the income chargeable under the head "Profits and gains of business or profession"

(i) the valuation of inventory shall be made at lower of actual cost or net realisable value computed in accordance with ICDS.

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

(iii) the inventory being securities not listed on a recognised stock exchange, or listed but not quoted on a recognised stock exchange, shall be valued at actual cost as initially recognised in accordance with the ICDS.

(iv) the inventory being securities listed and quoted on a recognised stock exchange, shall be valued at lower of actual cost or net realisable value in accordance with the ICDS.

Provided that the inventory being securities held by a scheduled bank or public financial institution shall be valued in accordance with the ICDS after taking into account the extant guidelines issued by the Reserve Bank of India in this regard.

Taxability of Certain Income [Section 145B]

Notwithstanding anything to the contrary contained in section 145, the interest received by an assessee on any compensation or on enhanced compensation, shall be deemed to be the income of the previous year in which it is received.

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

Subsidy or grant from Government as referred in definition of income under section 2(24) of the Act, shall deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

Income earned in Cash or in Kind

The income that is chargeable to tax under this head may be realised by the assessee in cash or kind. In cases where the profit is realised in any other form than cash, the market value of the commodity received as income should be taken to be the quantum of income chargeable to tax. Even in cases where an assessee is in receipt of money from his clients or other persons who are under no obligation to make such payment, the assessee would still be chargeable to tax if these monies were received by him in the ordinary course of business or profession. For instance, any amount paid to a Company Secretary by a person who has not been his client but who has been benefited by his professional service to another, would be assessable as the Company Secretary's income from profession.

The person carrying on the business or profession would be chargeable to tax under this head regardless of the fact that the profits or gains made by him ultimately go to the benefit of some other person or to the business community or public body as a whole. In other words, the subsequent application of the money derived by way of income from business is immaterial for the purpose of assessment of the businessman.

Continuation of Business or Profession

The chargeability to tax under Section 28 is based primarily upon the condition that the assessee must have carried on a business or profession at any time during the accounting year, though not necessarily throughout the accounting year.

But there may be a few cases (e.g., deemed profits taxable under Section 41) where even if no business is carried on during the accounting year, the assessee would still be chargeable to tax.

Ownership of Business is not necessary for Taxability

In order to be taxable in respect of the income of a business, it is not essential that the business must be carried on by the same person who is the owner thereof. Even if the owner authorises some other person to carry on the business on his behalf or the owner is deprived by the court under certain circumstances of the right to carry on his own business, the owner will still be taxable under this head.

Similarly, it is not only the legal ownership but also the beneficial ownership that has to be considered. In this connection it has to be kept in view, as to who is the actual recipient of the income which is going to be taxed.

For example, where a business is acquired for the benefit of a company which is going to be incorporated and the promoters carry on the business and earn profits during the period prior to the incorporation, if the company accepts the action of the promoters and receives from them the past profits made prior to its incorporation, the company shall be assessable under this section in respect of such profits although before the incorporation of the company the promoters were the legal owners of this business yet as the company was the beneficial owner (as it has actually received the profits) of the business, it will be assessable on these profits.

Business may be Legal or Illegal

While profit motive is indicative of the fact that the adventure of an assessee is in the nature of trade and consequently constitutes a business, it is immaterial whether the business is legal or illegal. In other words, the taxability of the income from business does not in any way depend upon or is affected by the taint of illegality in the income or the sources. Income derived from illegal activities is as much chargeable to tax as income from other operations. The fact that the person who carried on the illegal activities is punishable under the appropriate law, does not exclude him from the liability to income-tax.

Even the benefits/deductions under the Act are not denied mere on the grounds of illegibility of business. As per the Supreme Court Judgement in the case of Dr. T.A. Qureshi, the loss arising on account of confiscation of heroin (drugs) is a business loss even it is illegal business. Such loss can be set-off against the profits of legal business.

Profit Motive is not the Sole Consideration for Taxability

There may be assessees who carry on business without the primary object of making profits (e.g., a co-operative society which tries to cater to the needs of its members without the object of making maximum profits). Even in such cases, if profits arise from the business carried on by the assessee and such profits are incidental to the business, the assessee would still be taxable. Therefore, profit motive is not the only test of determining the taxability of income from any activity constituting business or profession.

Computation of Income Separately for each Business

A taxpayer is entitled to carry on as many number of businesses as he possibly can, both in his own name and in the name of others. The profits and gains of all businesses or professions would be assessable under this head. But the profit of each business must be computed separately from one another and the deductions and allowance permissible to each business must be allowed against the income derived there from. The income chargeable under this head is the aggregate of the net result of the various business or businesses or profession(s) carried on during the accounting year. Thus, the loss arising from one business would be set off against income from another business falling under the same head and the net result after such set off would alone be assessable income under this head.

COMPUTATION OF PROFITS FORM BUSINESS OR PROFESSION

The profits and gains of business or profession are computed in accordance with the provisions contained in Sections 30 to 43D. Sections 30 to 36 contain those specific deductions which are expressly allowed while Section 37(1) extends the allowance to items of business expenditure not covered by sections 30 to 36 which are otherwise allowable according to accepted commercial practices, while computing profits of business or profession. Section 40 provides those expenses which are allowed on the basis of general commercial principles while computing profits of business or profession. It is necessary to know those principles before studying the deductions expressly allowed while computing profits of business or profession.

General Commercial Principles

- Profits should be computed according to the method of accounting regularly employed by the assessee, provided that actual profit can be ascertained by this method, whether on receipt basis or accrual basis.
- Only those expenses and losses are allowed as deductions which were incurred or sustained during the relevant previous year and related to business.
- These losses and expenses should be incidental to the operation of the business. Forexample, embezzlement by an employee during the course of business is a loss incidental to the business.
- If a business has been discontinued before the commencement of the previous year, it's expenses cannot be allowed as deduction against the income of any other running business of the assessee.
- There are some essential expenses, though neither expressly allowed nor disallowed, but are deductible while computing the profits of business or profession on the basis of general commercial principles provided that these are not expenses or losses of a capital nature or personal nature.
- Any expenditure incurred in consideration of commercial expediency is allowed as deduction.
- Deduction can be made from the income of that business only for which the expenses were incurred. The expenses of one business cannot be charged against the income of any other business.

COMPUTATION OF INCOME UNDER THE HEAD "PROFITS AND GAINS FROM BUSINESS OR PROFESSION"

Net Profit as per Profit and Loss Account	xxx
Add : Inadmissible expenses debited to profit and loss account	xxx
Add : Deemed incomes not credited to profit and loss account	xxx

Less : Deductible expenses not debited to profit and loss account	(xxx)
Less : Incomes chargeable under other heads credited to Profit & Loss A/c	(xxx)

ADDIMISIBLE DEDUCTIONS

1. Rent, rates, repairs and insurance for buildings [Section 30]
2. Repairs and insurance for Plant & Machinery, Furniture [Section 31]
3. Depreciation [Section 32]
4. Investment in new plant or machinery in notified backward areas in certain States [Section 32AD]
5. Tea/Coffee/Rubber Development Account [Section 33AB]
6. Site restoration fund [Section 33ABA]
7. Scientific Research [Section 35]
8. Amortization of Spectrum fees [Section 35ABA]
9. Expenditure on telecom licence [Section 35ABB]
10. Expenditure of capital nature incurred in respect of specified business [Section 35AD]
11. Expenditure by way of Payment to Associations and Institutions for carrying out Rural Development Programmes [Section 35CCA]
12. Expenditure on Agricultural extension project [Section 35CCC]
13. Expenditure on skill development project [Section 35CCD]
14. Amortization of Preliminary Expenses [Section 35D]
15. Amortization of Expenditure in the case of Voluntary Retirement Scheme [Section 35DDA]
16. Other Deductions [Section 36]
17. Other Expenses [Section 37]

Rent, Rates, Taxes, Repairs and Insurance for Buildings [Section 30]

This section allows the deduction in respect of rent, rates, taxes, repairs and insurance for buildings that are used by the assessee for his business / profession.

- **Property partly used:** If the property is partly used, the deduction will be proportionate to the use.
- **Part of the property is sub-let:** In case part of the property is sub-let, the differential, i.e., rent paid minus rent recovered would be allowable as deduction.
- **Occupation by owner himself:** No notional rent is allowable for owned properties.
- **Repair of the premises:** Repairs undertaken, whether as a owner / tenant, are allowed.
- **Expenses Deduction:** Municipal taxes, rates, insurance incurred by the assessee for the property is also allowed.

Deduction of expenses on the basis of usage:

Section 38 of the Act provides for the allowance of the proportionate amount of the expenses where the assessee

uses the premises partly for his business or professional purposes and partly for other purposes the deduction allowable under this section is a sum proportionate to that part of the expenses which are attributable to the premises used for business or professional purposes. If the assessee is the owner of the building which is used for business or professional purposes, no deduction would be available in respect of the notional rent which would otherwise have been payable. But depreciation under Section 32 would be available in respect of such buildings. In cases where a firm carries on a business in the premises owned by one of its partners the rent payable to the partner would be an allowable deduction since the firm and the partners are separate entities.

Similarly where any building, machinery, plant or furniture is not exclusively used for the purposes of the business or profession, the deductions under Section 30, Section 31 and Section 32 shall be restricted to a fair proportionate part thereof which the Assessing Officer may determine, having regard to the user of such building, machinery, plant or furniture for the purposes of the business or profession.

Repairs and Insurance for Plant & Machinery, Furniture [Section 31]

This section allows deduction in respect of expenses on current repairs and insurance of Plant & Machinery, & furniture used for business / profession.

- **Usage of the Asset:** Allowable in full, even if used for part of the year.
- **Repairs:** Current repairs deduction is allowed. However, capital nature isn't allowed.
- **Insurance Premium:** Insurance premium paid to insure the assets against risks of losses owing to damage / destruction, provided that the assets are used for business / profession are allowed, only if these premiums are paid / payable during the Previous Year.

Note: The assessee is entitled for deduction in respect of repairs and insurance of these assets only if these assets have been actually used for the purpose of the business of the assessee during the accounting year the profits of which are subjected to tax. Thus, if the assets are used in some business, income of which is not chargeable to tax, the assessee cannot claim deduction in respect of these expenses against the income from some other business, the profits of which are taxable.

Depreciation [Section 32]

This section allows a deduction in respect of depreciation resulting from the diminution or exhaustion in the value of certain capital assets. *The deduction on account of depreciation shall be made compulsorily, whether or not the assessee has claimed the deduction in computing his total income.* The deduction towards depreciation is very essential to arrive at the income of the assessee and also to amortise the capital cost of the amount invested in buildings, machinery, plant and furniture.

The provisions for allowing depreciation are contained in Section 32 and are regulated under Rule 5 of the Income- tax Rules. The rates of depreciation are also provided in the Income-tax Rules. Assets should have been owned and used by the assessee for the purpose of his business / profession during the Previous Year irrespective they are wholly owned by the assessee or not.

Conditions for Allowability of Depreciation [Rule 5]

(a) Classification of Assets:

The assets in respect of which depreciation is claimed must be buildings, machinery, plant or furniture. In addition to these tangible assets intangible assets like know how, patent rights, copy rights, trade marks, licences, franchises or any other business or commercial right of similar nature acquired on or after 1.4.1998 are eligible for depreciation. No depreciation is allowable on the cost of the land on which the building is erected because the term 'building' refers only to superstructure but not the land

on which it has been erected. The term 'plant' includes ships, books, vehicles, scientific apparatus and surgical equipments used for the purposes of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings. Similarly, the term 'buildings' includes within its scope roads, bridges, culverts, wells and tubewells.

(b) Assets must be owned either wholly or partially:

Depreciation is allowable to the assessee only in respect of those capital assets which are owned by him. In case of a building, the assessee must be owner of the super-structure and not necessarily of the land on which it is constructed. If the assessee is only a tenant of the building but not its owner he is not entitled for allowance in respect of depreciation thereof. Where the land on which the building is constructed has been taken on lease by the assessee, the allowance of depreciation would be admissible only if, according to the lease deed, the assessee is entitled to be the owner of the super-structure. The fact that as part of the terms of the lease deed, the building, after expiry of the lease is to be transferred to the lessor of the land would not affect the allowance for depreciation.

In the case of assets acquired on hire-purchase, e.g., plant and machinery taken on hire, the assessee would not be the owner thereof and consequently would not be entitled for depreciation in respect of the same. But if the plant and machinery had been acquired on instalment basis, the assessee becomes the owner of the assets the moment the purchase or sale is concluded and consequently is entitled to depreciation although a part or whole of the price is payable in future.

(c) Used for the purpose of Business or Profession:

The allowance for depreciation is subject to the condition that the assets on which depreciation is claimed are actually put to use by the assessee for the purposes of his business or profession during the accounting year. The allowance for depreciation, however, is not subject to the condition that the asset in question must be used throughout the relevant accounting year in order to enable the assessee to claim depreciation. Use could also include passive use that means kept ready for use, example – fire extinguishers. In cases where the depreciable asset is used partly for business purposes and partly for other purposes, the deduction towards depreciation allowable under Section 32 would be of a sum proportionate to the depreciation allowance to which the assessee would have otherwise been entitled. It's not just use that's important, it's owned and used that's mandatory, i.e., the assets should be owned and used by the assessee in the Previous Year. If the asset is used for < 180 days, 50% of depreciation is allowable for that previous year.

(d) No deduction on sold Assets: No depreciation is allowable in respect of the depreciable asset if the asset concerned is sold, destroyed, discarded or demolished in the same year in which it was acquired.

(e) Depreciation is allowed on the Written Down Value (WDV) Method: Depreciation is computed on the written down value of the Block of the asset as on the last day of the previous year. However in case of the assess engaged in the generation or distribution of power, depreciation may be claimed on the basis of Straight Line Method.

(f) Where an assessee incurs any expenditure for acquisition of depreciable asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of ECS through a bank account or such other electronic mode as may be prescribed, exceeds Rs. 10,000 such payment shall not be eligible for normal/ additional depreciation. Also such Payment will be ignored for the purpose of computation of Actual Cost of such asset under section 43(1).

(g) Depreciation is allowable in the hands of the predecessor and successor, in case of succession of a firm, proprietary concern, by a company, or predecessor company and successor LLP, in case of conversion of Pvt. Ltd. Co. to LLP., in case of amalgamation or demerger, and that shall not exceed the

depreciation that would have been allowed if the succession, demerger, amalgamation had not taken place and such depreciation shall be apportioned between them proportionate to use.

(h) Block of Assets: The depreciation is provided in respect of "Block of assets". As per Section 2(11) Block of assets means "a group of assets falling within a class of assets, being tangible assets such as buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trademarks, licences, Franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed".

There are four classes of the assets which are further categorized into ten Blocks of Assets according to different rates of assets prescribed as under:

S. No.	Class of Asset	Block of Asset
1.	Building	3 blocks (5%, 10% and 40%)
2.	Furniture & Fixture	1 block (10%)
3.	Plant and machinery	5 blocks (15%, 20%, 30%, 40%, 45%)
4.	Intangible Assets	1 block (25%)

(i) Rates of Depreciation

I.	**Buildings:**	Rate
	Residential	5%
	General	10%
	Temporary Structure	40%
II.	**Furniture & Fittings**	10%
III.	**Plant & Machinery**	
(a)	Plant & Machinery (General)	15%
(b)	Renewable Energy Devices - (i) Being wind mills and any specifically designed devices which run on wind mills (ii) Being any special devices including electric generators and pumps running on wind energy	 40% 40%
(c)	Motor cars **other than** those used in a business of running them on hire	15%
(d)	Motor buses, motor lorries, motor vans and motor taxis used in a business of running them on hire	30%
(e)	Books owned by assessees carrying on a profession	40%
(f)	Books owned by assessees carrying on business in running lending libraries	40%
(g)	Aeroplanes,	40%
(h)	Air Pollution Control Equipment, Water Pollution Control Equipment Solid waste control equipment	40%
(i)	Computers including computer software	40%

(j)	Ships	20%
(k)	Oil wells	15%
IV. Intangible Assets		
Know-how, patents, copy-rights, trade marks, licences, franchises or any other business or commercial rights of similar nature **but not being goodwill of business and profession**		25%

Note: As per the landmark judgment of CIT V/s Annamalai Finance Ltd., Madras High Court held that; It is the end use of the specified asset which is relevant for determining the percentage of depreciation. For example in case of business of leasing out vehicle, if lessee is using the vehicle for running them on hire, depreciation shall be allowable at Higher rate of 30% instead of 15% to the lessor.

Illustration 1:

X Ltd. has a block of assets (P&M), carrying 15% depreciation, WDV on 1st Apr 2021 is INR 75,00,000. It purchased subsequently on 1st Dec. 2021, another machinery for INR 25,00,000 and put to use on the same day. X Ltd. was amalgamated with Y Ltd. effective 1st Feb. 2022.

Solution:

Compute the depreciation allowable for X Ltd. and Y Ltd. for the AY 2022-23.

Block	***Days***	***Allowable***	***Depreciation***
75,00,000	365	Full	11,25,000
25,00,000	121	Half	1,87,500

		Total Depreciation	**13,12,500**
Predecessor	306	On the Opening P&M	9,43,151
Successor	59		1,81,849
Predecessor	62	On the Acquired P&M	96,074
Successor	59		91,426

Notes:

(1) The depreciation for the asset in existence and used for the whole year is proportionately divided on the basis of the number of days used by the predecessor until amalgamation date and the successor post amalgamation date.

(2) The depreciation for the asset acquired during the year and used for the remaining part of the year is proportionately divided on the basis of the number of days used by the predecessor until amalgamation date and the successor post amalgamation date, beginning the date of acquisition.

Note*: As per the CBDT circular, irrespective of the accounting treatment, the Lessor shall be entitled to claim depreciation on leased assets, whether the lease is an operating lease or a financial lease.*

Steps for computing Depreciation:

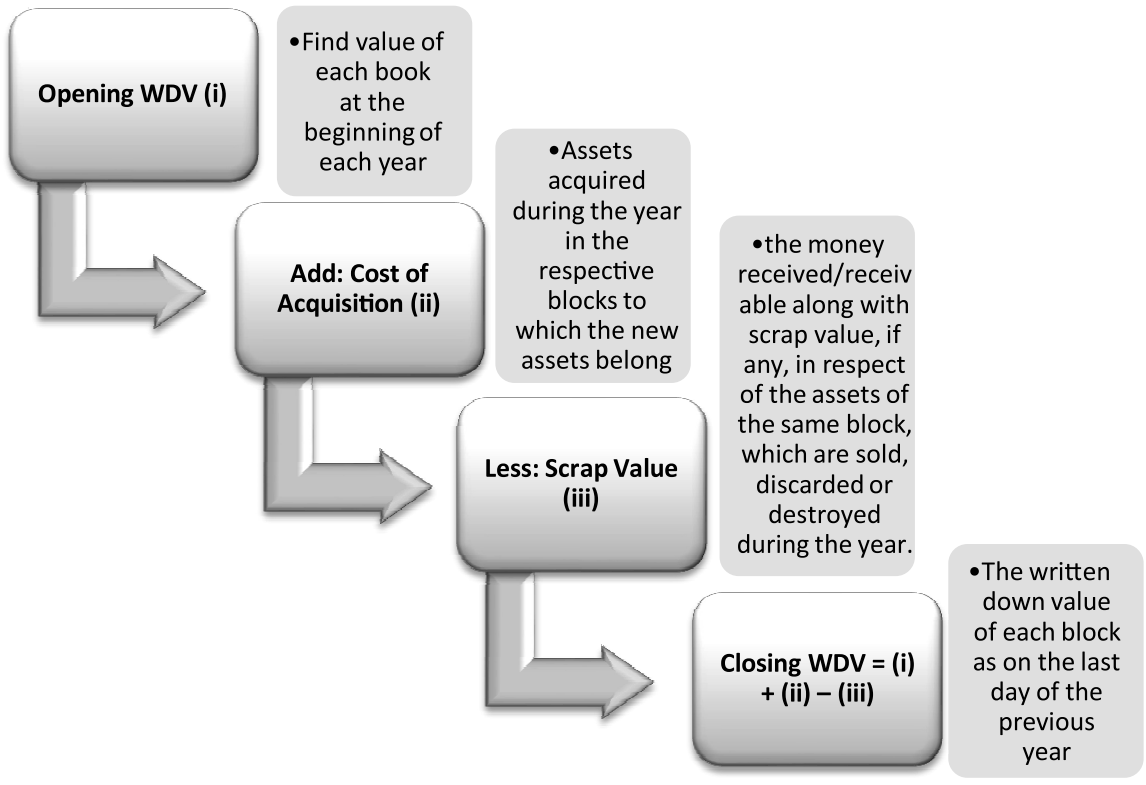


Illustration 2:

M Ltd. owns the following assets on 1.4.2022:

Assets	*WDV as on 1.4.2022 (₹)*	*Rates of Depreciation (%)*
Building A	10,20,000	10
Building B	5,40,000	10
Building C	6,35,000	10
Machinery C	1,65,000	30
Machinery D	4,000	30
Machinery E	50,000	30
Furniture A	1,10,000	10
Furniture B	8,000	10

The following assets are acquired by the company during the previous year 2022-23:

Asset	*Actual Cost ₹*	*Rate of Depreciation (%)*	*Date of acquisition*
Building D	5,40,000	10	14.5.2022
Machinery F	16,000	30	21.9.2022
Patents	40,000	25	15.4.2022
Technical Know-how	60,000	25	17.5.2022

The following assets are sold by the company during the previous year 2022-23:

Asset	*Sale consideration (₹)*	*Date of Sale*
Machinery C	1,10,000	2.9.2022
Machinery E	80,000	28.3.2022

Determine the depreciation for the assessment year 2023-24.

Solution:

Particulars	*WDV as on 1.4.2022 (₹)*	*Additions during the year (₹)*	*Assets sold during the year (₹)*	*WDV as on 31.3.2023 (₹)*	*Depreciation (₹)*
Block 1 Building 10%	21,95,000	5,40,000	—	27,35,000	2,73,500
Block 2 Machinery 30%	2,19,000	16,000	1,90,000	45,000	13,500
Block 3 Furniture & Fixtures	1,18,000	—	—	1,18,000	11,800
Block 4 Intangible assets	Nil	1,00,000	—	1,00,000	25,000
Total					323800

Illustration 3:

W.D.V. of the block having two machines namely A & B as on 1.4.2022 is ₹6,00,000. Machine C was acquired on 12.11.2022 for ₹3,00,000 and put to use on the same date. Machine C is sold on 31.3.2023 for ₹4,00,000.

(a) Compute the depreciation allowable for the assessment year 2023-24.

(b) What will be the amount of depreciation allowed, if machine 'A' is sold instead of machine 'C'.

(c) What will be the amount of depreciation allowed if both 'A' and B machines are sold instead of machine C

Solution (a)

Particulars	*(₹)*
W.D.V. of the block as on 1.4.2022	6,00,000
Addition during the year of Machine C for less than 180 days	3,00,000
	9,00,000
Less: Sale price of machine C sold during the year	(4,00,000)
W.D.V. as on 31.3.2023 for the purpose of charging depreciation	5,00,000
Depreciation on ₹5,00,000 @ 15%	(75,000)
W.D.V. as on 1.4.2023	4,25,000

Full depreciation @ 15% has been charged, as the machine C which was put to use for less than 180 days during the year, ceases to exist on 31.3.2023 and as such depreciation shall not be charged at the rate of 50% of the normal rate. It would have been charged, if the machine other than C had been sold during the year.

(b)

Particulars	*Amount*	*Amount*
W.D.V. of the block as on 1.4.2022		6,00,000
Addition during the year of Machine C put to use for less than 180 days		3,00,000
		9,00,000
Less : Sale price of machine A sold during the year		4,00,000
		5,00,000
Depreciation @ 7.5% on ₹3,00,000	22,500	
@ 15% on balance₹2,00,000	30,000	52,500
W.D.V. as on 1.4.2023		4,47,500

(c)

Particulars	*Amount*	*Amount*
W.D.V. of the block as on 1.4.2022		6,00,000
Addition during the year of Machine C put touse for less than 180 days		3,00,000
		9,00,000
Less : Sale priceof machine A & B sold during the year		4,00,000
		5,00,000
Depreciation* @ 7.5% on₹3,00,000	22,500	
@ 15% on balance₹2,00,000	30,000	52,500
W.D.V. as on 1.4.2023		4,47,500

* Although only one asset 'C' is left in the block whose cost is₹3,00,000, still depreciation will be allowed on the balance amount of₹2,00,000 @ 15% as the block has not ceased to exist.

Actual Cost [Section 43(1)]

The actual cost of an asset to the assessee is normally the amount of capital expenditure incurred in respect of the acquisition, installation, etc., of the asset and also the other expenses, if any, incurred by him to make the asset ready for the purpose of its use in the business.

The expression 'actual cost' has been defined in Section 43(1) of the Act to mean that actual cost of the asset to the assessee as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. For instance, if an assessee gets a subsidy from the Government for the purchase of a particular item of machinery, the actual cost of the machinery to the assessee would be total of the purchase price and the expenses in regard to installation etc. minus the subsidy received from the Government.

It is important to note that where, an assessee, in acquisition of an asset, makes payment(s) in a day otherwise than by an a/c payee cheque / demand draft / ECS / or such other electronic modes as may be prescribed, which is > INR 10000, such expenditure would not be a part of the actual cost.

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2021 dated 29.01.2021].

The provisions of Section 43(1) of the Act clarify that the actual cost of depreciable asset should be determined in the following circumstances as indicated below:

- **Asset used for scientific research initially and then used for Business:** If an asset was first used for scientific research and then used for business later, the actual cost would be the initial cost incurred in acquiring the asset minus the deduction already claimed under section 3.
- **Asset acquired as a gift / inheritance:** If the asset is acquired as a gift / inheritance, the actual cost is the WDV of the previous owner.
- **Re-acquisition of Asset:** If an asset was once in use, then transferred and later re-acquired, the actual cost would be the WDV at the time of transfer OR the price of re-acquisition, whichever is lower.

  For Instance, if 'X' transfers his machinery on 1.1.2022 to 'Y' for a sum of Rs. 6.00 lakhs while the actual cost of the asset and the written down value thereof on that day to 'X' are Rs. 3.00 lakhs and Rs. 1.00 lakh respectively, it may be inferred that the transfer by 'X' to 'Y' is made with idea to enable 'Y' to claim depreciation on Rs. 6.00 Lakhs while the market value of the asset on the date of sale by 'X' to 'Y' may be Rs. 4.00 lakhs only. In such a case, the Assessing Officer would be entitled to allow depreciation to 'Y' on the basis of the cost which may be determined by him to be Rs. 4.00 lakhs instead of Rs. 6.00 lakhs as claimed by 'Y'.
- **Asset is transferred from a holding co**. to a subsidiary co. or vice-versa If an asset is transferred from a holding co. to a subsidiary co. or vice-versa, then subject to specified conditions, the transaction wouldn't be a transfer of a capital asset and hence, the actual cost to the transferee company shall be taken to be the same as it would have been used by the transferor company had it continued to hold it for the purposes of business / profession, and similar approach to be adopted for amalgamation / demerger.
- **Interest paid or payable in connection with acquisition of an Asset:** Any amount of interest paid / payable as interest in connection with the acquisition of an asset, and relatable to period after the asset is put to use, shall not be included in the actual cost of the asset.
- **Subsidy or grant or reimbursement by the Central Government or a State Government or any authority established under any law or by any other person :**Where a portion of the cost of an asset

acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee.

- **Asset acquired by a non-resident outside India:** Where an asset which was acquired outside India by an assessee, being a non-resident, is brought by him to India and used for the purposes of his business or profession, the actual cost of the asset to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee.
- **Capital Asset acquired under scheme for Corporatisation:** Where any capital asset is acquired by the assessee under a scheme for corporatisation of a recognised stock exchange in India, approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the actual cost of the asset shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatization.
- Capital Asset on which deduction has been allowed or allowable u/s 35AD shall be treated as nil:
- **Actual cost of inventory converted into capital asset, if used for business**, shall be the Fair Market Value.

Note: Interest paid before the commencement of the production on amounts borrowed by the assessee for acquisition and installation of the plant and machinery shall form part of the actual cost u/s 43(1), as decided by the Supreme Court in Challapalli Sugars Limited Vs CIT.

Illustration 4

Ashwani borrowed a sum of ₹30,00,000 on 1.4.2020 @ 12% p.a. to construct the building for the purpose of her business. The construction of house property in completed on 30.6.2022 and put to use immediately. The loan is still outstanding. Cost of construction of building is ₹60 lakh. Calculate the actual cost of building which shall be eligible for depreciation.

Solution:

Particulars	***Amount***
Cost of construction	₹ 60,00,000
Add: Interest from 1.4.2020 to 30.6.2022 (₹30,00,000 x 12/100 x 27/12)	8,10,000
Total actual cost eligible for depreciation	68,10,000

Note: Interest payable after 30.6.2022 shall be allowed as revenue expenditure.

Written Down Value (WDV) [Section 43(6)]

- **Asset acquired during previous year:** In case of acquisition of assets during the Previous Year, the actual cost becomes the WDV.
- **Asset acquired before previous year**: In case of assets acquired before the Previous Year, the WDV = Actual Cost to the Assessee Less Depreciation c/f if any.

- **Asset transfer from holding company to subsidiary, or vice-versa:** In case of transfer of assets from holding company to subsidiary, or vice-versa, or from a amalgamating company to an amalgamated company, then the actual cost of assets in the books of the transferee company would be the WDV of the block of assets, as in the books of transferor company for the immediately preceding Previous Year, minus, the allowable depreciation during the Current Year.
- **WDV in case successor is LLP:** In case of a successor LLP, the WDV in the books of the LLP would be the WDV in the books of the predecessor company on the date of such conversion.
- **The WDV of the following assets may be reduced to NIL:**
  (a) the moneys receivable by the assessee in respect of the assets sold, together with the scrap value if any is > than the current WDV of the assets at the beginning of the year as increased by the actual cost of any new asset acquired, OR
  (b) where the entire block of assets is sold during the year.

Unabsorbed Depreciation

- It's the depreciation that couldn't be consumed fully, that is, the profits were not sufficient to absorb it.
- Can be carried forward indefinitely. The current year depreciation and the brought forward business losses get priority in the set off over the unabsorbed depreciation, in that order.

Depreciation on Straight Line Basis

In the case of Power Units [Section 2(1)(i)] (optional to power generating units) from the assessment year 1998-99, an undertaking engaged in generation or generation and distribution of power can claim depreciation on straight line basis on the actual cost of individual asset. But the aggregate depreciation cannot exceed the actual cost. Alternatively, such undertaking can claim depreciation, at its option, according to written down value method like any other assessee. The option for this purpose shall be exercised before the due date of furnishing return of income. Once this option is exercised, it shall be final and shall apply to all the subsequent years.

Where an assessee incurs any expenditure for acquisition of any asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of ECS through a bank account or such other electronic mode as may be prescribed, exceeds Rs. 10,000, such Payment shall be ignored for the purpose of computation of Actual Cost of such asset.

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2021 dated 29.01.2021].

Terminal Depreciation

If any asset, on which depreciation is claimed on basis of SLM, is sold and the amount by which money payable together with scrap value, fall short of WDV of such asset, depreciation shall be allowed equal to such deficiency in the year of sale.

Illustration 5:

An electricity company which was charging depreciation on straight line method and whose actual cost of the asset was ₹6,00,000 and written down value ₹5,50,000 sold the said asset during 2022-23 after 2 years. What will be the tax treatment if the asset is sold for:

(i) ₹ 4,50,000 (ii) 5,80,000 (iii) ₹ 7,00,000

Solution

(i) ₹ 4,50,000 - ₹ 5,50,000 = ₹ 1,00,000 will be allowed as terminal depreciation in the previous year 2022-23.

(ii) ₹ 5,80,000 - ₹ 5,50,000 = ₹ 30,000 shall be balancing change and taxable as business income as per section 41(2).

(iii) ₹ 7,00,000 - 5,50,000 = ₹ 50,000 shall be balancing charge and hence taxable as business income ₹ 7,00,000 - 6,00,000 = ₹ 1,00,000 shall be short-term capital gain.

Balancing Charge [Section 41(2)]

If any asset, on which depreciation is claimed on basis of SLM, asset is sold and the amount by which moneys payable together with scrap value, exceeds WDV of such asset, then the least of the following shall be taxable under the head PGBP.

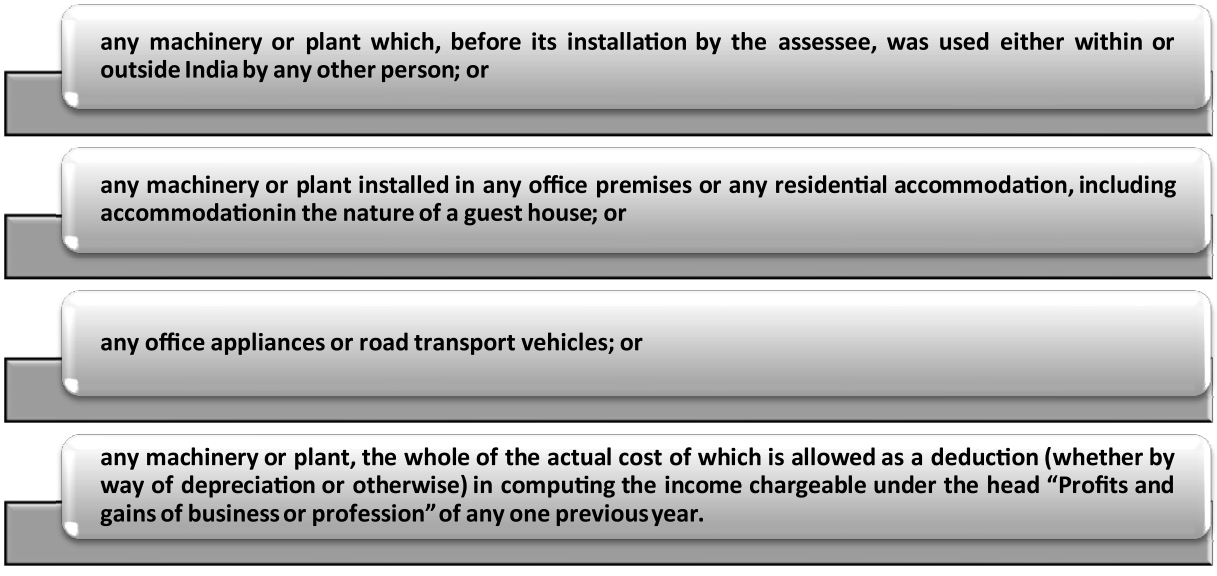
(i) difference between the actual cost and WDV.

(ii) difference between aggregate of moneys payable and WDV.

Additional Depreciation [Section 32(1)]

The additional depreciation is available to assessee engaged in the business of manufacture or production of any article or thing or engaged in the business of generation, transmission or distribution of power at the rate of 20% of actual cost of eligible new machinery or plant (other than ships and aircrafts acquired and installed after 31/3/05.

Additional Depreciation shall not be allowed if –



Note:

Where asset is purchased in same previous year and put to use in business in same year for less than 180 days then additional depreciation is allowed at 50% of rate of additional depreciation. However in case of Plant and Machinery purchased and installed in notified Backward areas of State of Andhra Pradesh and Telangana and put to use for less than 180 days, 50% of additional depreciation will be allowed in previous year in which asset is put to use and 50% in immediately succeeding financial year.

Where asset is purchased and put to use in business in the same previous year for less than 180 days then additional depreciation is allowed at 50% of rate of additional depreciation and balance 50% of additional depreciation in immediately succeeding financial year.

If an Individual or HUF opts to be taxed as per the new alternative regime under section 115BAC he / it will not be entitled to claim deduction of additional depreciation.

Calculation of Written Down Value of a Block of Asset [Section 43(6)]

WDV of block of assets shall be computed as follows -

Aggregate of Written Down Value of all the assets falling within that block of assets as at the beginning of the previous year	XXX
Add: Actual cost of any asset falling within that block **not being increase on account of acquisition of goodwill of a business or profession,** acquired during the previous year	XXX
Less: Moneys payable (including scrap) in respect of any asset falling within that block which is sold, discarded, demolished or destroyed during the previous year, to the extent it does not exceed the sum of the above two.	XXX
WDV at the end of the year	XXX
Less: Depreciation at block rate	XXX
Depreciated value of the block at the end of year	XXX

It means if the net consideration of an asset out of the block is less than the balance, there would be no capital gain. If the net consideration of an asset is more than the balance (the value of all assets in the block) the excess shall be deemed to be short term capital gain. If all the assets of the block are sold in the previous year and the net consideration is less than the balance, the loss shall be deemed to be short term capital loss.

Where any capital asset is acquired by the assessee under a scheme for corporatisation of a recognised stock exchange in India, approved by the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India, 1992, the actual cost of the asset shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatisation.

For Example:

Depreciable assets on 1.4.2020 on which the depreciation is available at the same rate of 25%.

Asset A		3,00,000
Asset B		5,00,000
Asset C		7,00,000
Total		15,00,000
Less : [Depreciation @ 25% of 15,00,000]		(3,75,000)
(i)	Written down value on 1.4.2022 of block of assets	11,25,000
	Add : Cost of Asset purchased during 2022-23	6,00,000

(ii)	Balance	17,25,000
	Asset B sold during year 2022-23	(6,75,000)
(iii)	Balance	10,50,000
	Less: Depreciation for 2022-23 @ 25% of Rs. 10,50,000	(2,62,500)

Written down value of all assets on 1.4. 2023 = 7,87,500

Illustration 6:

Mr. Mohan, engaged in the business of generation of power, furnishes the following details for FY 2022-23. He has opted for WDV method, you are required to compute the allowable depreciation for FY 2022-23.

The Opening Block as on 22nd April, 2022 was INR 950,000 (15% block). He acquired second hand machinery for INR 250,000 on 30th Nov'22. He also acquired Power Generation Machinery on 1st Aug 2022 for INR 10,00,000. He invested in an AC for Office for INR 200,000 on 9th Sep'22 and a pollution control equipment for INR 250000 on 30th Jun' 22 . He bought additional power generation machinery for INR 500,000 on 1st Feb' 23. Also, he sold assets valued INR 400,000 for INR 350,000 during the year.

Solution:

Particulars	***INR***	***Block***	***Date***	***Particulars***	***INR***	***Block***	***Date***
Opening WDV	9,50,000	15%		Air Pollution Control Equipment	2,50,000	40%	30th Jun, 21
Acq. Second hand	2,50,000	15%	30th Nov'22				
Power Generation Machinery	10,00,000	15%	1st Aug'22				
AC for Office	2,00,000	15%	9th Sep'22				
Power Generation Machinery	5,00,000	15%	1st Feb'23				
Sale Value	3,50,000						
Depreciation							
On the ones put to use for < 180 day	18,750						

	37,500						
On the Remaining Block, which comes to INR 18,00,000	2,70,000			On the Pollution Control Equipment	1,00,000		
Depreciation allowable	3,26,250						
Addl Depreciation allowable on Power Generation Machinery @ 20	2,00,000			Addl Depreciation allowable on On the Poll Control Equipment @	50,000		
Power Generation Machinery @ 20% which was used for < 180 days	50,000						
Total Depreciation Allowable	5,76,250			Total Depreciation Allowable	1,50,000		

Notes:

a) The cells highlighted denote the ones which were put to use for < 180 days.

b) Power generation equipment, pollution control equipment can enjoy additional depreciation.

c) No depreciation is allowable on second hand machinery or office appliances like AC.

Tea/Coffee/Rubber Development Account [Section 33AB]

Section 33AB is applicable to an assessee carrying on the business of growing and manufacturing tea in India. For claiming the deduction u/s 33AB the assessee has to satisfy the following conditions:

- an assessee, carrying on business of growing and manufacturing tea or coffee or rubber in India
- Any amount deposited with the National Bank or in an account maintained by the assessee with the Bank in accordance with and for the purposes specified in a scheme approved in this behalf by the Tea Board of India or the Coffee Board of India or the Rubber Board;
- assessees whose accounts have been audited and the assessee furnishes along with his return of income the report of such audit in the prescribed form and duly signed and verified by such accountant. In cases where the accounts of the tax payer are required to be audited under any other law, it would

be sufficient if the accounts are audited under that law and the audit report as per that law is furnished with the return along with a further report in the form prescribed for the purposes of this provision.

Deduction:

(a) a sum equal to the amount or the aggregate of the amounts so deposited; or

(b) Forty per cent of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under Section 33AB), whichever is less.

***Note*:**

1. The audit report is to be furnished at least one month prior to the due date for furnishing the return of income under section 139(1).
2. If an Individual or HUF opts to be taxed as per the new alternative regime under section 115BAC he/ it will not be entitled to claim deduction on account of Tea/ Coffee/Rubber development account.

Withdrawal of Amount

There is a restriction on the withdrawal of the amount standing in the credit of such Special account of the assessee, i.e., the withdrawal must be made either: (i) for the purposes specified in the scheme, or, in the following circumstances: (a) closure of business; (b) death of an assessee; (c) partition of a H.U.F.; (d) dissolution of a firm; (e) liquidation of a company.

Consequences in case of closure of Business

Withdrawal of any amount in the event of: (a) closure of business or; (b) dissolution of a firm, the whole of such amount shall be deemed to be the profits and gains of business or profession of that previous year and chargeable to income-tax as if the business had not closed, or, the firm not dissolved and taxable in that previous year.

Conversely, where any amount standing to the credit of the assessee in the special account or in the Tea Deposit Account is utilised by the assessee for the purposes of any expenditure in connection with such business in accordance with the scheme, such expenditure shall not be allowed as a revenue deduction in computing the income chargeable under the head "Profits and gains of business or profession".

Non-utilisation of any amount released by the National Bank, for being utilised by the assessee for the purposes of a business, in accordance with the scheme, renders the whole or part of the amount not utilised, as the case may be, deemed as profits and gains of business and, accordingly, chargeable to income-tax as income of that previous year. The exceptions to this provision are, when the amount is not utilised in the cases of: (i) death of an assessee; (ii) partition of a Hindu undivided family; (iii) liquidation of a company.

In cases where the asset acquired in accordance with the scheme or deposit scheme is sold or otherwise transferred in any previous year by the assessee to any person, at any time before the expiry of eight years from the end of the previous year in which it was acquired, such part of the cost of the asset as is relatable to the deduction already allowed is deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and charged to income-tax accordingly.

Exception to the Provision:

(i) the asset is sold or otherwise transferred by the assessee to Government, local authority, corporation established by or under a Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956; or

(ii) Where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise

transfers to the company any asset and the scheme or the deposit scheme continues to apply to the company in the manner applicable to the firm only where;

(i) all the properties of the firm relating to business or profession immediately before the succession become the properties of the company;

(ii) all the liabilities of the firm relating to the business or profession immediately before the succession become the liabilities of the company; and

(iii) all the shareholders of the company were partners of the firm immediately before the succession.

(a) "Coffee Board" means the Coffee Board constituted under Section 4 of the Coffee Act, 1942;

(aa) "National Bank" means the National Bank for Agriculture and Rural Development established under Section 3 of the National Bank for Agriculture and Rural Development Act, 1981;

(ab) "Rubber Board" means the Rubber Board constituted under Sub-section (1) of Section 4 of the Rubber Board Act, 1947;

(b) "Tea Board" means the Tea Board established under Section 4 of the Tea Act, 1953.

Computation of Business income in cases where income is partly Agriculture and partly Business

Taxability in case of composite income for manufacturing and performing other processes of Rubber; tea and Coffee is summarized as under:

S. No.	*Nature of composite income*	*Business income (Taxable)*	*Agricultural Income (Exempt)*
1	Income from the manufacture of rubber	35%	65%
2	Income from the manufacture of coffee		
	• sale of coffee grown and cured	25%	75%
	• sale of coffee grown, cured, roasted and ground	40%	60%
3	Income from the manufacture of tea	40%	60%

Site Restoration Fund [Section 33ABA]

- The taxpayer is engaged in the business of the prospecting for, or extraction or production of, petroleum or natural gas or both in India.
- The Central Government has entered into an agreement with the taxpayer for such business.
- The assessee deposit with SBI any amount in an account maintained by the assessee with that bank in a scheme approved by the Government of India in the Ministry of Petroleum and Natural Gas; or deposit any amount in an account opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Ministry of Petroleum and Natural Gas.
- The aforesaid amount shall be deposited before the end of the previous year.
- The accounts of the taxpayer should be audited by an accountant as defined in the explanation below Sub- section (2) of Section 288 and the report of the auditor is filed along with the return of the relevant

assessment year. Further, in case where the accounts of the taxpayer are required to be audited under any other law, e.g., under the Companies Act, it would be sufficient if the accounts are audited under that law and the audit report as per that law is furnished with the return along with a further report in the form prescribed for the purposes of the provision.

Amount of Deduction: Lower of the following

(a) a sum equal to amounts deposited as mentioned above; or

(b) 20% of the profit of such business computed under the head "Profits and gains of business or profession" before making any deduction under Section 33ABA and before adjusting brought forward business loss under Section 72.

Note:

1. Where any deduction is claimed under this section, no deduction shall be allowed in respect of such amount in any other previous year.
2. Where a deduction is claimed and allowed under this section, to a firm, association of persons or body of individuals, no deduction shall be allowed to any partner of the firm or the member of the association or body in respect of the same deposit.
3. If an Individual or HUF opts to be taxed as per the new alternative regime under section 115BAC he/it will not be entitled to claim deduction on account of Site Restoration fund.

The amount standing to the credit of such special account or site restoration account may be withdrawn only for the purpose specified in the scheme or deposit scheme. If the amount released by SBI or the amount withdrawn from site restoration account in a year is not utilized in the same previous year for the purpose for which it is released, the amount not so utilized will be treated as taxable profits of that year and taxed accordingly.

Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is withdrawn on closure of the account during any previous year by the assessee, the amount so withdrawn from the account as reduced by the amount, if any, payable to the Central Government by way of profit or production share as provided in the agreement referred to in Section 42, shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income- tax as the income of that previous year. Where any amount is withdrawn on closure of the account in a previous year in which the business carried on by the assessee is no longer in existence, the above provisions shall apply as if the business is in existence in that previous year.

There is an overriding condition that the deduction under this provision cannot be claimed in relation to amounts utilized for the purpose of any machinery or plant to be installed in any office premises or residential accommodation including guest house; any office appliance, other than computers; any other plant or machinery which either is installed in an undertaking producing low priority items specified in the Eleventh Schedule in the Act or is an item of plant or machinery entitled to 100 per cent write off by way of depreciation or for any other reason in any one year.

The deduction allowed under this provision will be withdrawn if the asset acquired in accordance with the scheme is sold or otherwise transferred within 8 years from the end of the previous year in which it is acquired. For this purpose, the cost of the asset relatable to the deduction allowed will be treated as taxable business profits of the year in which the asset is sold or otherwise transferred.

The deduction allowed earlier will, however, not be withdrawn in cases where the asset is transferred within 8 years period to Government, local authority statutory corporation or Government company.

It will also not be withdrawn where the transfer takes place in connection with succession of a firm by a company. For this purpose it is necessary that:

(a) the scheme continues to apply to the company in the manner applicable to the firm;

(b) the successor company takes over all the assets and liabilities of the firm; and

(c) all the shareholders of the company were partners of the firm before the succession.

Scientific Research [Section 35]

The term scientific research connotes and implies activities for the extension and advancement of knowledge, in the fields of natural or applied science, including, agriculture, animal husbandries and fisheries.

A) Deduction of expenditure incurred on research carried on by Assessee Himself

In case the expenditure is made by the assessee himself, then irrespective of whether the expenditure is revenue or capital in nature, 100% of the expenditure would be allowable. However, it is prudent to note that if the expenditure is towards acquisition of land, that would not be allowable.

Revenue Expenditure: Any revenue expenditure incurred by the assessee within 3 years immediately preceding the commencement of business, for which research is conducted, by way of salary to research personnel engaged in such research, or material inputs for such research, will be allowed as a deduction in the year in which such business is commenced. However, such expenditure would be limited to the amount certified by the prescribed authority.

Capital Expenditure: Any capital expenditure incurred by the assessee, within 3 years immediately preceding the commencement of the business would be deemed to have been incurred in the year in which the business was commenced and will therefore rank for deduction in the year of commencement of business, in full

In case such expenditure cannot be absorbed by business profits in any year, such deficiency can be carried forward indefinitely until it is fully absorbed / consumed

B) Deduction of expenditure incurred on research carried on by Third Party

In case the research is conducted by a third party, and the payment is made by the assessee for conducting the research, the allowability is as under:

a) In case the amount is **paid to a company for scientific research,** 100% of such expenditure is allowable. This deduction is allowable only if the company is an Indian company and has as it's main object, scientific research and development.

b) In case the amount is paid to a **university, college or research association for social science or statistical research,** 100% of such expenditure is allowable. The deduction is allowable only if the payment is to an approved institution and such deduction cannot be denied later, subsequent to such payments, merely on the grounds, that the approval so granted to the institution is withdrawn.

c) In case the amount is paid to a **National Laboratory / IIT,** 100% of the expenditure can be claimed as a deduction. A National Laboratory is a scientific laboratory functioning at the national level, under the ambit of Indian Council of Agricultural OR Medical OR Scientific Research, the Defence Research and Development Organisation (DRDO), the Department of Atomic Energy / Bio-technology are included.

d) In case the amount is paid to a **university, college or research association for scientific research**, 100% of such expenditure is allowable. The payments made to such institutions would be allowable irrespective of whether such research is related to the assessee's business or not and irrespective of whether the expenditure is revenue or capital in nature.

e) Where a company is engaged in the business of **bio-technology or in the business of manufacture or production of any article / thing, not being one which is specified in the eleventh schedule,** incurs any expenditure on scientific research, OR in-house research & development facility as may be approved by the prescribed authority, a weighted deduction of 100% is allowable in the Previous Year.

No deduction is allowable in case of any expenditure that is towards acquisition of land.

Expenditure in case of drugs and pharmaceuticals shall include the expenditure of clinical drug trial, obtaining approvals from any state regulatory authority, and filing an application under the Patents Act, 1970.

Provided that every notification on account of payment to outside agencies under section 35(1)(ii), (iia), (iii) in respect of the research association, university, college or other institution, issued on or before the date on which Section 35(1) has come into force, shall be deemed to have been withdrawn unless such outside agency makes an intimation in such form and manner, as may be prescribed, to the prescribed income-tax authority by 31.08.2020 and subject to such intimation the notification shall be valid for a period of five consecutive assessment years beginning with the assessment year commencing on or after the 1st day of April, 2021.

Provided further these outside agencies (Donee) under section 35(1)(ii), (iia), (iii) are not entitled to deduction under section 35(1) unless they prepare and deliver the Statement of donation receipts by Donee to cross check claim of donation by Donor for such period as may be prescribed to the said prescribed income-tax authority in such form, verified in such manner and within such time, as may be prescribed. And furnishes a certificate to the donor, specifying the amount of donation within such time from the date of receipt of sum.

Note: *Any failure by the Donee in preparing and delivering the Statement of donation to the Income Tax Authority or in furnishing certificate to the donor within the time prescribed shall attract fee @Rs. 200 for every day during which the failure continues under section 234G along with the penalty for a sum not less than Rs. 10,000 which may be extended to Rs. 1,00,000 under section 271K.*

Summary		
Section	***Expenditure Incurred for / Payment made***	***Deduction***
35(1)(i)	Revenue Expenditure incurred on scientific research related to assessee's business	100%
35(1)(ii)	Research Association for Scientific Research	100 %
35(1)(iia)	Paid to Company for Scientific Research	100%
35(1)(iii)	Research Association for Social Science OR Statistical Research	100%
35(1)(iv)	Capital Expenditure (except land acquisition)	100%
35(2AA)	National Laboratory / IIT for scientific research undertaken under an approved Programme	100 %
35(2AB)	Expenditure incurred by a company engaged in Bio-technology	100 %

Note: *If an Individual or HUF opts to be taxed as per the new alternative regime under section 115BAC he / it will not be entitled to claim deduction on account of payment to outside agencies for Scientific Research under section 35(1)(ii), (iia), (iii) and 35(2AA). [As Amended by Finance Act, 2020]*

Illustration 7:

Binod furnishes the following particulars for PY 2022-23. You are required to arrive at the deduction allowable u/s 35 for AY 2023-24, while computing the Income under the head "Profits / Gains from Business / Profession".

1. Amount paid to M/s ABC Ltd., a company registered in India, which has as it's main object, scientific research and development, as approved by the prescribed authority INR 600,000
2. Amount Paid to IIT Mumbai, for an approved scientific research programme INR 375,000
3. Revenue Expenditure on In-house R&D facility as approved by prescribed authority INR 450,000
4. Capital Expenditure on In-house R&D facility as approved by prescribed authority INR 12,00,000. This includes cost of Land INR 450,000
5. Amount paid to Indian Institute of Science, Bangalore, for Scientific Research INR 10,00,000

Solution:

Expenditure	*INR*	*Allowable Section*	*Deduction*
Amount paid to M/s ABC Ltd., a company registered in India, which has as it's main object, scientific research and development, as approved by the prescribed authority	6,00,000	100% 35(1)(iia)	6,00,000
Amount Paid to IIT Mumbai, for an approved scientific research programme	3,75,000	100 % 35(2AA)	3,75,000
Revenue Expenditure on In-house R&D facility as approved by prescribed authority	4,50,000	100% 35(1)(i)	4,50,000
Capital Expenditure on In-house R&D facility as approved by prescribed authority	7,50,000	100% 35(1)(iv)	7,50,000
Amount paid to Indian Institute of Science, Bangalore for Scientific Research	10,00,000	100 % 35(1)(ii)	10,00,000
Total	**31,75,000**		**31,75,000**

Amortization of Spectrum Fees for Purchase of Spectrum [Section 35ABA]

New section 35ABA is inserted to provide amortization of amount paid on the acquisition of any right to use spectrum for telecommunication services by paying spectrum fees. The section provides:

i. Any capital expenditure incurred and actually paid by the assessee on acquisition of any right to use spectrum for Telecom services by paying spectrum fee will be allowed as deduction in equal instalments. Deduction will start from the year in which payment is made (or the year of commencement of business, whichever is later) and ending with the year in which spectrum comes to an end, irrespective of the previous year in which liability for expenditure was incurred according to the method of accounting regularly followed by assessee or payable in such manner as may be prescribed.

ii. Where the spectrum is transferred and the proceeds of transfer are less than the expenditure remaining unallowed, a deduction equal to the expenditure remaining unallowed as reduced by the proceeds of transfer, shall be allowed in the year of transfer of spectrum.

iii. If spectrum is transferred and proceeds of transfer exceed the amount of expenditure remaining unallowed, the excess amount (to the extent it does not exceed deduction claimed u/s 35ABA) shall be chargeable to tax as profits and gains of business in the previous year in which such spectrum has been transferred.

iv. Unallowed expenditure in a case where a part of spectrum is transferred would be amortised.

v. Where the deduction has been claimed and granted to the assessee in accordance with the provisions of this section and, subsequently, there is failure to comply with any of the provisions of this section, then the deduction shall be deemed to have been wrongly allowed. In such case, the assessing officer can re-compute the total income of the assessee for the previous year (in which deduction was claimed) and make necessary rectification. Such rectification can be made within 4 years from the end of the previous year in which failure takes place.

vi. Under the scheme of amalgamation, if the amalgamating company sells or transfers the spectrum to an amalgamated company, being an Indian company, then the provisions of this section shall apply the amalgamated company as they would have applied to the amalgamating company if later had not transferred the spectrum. Similar rule will be applicable in case of demerger.

Where, in a previous year, any deduction has been claimed and granted to the assessee under sub-section (1), and, subsequently, there is failure to comply with any of the provisions of this section, then, -

(a) the deduction shall be deemed to have been wrongly allowed;

(b) the Assessing Officer may, notwithstanding anything contained in this Act, re-compute the total income of the assessee for the said previous year and make the necessary rectification;

(c) the provisions of section 154 shall, so far as may be, apply and the period of four years specified in subsection (7) of that section being reckoned from the end of the previous year in which the failure to comply with the provisions of this section takes place.

Expenditure on Telecom Licence [Section 35ABB]

Deduction of Capital Expenditure: Where any capital expenditure is incurred by the assessee for acquiring any right to operate telecommunications services and for which payment has actually been made to obtain a licence, a deduction will be allowed in equal instalments over the period for which the licence remains in force, subject to the following:

(a) Fees paid before commencement of business: If the fee is paid for acquiring any right to operate telecommunications services before the commencement of such business, the deduction shall be allowed for the previous years beginning with the previous year in which such business is commenced.

(b) Fees paid after commencement of business:If the fee is paid for acquiring such rights after the commencement of such business the deduction shall be allowed for the previous years beginning with the previous year in which the license fee is actually paid (irrespective of the previous year in which the liability for the expenditure is incurred).

Profit/Loss on Sale –

- **Transfer of License:** Where the licence is transferred and proceeds of transfer (sale proceeds) are less than the amount of expenditure incurred remaining unallowed:

(i) Whole License transferred: Where whole of the licence is transferred in a previous year. Deduction as given below shall be allowed in the previous year in which the licence is transferred.

Expenditure remaining unallowed less sale proceeds.

(ii) Part of the license transferred: Where part of the licence is transferred in a previous year. Deduction as given below shall be allowed in the balance number of relevant previous years.

(expenditure remaining unallowed less sale proceeds) divided by balance number of relevant previous years, i.e., the previous years not expired at the beginning of the year of transfer.

- Where the licence is transferred and the proceeds of transfer (sale proceeds) exceed the amount of expenditure incurred remaining unallowed.

  Sale proceeds less expenditure remaining unallowed subject to deductions already allowed shall be chargeable to income tax as profits and gains of the business in the previous year in which licence is transferred. Consequently, no further deduction in the previous year in which licence is transferred or in any subsequent previous years is allowed.

  Where licence is transferred in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

- **Transfer in scheme of Amalgamation:** Where under a scheme of amalgamation a telecom licence is transferred by the amalgamating company to the amalgamated company (being an Indian company), then deduction will not be available under this section to the amalgamating company, instead the provisions of this Section (35ABB) will continue to apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the licence.

- **Transfer in case of Demerger:** Similarly in a scheme of demerger a telecom licence is transferred by the demerged company to the resulting company, then deduction will not be available to the demerged company and will instead apply to the resulting company as they would have applied to the demerged company if the latter had not transferred the licence.

Further where a deduction for any previous year is claimed and allowed under Section 35ABB, then no deduction under Section 32(1) shall be allowed for the same or any subsequent previous year.

Expenditure of capital nature incurred in respect of Specified Business [Section 35AD]

An assessee shall (if he opts) be allowed a deduction of capital nature expenditure incurred for any specified business carried on by him during the previous year in which such expenditure is incurred by him. This section talks about investment linked incentives for specified businesses as under:

A) Setting up & operating cold chain facilities for specified products

B) Setting up & operating warehousing facilities for agricultural produce

C) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for storage and distribution, as a part of the network

D) Building and operating a 2-star hotel or above, anywhere in India

E) Building and operating a hospital with > 100 beds, anywhere in India

F) Developing & building a housing project under a scheme for slum redevelopment / affordable housing

G) Production of fertilizers in India

H) Setting up and operating an Inland Container Depot OR a Container Freight Station, under Customs Act, 1962

I) Bee-keeping and production of honey and beeswax

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

K) Laying and operating a slurry pipeline for transportation of iron-ore

L) Setting up and operating a semi-conductor wafer fabrication manufacturing unit

M) Developing / Maintaining & Operating / Developing & Maintaining & Operating a new infrastructure facility in India.

Capital Expenditure Deduction: 100% of the capital expenditure incurred during the Previous Year, wholly and exclusively for the above businesses would be allowable as a deduction.

Expenditure incurred prior to commencement of business: The expenditure incurred prior to the commencement of the business, would be allowed as a deduction in the year of commencement of business, and should also be capitalised in the books of the assessee on the commencement of operations.

Set off of Losses: The loss from specified businesses can be set off only against profits of specified businesses but can be carried forward indefinitely for set off against one or more specified businesses.

Period of Deduction: The above deduction is allowable only if accounts of the assessee are audited by a Chartered Accountant and that any asset in respect of which the deduction is claimed, can be used only for the specified businesses for a period of 8 years beginning with the PY in which the asset was acquired / constructed.

Exceptions

- Expenditure on acquisition of land OR goodwill will not be allowed as a deduction.
- Any expenditure where the aggregate of payments made to a person exceeding INR 10,000 per day, otherwise than by account payee cheque / DD / ECS / or such other electronic modes as prescribed under Rule 6ABBA would not be eligible for a deduction. The prescribed electronic modes include ***credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [Notification No. 8/2020 dated 29.01.2020]***
- No deduction in respect of the expenditure under section 35AD(1) shall be allowed to the assessee under any other section in any previous year or under this section in any other previous year, if the deduction has been claimed or opted by the assessee and allowed to him under this section.

Any asset in respect of which a deduction is claimed and allowed under Section 35AD, shall be used only for the specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.

If any asset on which a deduction under section 35AD has been allowed, is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in one or more previous years in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used.

Note: If an individual or HUF opts to be taxed as per the new alternative regime under section 115BAC he/it will not be entitled to claim deduction under section 35AD.

Example: Suppose a company purchased plant and machinery for Rs. 2 crores for a specified business, and claimed deduction under section 35AD. However, the very next year the plant and machinery purchased was put to use for unspecified business.

In this case, since the machinery has been used for unspecified business, the deduction claimed under section 35AD will be disallowed. However, the amount of deduction to be disallowed will be reduced by the depreciation allowable in accordance with the provisions of section 32.

Deduction claimed under section 35AD on a capital asset: Rs. 2,00,00,000

Depreciation eligible will be @15%: Rs. 30,00,000

Profit chargeable to tax in accordance with the sub-section (7B) of section 35AD: Rs.1,70,00,000

Illustration 8:

Kiara Ltd. constructed a building and started operating a hotel of 3 star category w.e.f. 1.4.2022. The company incurred the following expenditure in this connection.

1.	Capital expenditure (including cost of land ₹ 70 lakhs) incurred during December, 2021 to March 2022 which were capitalized in the books of account 31.3.2022	₹ 1,30,00,000
2.	Capital expenditure incurred during previous year 2022-23 (it includes ₹ 40 lakhs paid for Goodwill)	₹ 1,40,00,000

Compute the deduction available under section 35AD in the assessment year 2023-24.

Solution:

Particulars	₹ ***Amount***
Capital expenditure incurred before commencement but capitalized in books of account	1,30,00,000
Less: Cost of land not eligible for deduction under section 35 AD	(70,00,000)
	60,00,000
Capital expenditure incurred during previous year 2022-23 exclusive of value of goodwill and ₹ 2,00,000 assets acquired for cash	1,00,00,000
Deduction allowable under section 35AD	1,60,00,000

Illustration 9:

ABC Ltd commenced operations of the Business of a new Four-Star Hotel in Chennai on 01.04.2022. The Company incurred Capital Expenditure of ₹ 40 Lakhs during the period January, 2022 to March, 2022 exclusively for the above Business, and capitalised the same in its Books of Account as on April, 2022. Further, during the Previous Year 2022-2023, it incurred Capital Expenditure of ₹ 2.5 Crores (out of which ₹ 1 Crore was for Acquisition of Land) exclusively for the above Business.

Compute the Income under the heading Profits and Gains of Business or Profession for the Assessment Year 2023-2024, assuming that ABC Ltd has fulfilled all the conditions specified for claim of deduction u/s 35AD and has not claimed any deduction under Chapter VI-A under the heading "C- Deductions in respect of certain incomes". The Profits from the Business of running this Hotel (before claiming deduction u/s 35AD), for the Assessment Year 2023-2024 is ₹ 80 Lakhs.

Assume that the Company also has another existing Business of running a Four-Star Hotel in Kanpur, which commenced Operations 6 years back, the Profits from which was ₹ 130 Lakhs for the AY 2023-2024.

Solution:

Assessee: ABC Ltd Previous Year: 2022-2023 Assessment Year: 2023-2024

Computation of Deduction u/s 35AD

Particulars	₹ ***Lakhs***
1. Income from Four Star Hotel in Chennai	80
Less: Eligible deduction u/s 35AD: (i) Prior Period Expenditure (40) (ii) Capital Expenditure (₹ 250 Lakhs - ₹ 100 Lakhs) (150)	(190)
Total [Loss can be set-off only against the Income from any Specified Business] **[Section 73A]**	(110)
2. Income from Four Star Hotel in Kanpur [Being a Specified Business, above Loss is eligible to be set- off against this Income u/s 73A],	130
Income under the head Profits & Gains of Business/Profession	**20**

Note: *Expenditure relating to acquisition of Land is not allowable as a deduction u/s 35AD.*

Expenditure by way of Payment to Associations and Institutions for carrying out Rural Development Programmes [Section 35CCA]

Any sum paid to a rural development fund set up and notified by the Central Government and to the National Urban Poverty Eradication Fund similarly set up and notified qualifies for deduction on fulfilment of certain conditions.

Expenditure on Agricultural extension project [Section 35CCC]

Where an **assessee incurs** any expenditure on agricultural extension project notified by the Board then, there shall be allowed a deduction of a sum equal to 100 % of such expenditure.

Expenditure on skill development project [Section 35CCD]

Where a **company incurs** any expenditure **(not being expenditure in the nature of cost of any land or building)** on any skill development project notified by the Board then, there shall be allowed a deduction of a sum equal to 100% of such expenditure.

Amortization of Preliminary Expenses [Section 35D]

Eligible Assessee: Under Section 35D, ***Indian companies and other non-corporate taxpayers resident in India*** would be entitled to amortisation of certain preliminary expenses incurred by them for the establishment of business concerns or the expansion of the business of existing concerns.

Expenditure incurred prior or after commencement of business: The expenditure which qualifies for amortisation should have been incurred by the assessee before the commencement of his business. If, however,

the expenditure is incurred after the commencement of business, it is essential that the expenditure should be in connection with the extension or expansion of the undertaking of the assessee or in connection with the setting up of a new unit by the assessee.

Eligible Deduction: The amount qualifying for amortisation would be allowable as a deduction in **five equal instalments** beginning with the previous year in which the business of the assessee actually commences or the previous year in which the extension of the present undertaking is completed or the new unit commences production or operation, as the case may be.

The following expenses incurred by the assessee, qualify for amortisation under this section as preliminary expenses:

(i) Expenses in connection with the preparation of feasibility report or project report;

(ii) Expenses for conducting market survey or any other survey necessary for the purpose of the business of the assessee;

(iii) expenditure for getting engineering services related to the business of the assessee;

(iv) expenses by way of legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;

(v) in the case of a company

  (a) expenses by way of legal charges for drafting the Memorandum and Articles of Association of the Company;

  (b) expenses for printing the Memorandum and Articles of Association;

  (c) expenses by way of fees for registration of the company under Companies Act; and

  (d) expenditure incurred in connection with issue for public subscription of shares or debentures of the company, being underwriting commission, brokerage and the charges of drafting, typing, printing and advertisement of the prospectus; and

(vi) such other items of expenses not covered by the list specified above which the Central Board of Direct Taxes may prescribe for the purpose of amortisation under this section.

Amount Qualifying for Deduction:

The maximum aggregate amount of the qualifying expenses that can be amortised has been fixed at

- 5% of the cost of the project in case of assessee **other than Indian company**
- In the case of an Indian company, at the option of the company,
- 5% of the capital employed in the business of the company, or
- Cost of Project.

whichever is higher. The excess, if any, of the qualifying expenses shall be ignored.

Expenses incurred before commencement of Business: For the purpose of amortisation, the expression **"Cost of the Project"** in relation to the expenses incurred before the commencement of the business means the actual cost of the fixed assets being land, buildings, lease holds, plant, machinery, furniture, fittings and railway sidings, including expenditure on the development of land and buildings, which are shown in the books of accounts of the assessee as on the last day of the accounting year in which the business of the assessee actually commences.

Expenses incurred after commencement of Business: Where the expenses are incurred after the commencement of business either in connection with the extension of the present undertaking or in connection with the setting up of a new unit, the cost of the project should be taken to mean the actual cost of the fixed assets, being land, buildings, lease holds, plant, machinery, furniture, fittings and railway sidings, including expenditure on the development of the land and building which are shown in the books of the assessee as on the last day of the previous year in which extension of the undertaking is completed or the new unit commences production or operations, as the case may be, to the extent to which such fixed assets have been acquired or developed in connection with the extension of the undertaking or the setting up of the new unit of the assessee.

Note: The audit report is to be furnished at least one month prior to the due date for furnishing the return of income under section 139(1).

In the case of company, the **"capital employed"** in the business means where preliminary expenses have been incurred before the commencement of the business, the a**ggregate of the issued share capital, debentures and long- term borrowings** as on the last day of the accounting year in which the business of the company has actually commenced. In cases where the expenditure has been incurred after the commencement of the business, the capital employed in the business of the company should be taken to be the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the accounting year in which the extension of the undertaking is completed or, as the case may be, the new unit commences production or operation, to the extent to which the capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the undertaking or setting up of the new unit of the company.

The expression **"long-term borrowings"** to be included as part of the capital employed in the business of the company should be taken to mean:

(i) any moneys borrowed by the company from the Government or the Industrial Finance Corporation of India or Industrial Credit and Investment Corporation of India or any other financial institution which is eligible for deduction under Section 36(1)(vii) of the Act or any banking institution; or

(ii) any moneys borrowed or debt incurred by the company in a foreign country in respect of the purchases outside India of capital plant and machinery where the terms of the borrowing provide for repayment of the money borrowed or debt incurred over a period of not less than seven years.

The allowance towards amortisation of preliminary expenses is subject to the condition that the accounts of the assessee for the year or years in which the preliminary expenses are incurred have been audited by a Chartered Accountant or other accountant specified in Section 288(2) of the Act and, in addition, the assessee furnishes along with his return of income for the first year in which the deduction is claimed, the report of audit in the prescribed form, duly signed and verified by the auditor and setting out such other particulars as have been prescribed by the Board for this purpose.

Note: The **audit report** is to be furnished **at least one month prior to the due** date for furnishing the return of income under section 139(1).

In cases of amalgamation as defined in Section 2(1B) of the Act, where the undertaking of an Indian Company has been transferred before the expiry of ten years, the amalgamating company would not be entitled to the allowance towards amortisation of preliminary expenses in the year in which the amalgamation takes places. But the amalgamated company would be entitled to the allowance for the remaining period over which the allowance under this section is available. The total period over which the amortisation is allowable should not exceed ten years or five years as the case may be in the case of both the amalgamating company and the amalgamated company. The allowance under this section would not be denied, in cases of amalgamation, to the amalgamated company merely because the expenditure has not actually been incurred by the amalgamated company. Similarly, in case of demerger where an undertaking of an Indian company which is entitled to the deduction under this section is transferred before the expiry of the said period of 10 years or 5 years (as the

case may be), to another company in a scheme of demerger no deduction shall be admissible to the demerged company in the year in which the demerger takes place. The resulting company would be entitled to claim deduction for the balance period under this section. In other words, the deduction for the balance period will be available to resulting company as it would have been available to demerged company, if the demerger had not taken place. In cases where preliminary expenses qualify for amortisation under Section 35D and the allowance claimed by the assessee in this regard is allowed in any assessment year, these expenses would not qualify for any allowance or deduction in respect of any other assessment year or even in the same year under any other provision of the Income-tax Act, 1961.

Illustration 10:

(a) Compute the deduction allowable under section 35D on the basis of the following information submitted.

Preliminary expenses incurred	₹ 2,20,000
Cost of project	₹ 50,00,000

(b) What will be your answer if the above preliminary express have been incurred by Ruchira Ltd. & the capital employed is ₹ 60,00,000.

Solution

(a) Cost of project	₹ 50,00,000
5% of cost of project	₹ 2,50,000
Actual expenditure incurred	₹ 2,20,000
Deduction allowed shall be limited to	₹ 2,20,000

Deduction allowed shall be ₹ 2,20,000/5 = ₹ 44,000 for a period of 5 years starting from the previous year in which business has commenced.

(b) Actual preliminary expenditure incurred	₹ 2,20,000
5% of cost of project	₹ 2,50,000
Capital employed	₹ 60,00,000
5% of capital employed	₹ 3,00,000

Maximum deduction to be allowed shall be restricted to ₹ 2,50,000 Deduction allowable for 5 years — ₹ 2,50,000/5 = ₹ 50,000 every year

Amortisation of Expenditure in the case of Voluntary Retirement Scheme [Section 35DDA]

One-fifth of the expenditure incurred by an assessee-employer in any previous year in the form of payment to any employee in connection with his voluntary retirement in accordance with a scheme of voluntary retirement shall be allowed as deduction in that previous year and the balance in four equal installments in the immediately four succeeding previous years.

Other Deductions [Section 36]

The other deductions allowable while computing the income from business/professions are as follows:

Type & Section	*Deductions*
Insurance Premia paid u/s 36(1)(i)	Premia paid on insurance policy to cover risk of damage/ destruction to stock/ stores of the business.
Premia paid by employer for health insurance of employees u/s 36 (1) (ib)	Premia paid by employer **by any mode other than by cash**, on health insurance of it's employees, in accordance with the scheme framed by GIC of India, or approved by the IRDA.
Bonus & Commission u/s 36 (1)(ii)	Deductible in full as long as the bonus / commission shall not be payable to them as profits / dividends, if it had not been paid as bonus/ commission.
Interest on Borrowed Capital u/s 36(1)(iii)	Deduction allowed for any interest paid in respect of capital borrowed for business. In case the capital is borrowed for acquiring an asset, the interest is capitalised from the date of borrowing until the date when the asset is put to use. Post the "put to use" date, it cannot be capitalised anymore and then such interest becomes an allowable deduction.
Discount on Zero Coupon Bonds u/s 36(1)(iiia)	Difference between the issue and the redemption values, as these are issued at a discount and redeemed at par.Available to Infra. Companies/ funds / Scheduled Banks, starting from the date of issue of the bond, ending with the maturity / redemption.
Contribution to Provident & Other funds u/s 36(1)(iv) & (v)	Allowable if the fund is settled upon a trust, it should be recognised / approved, and the contributions should be periodic, and as long as the fund is for the benefit of the employees.
Employer's contribution to the a/c of the employee under a pension scheme referred to in Section 80CCD [Section 36(1)(va)]	Deduction is restricted to 10% of salary of employee in PY. Salary, here, would include only Basic & DA (if the terms of employment provide).
Employee's Contribution to Welfare Funds [Section 36(1)(va)]	Deemed as business income of the employer assessee and will be allowed as a deduction only if the employee contributions have been credited to the employees' account by the assessee in the fund, on or before the due date under the respective welfare acts.
Bad Debts u/s 36(1)(vii) & 36(2)	Allowable if the debts written off as irrecoverable in the accounts of the assessee pertain to the business / profession carried on during the PY and as long as the debt was considered in the income for the PY in which it was earned. If on the final settlement, the amount recovered on any debt falls short of the total debt minus the debt allowed, the deficiency will be allowed as a deduction in the year of recovery and if the amount so recovered is more than the amount due after the allowance has been made, the excess will be chargeable to tax.
Expenses on family planning [Section 36(1)(ix)]	If the expenditure is capital in nature, allowable in five equal instalments beginning the PY in which it was incurred and if revenue in nature, it shall be fully allowable in the PY in which it was incurred. **The deduction is allowable to corporate assessees only.**

Type & Section	*Deductions*
Securities Transaction Tax Paid[Section 36(1)(xv)]	Allowable in respect of transactions entered in the course of business, as long as the income from the taxable securities' transactions, in respect of which it was incurred, is included under the heads "Profits / Gains from Business / Profession"
Commodities Transaction Tax paid [Section 36(1)(xvi)]	Allowable in respect of transactions entered in the course of business, as long as the income from the taxable commodities' transactions, in respect of which it was incurred, is included under the heads "Profits / Gains from Business / Profession" For this purpose, a 'taxable commodities transaction' means a transaction of sale of commodity derivatives ***or sale of commodity derivatives based on prices or indices of prices of commodity derivatives or option on commodity derivatives or option in goods in respect of commodities, other than agricultural commodities, traded in recognised stock exchange.***

Other Expenses [Section 37]

Section 37(1) of the Income-tax Act provides for allowance in respect of any other item of expenditure not covered by any of the provisions contained in Sections 30 to 36 discussed above and is limited to the amount actually expended during the Previous Year. This deduction is subject to the following conditions:

Conditions:

- **Expenditure should not be covered u/s 3036**
- **Expenditure should be incurred by the assessee in the PY**
- **Expenditure should be incurred wholly and exclusively for the purpose of business/profession**
- **Expenditure should not be personal in nature**
- **Expenditure should not be capital in nature**
- **Expenditure is not incurred for any purpose which is an offence or prohibited by law illegal/immoral purpose**

Explanation 3 to section 37(1)- It is clarified that the expression "expenditure incurred by assessee for any purpose which is an offence or which is prohibited by law in shall include and deemed to have always included the expenditure incurred by an assessee,-

(i) for any purpose which is an offence under any law for the time being in force, in india or outside india or which is prohibited by any law for the time being in force, in india or outside india; or

(ii) to provide any benefit or perquisite, in whatever form to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation

of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or

(iii) to compound an offence under any law for the time being in force, in india or outside india.

For eg: Expenses incurred in providing freebies to medical practitioner by pharmaceutical and allied health sector industry. These expenses are is in violation of the provisions of Indian medical council Regulations. Hence such expenditure are considered to be expenses prohibited by the law and not allowed in the hands of such pharmaceutical or allied health sector industry or other assessee which has provided aforesaid freebies.

Note:

1. Corporate Social Responsibility (CSR) expenditure is not construed to have been incurred for the purposes of business / profession and hence will be disallowed, and will be allowed aptly under the relevant Sections 30- 36.
2. Any advertisement expenditure in souvenirs of political parties, representing contributions for political purposes, would be disallowed.

Some of the examples of allowable expenses under Section 37(1) are as under:

(i) Expenditure incurred on raising loans or issuing debentures but not on issuing share capital.

(ii) Legal expenses incurred:

(a) to avoid a business liability, e.g., for alleged breach of a trading contract;

(b) to defend the assessee's title to his assets, e.g., land, building, etc.;

(c) to secure the termination of a disadvantageous trading relationship, e.g., removal of an undesirable employee;

(d) by a director of a company in defending a suit brought to challenge the validity of his election to the directorship;

(e) to protect the capital asset of the business which has already been acquired;

(f) by a company in resisting a winding up petition by some shareholders;

(g) for defending monopoly rights;

(h) incurred in restraining another company from using assessee's trade mark.

However, the expenses incurred in criminal proceedings are not allowable. Legal expenses relating to acquisition of capital asset for a business are capital expenses and as such, not allowable.

In this connection the Supreme Court held that-where litigation expenses are incurred by the assessee for the purpose of creating, curing or completing his title to the capital, then the expenses incurred must be considered as capital expenditure. But if the litigation expenses are incurred to protect the business of the assessee, they must be considered as a revenue expenditure. [*Dalmia Jain & Co. v. C.I.T. (1971) 81 ITR p. 754 (S.C.)*].

Expenditure for prosecuting civil proceedings is deductible provided the expenditure was laid out for the purpose of the business wholly and exclusively i.e. to promote the interest of the business. [*Sree Meenakshi Mills v. C.I.T. (1976) 63 ITR, p. 207 (S.C.)*]

(iii) Bonus to employees under an industrial award.

(iv) Expenses for the installation of new telephone.

(v) Sales tax is an admissible deduction but not estate duty.

(vi) Interest on unpaid purchase price of goods or capital assets.

(vii) Expenditure incurred to oppose nationalization or to prevent extinction of business. However, the donations given for the political parties or for political cause are not admissible deductions under Section 37.

(viii) Subscriptions given are allowed if their payment is compulsory or commercially expedient and of benefit to the payer.

(ix) Expenses incurred on the occasion of festival or customary days are allowed up to a reasonable amount keeping in view the size of the business and subject to the satisfaction of the Assessing Officer that the expenses are not expenses of personal, social or religions nature.

(x) Recurring expenses incurred on imparting basic training to apprentices under the Apprentices Act, 1961 is deductible.

(xi) Initial expenditure on the first installation of fluorescent tube lights is treated as Capital expenditure and hence not deductible but all subsequent expenditure for replacement of tubes is treated as revenue expenditure and hence deductible.

(xii) Loss through embezzlement by an employee is deductible.

(xiii) Professional tax paid by a person carrying on business or trade is allowed as deduction.

(xiv) Annual listing fee paid to stock exchange is allowed as deduction.

(xv) Expenses incurred on Civil defence measures as specified by the Board, even when there is no emergency, is deductible.

(xvi) Brokerage paid for raising loan to finance business.

(xvii) Stamp and registration charges for the purpose of entering into agreement for obtaining overdraft facilities.

(xviii) Security deposited with postal authorities for telex connection deductible as business expenditure. However, when the amount is returned by postal authorities, when the telex connection is finally closed, the refund shall be treated as an income of the assessee of the year in which the amount is refunded.

(xix) Compensation payable as a result of negligence in carrying on a business or termination of an employee, director or agent.

(xx) Compensation to an employee for injury sustained or accident met with while on duty.

(xxi) Royalty paid for mining, patents or copyrights.

(xxii) Insurance premiums: Premium for insurance of building, plant, machinery, furniture, stock or stores are allowable under specific sections, e.g., premium paid by a businessman under a policy insuring its employees or experts against death or injury, or insuring the employer against liability for compensation in respect of accidents to its workmen or against loss of trading licence.

(xxiii) Penalty paid by the assessee for saving from confiscation of the goods which he has purchased from a third- party without knowing that they had been illegally imported.

(xxiv) Pension, gratuity or other voluntary payment made to the employees are deductible but a gratuity paid to a single employee when it was not the practice of the business was treated as disallowable expense. In the same way voluntary pensions and lump sum payments made by a company to its employees on its winding up were not allowed.

(xxv) *Bona fide* expenditure of a revenue nature incurred for the welfare of employees on its winding up was not allowed.

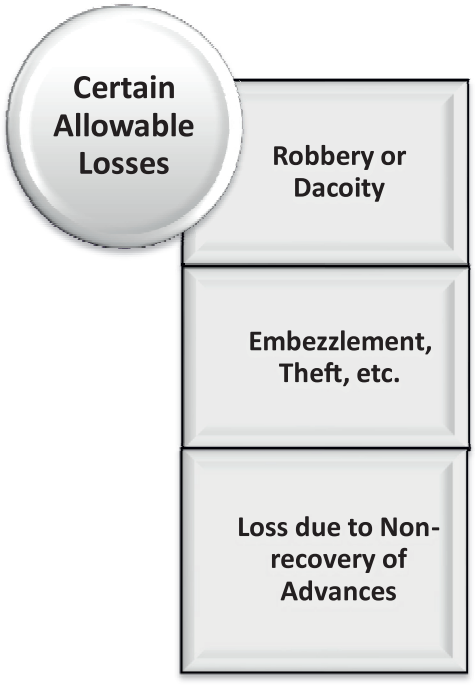
(xxvi) Excessive price paid out of extra commercial considerations shall be disallowed.

(xxvii) Sum paid by the assessee as a surety when it is not part of his business shall be disallowed.

(xxviii) Presents given to employees by way of gift and not as perquisites for services rendered, shall be disallowed.

Certain Allowable Losses

Losses which are directly incidental to the business or profession of the assessee are allowable. Following are some examples of such losses:



1. Robbery or Dacoity: Loss caused by robbery or dacoity is not deductible. But, if it is incidental to business it will be allowed as a deduction and this depends upon the specific circumstances and conditions. For example, if cash is sent for disbursement at different centers by a sugar factory in rural area, it is incidental to business and is, therefore, allowed. Any loss due to robbery in a bank will be allowed as the bank is under an obligation to maintain some cash outside the storeroom for payments.

2. Embezzlement, Theft, etc.: The loss of money due to embezzlement by an employee handling the funds of the business while discharging his official duties is allowed as deduction. It is deductible when discovered. When an employee goes to bank to deposit the cash or takes cash with him f or disbursement and he takes away the money for his own use, even then, the loss is allowable. Theft by a cashier, who is incharge of cash is also an allowable loss. A theft committed either by an employee or by someone else by breaking open into the business premises after office hours, is also allowable.

3. Loss due to Non-recovery of Advances: If it is the practice in a business to give advance money to the suppliers and if the supplier neither supplies the order nor refunds the advance money, the loss sustained by the assessee is incidental to business and is, therefore, allowable.

EXPENSES DISALLOWED [SECTION 40]

The following expenses shall not be deducted in computing the income chargeable under the head "profits and gains of business or profession:

- **Interest, royalty, fees for technical services payable outside India or India to a Non-Resident:** Under **Section 40(a)(i),** deduction is not allowed in respect of any interest, royalty, fees for technical services or other sum chargeable under the Income-tax Act, which is payable outside India or in India to a non-resident non-corporate or to a foreign company and on which tax has not been deducted or after deduction, has not been paid as specified in subsection (1) of section 139.

  Provided that where in respect of any such sum, tax has been deducted in any subsequent year or has been deducted in the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

  Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.

  Since the date of furnishing the return of income by the payee is taken to be the date on which the payer has deducted tax at source and paid the same, such expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(i) in the year in which the said expenditure is incurred. However, such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the payee, since tax is deemed to have been deducted and paid by the payer in that year.

- **TDS not deducted on any sum payable to a Resident: Under section 40(a)(ia), 30% of any sum payable to a resident** on which tax is deductible at source under Chapter XVIIB and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139.

  Provided that where in respect of any such sum, tax has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, 30% of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

  Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.

  ***For Example*:** Tax on rent paid to Mr. A, a resident, has been deducted during the previous year 2021-22, the same has to be paid by 31st July/ 31st October 2022, as the case may be. Otherwise, 30% of rent paid would be disallowed in computing the income for A.Y. 2022-23. If in respect of such rent, tax deducted during the P.Y. 2021-22 has been paid after 31stJuly/ 31st October, 2022, 30% of such rent would be allowed as deduction in the year of payment.

  Since the date of furnishing the return of income by the payee is taken to be the date on which the payer has deducted tax at source and paid the same, 30% of such expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(ia) in the

year in which the said expenditure is incurred. However, 30% of such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the payee, since tax is deemed to have been deducted and paid by the payer in that year.

- **Rate or Tax Paid on Profits: Under Section 40(a)(ii),** any sum paid by the assessee on account of any tax or rate levied on profits on the basis of or in proportion to the profits and gains of any business or profession, would be disallowed in full. For example, income-tax, foreign income-tax or a professional tax levied under the Municipal Act on persons who exercise a profession, trade or calling within the municipal limit shall be disallowed.

  Explanation 1 to sub-clause (ii) of clause (a) of Section 40 clarifies that any sum paid outside India and eligible for relief of tax under Section 90 or deduction from the Income Tax payable under Section 91 is not allowable and deemed to have never been allowable as a deduction under Section 40 of the Income Tax Act. However, the tax payers will continue to be eligible for tax credit in respect of Income Tax paid in a foreign country in accordance with the provisions of Section 90 or Section 91 as the case may be.

  Explanation 2 provides that any sum paid outside India and eligible for relief of tax under new Section 90A will not be allowed as a deduction in computation of profit and gains from business or professions.

  Under section 40(a)(iib), any amount paid by way of fee, charge, etc., which is levied exclusively on, or any amount appropriated, directly or indirectly, from a State Government undertaking, by the State Government, shall not be allowed as deduction for the purposes of computation of income of such undertakings under the head "Profits and gains of business or profession".

  A State Government undertaking includes –

  (a) A corporation established by or under any Act of the State Government;

  (b) A company in which more than 50% of the paid up equity share capital is held by the State Government;

  (c) A company in which more than 50% of the paid up equity share capital is held singly or jointly by (a) or (b);

  (d) A company or corporation in which the State Government has the right to appoint the majority of directors or to control the management or policy decisions.

  An authority, a board or an institution or a body established or constituted by or under any Act of the State Government or owned or controlled by the State Government.

- **Salaries [Section 40a(iii)]**: Any payment which is chargeable under the head "salaries" if it is payable outside India or to a non-resident and if the tax has not been paid thereon or deducted thereon under Chapter XVIIB of the Act.

- **Payment to Provident Funds etc. [Section 40a(iv)]**: Any payment to a Provident Fund or other fund established for the benefit of employees of the assessee would be disallowed in cases where the assessee (employer) has not made effective arrangements to secure deduction of tax at source from any payment made from the fund which are chargeable to tax under the head "salaries" in the hands of the employees.

- **Payment of tax on non-monetary perquisites [Section 40a(v)]:** In case of an employee, deriving income in the nature of perquisites (other than monetary payments), the amount of tax on such income paid by his employer is exempt from tax in the hands of that employee.

  Correspondingly, such payment is not allowed as deduction from the income of the employer. Thus,

the payment of tax on perquisites by an employer on behalf of employee will be exempt from tax in the hands of employee but will not be allowable as deduction in the hands of the employer.

- **Payment to Partners**: The provision of Section 40(b) in the case of a firm which is assessable as such or LLP the following amounts shall not be deducted in computing the business income of the Firm/ LLP:

  (a) **Payment to Non- working partner:** Any payment of salary, bonus, commission or remuneration to non- working partner.

  (b) **Remuneration paid to a working partner not authorized by deed:** Remuneration paid to a working partner or interest paid to any partner which is not authorised by or not in accordance with the terms of the partnership deed.

  (c) **Any remuneration paid to a working partner or interest paid to any partner** which is authorised by or is in accordance with the terms of the partnership deed but which relates to any period falling prior to the date of such partnership deed.

  (d) **Interest paid in excess of 12%:** any interest which is paid in accordance with the terms of the partnership deed and relates to any period falling after the date of such partnership deed but which is in excess of simple interest @ 12% p.a..

  (e) any remuneration to a working partner which is authorised by and is in accordance with the terms of the partnership deed and in relation to any period falling after the date of partnership deed is an allowable deduction subject however, to the condition that the maximum amount of such payment made to all the partners during the previous year should not exceed the limits given below:

Quantum of Book Profit	***Amount***
(a) Up to Rs. 3,00,000 or in case of a loss	Rs. 1,50,000 or 90% of the Book profit, whichever is more
(b) on the balance	60% of book profit

"Working Partner", means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner.

"Book Profit" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in chapter IV-D (i.e., Sections 28 to 44D) as increased by the aggregate amount of remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit.

For Example: A firm has paid Rs. 8 lakhs as remuneration to its partners for the P.Y. 2022-23, in accordance with its partnership deed, and it has a book profit of Rs. 10 lakh. Now the allowable remuneration calculated as per the limits specified in section 40(b):

On first Rs.3 lakh of book profit [Rs. 3,00,000 × 90%] = Rs. 2,70,000

On balance Rs. 7 lakh of book profit [Rs. 7,00,000 × 60%] = Rs. 4,20,000

Total = Rs. 6,90,000

So the excess amount of Rs. 1,10,000 (i.e., Rs.8,00,000 – Rs. 6,90,000) would be disallowed as per section 40(b)

- **Payment by AOPs / BOIs [Section 40(ba)]**: In the case of an association of persons or body of individuals (other than a company or a Co-operative Society or a society registered under the Societies

Registration Act, 1860, or under any law corresponding to that Act in force in any part of India) any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such association or body to its member shall not be allowed as a deduction in computing the income of such association or body.

As per explanation 1 to clause (ba) of Section 40 of the Income-tax Act, where interest is paid by the association or body to any member thereof, who has also paid interest to the association or body, the disallowance shall be restricted to the amount paid by the association or body to the member, after deducting therefrom the amount paid by the member to the association or body.

EXPENSES RESTRICTED

(1) Payment to Relatives or Associates [Section 40A(2)]: (1) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person specified below and the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable, having due regard to the

- fair market value of the goods, services or facilities for which the payment is made or
- the legitimate needs of the business or profession of the assessee or
- the benefit derived by or accruing to him therefrom,

so much of the expenditure as is considered to be excessive or unreasonable must be disallowed in computing the assessee's income from business or profession. However the amount so disallowed would be taxable as income in the hands of the recipient. **This section applies to expenditure only.** It is not attracted when assessee makes a sale to specified person at a price lower than its Fair Market Value.

Domestic Transfer pricing provisions of arm length pricing shall not be applied to any expenditure in respect of which payment is made to a related party covered by section 40A(2) of the Income-tax Act.

The specified persons, the payments to whom may fall for disallowance under this section are the following:

Assessee	***Specified Person***
An Individual	a. any relative of the individual assessee b. any person who carries on a business or profession, if individual assessee or any of his relative has a substantial interest in the business of that person
Company, firm, association of persons or H.U.F	a. any director of the company, partner of the firm, member of the association or family, or any relative of such director, partner or member b. In case of a company assessee, any individual who has substantial interest in the business or profession of the company or any relative of such individual c. any person who carries on a business or profession in which the company/ firm/ HUF/AOP or director of the company, partner of the firm or member of the family or association or any relative of such director, partner or member has substantial interest in the business of that person

Assessee	*Specified Person*
All Assessee	a. Any Person who has a substantial interest in the business or profession of the assessee or any relative of such Person b. Other related persons of such person, who has a substantial interest in the assessee's business like ● director of such company, partner of such firm or the member of such family or association. ● any relative of such director, partner or member ● Any other company carrying on business or profession in which the first mentioned company has a substantial interest

Note:

a. **Substantial interest in a Business or Profession means**- (i) in cases where the business or profession is carried on by a company, if such person is the beneficial owner at any time during the relevant accounting year of equity shares carrying not less than 20% of the total voting power, and (ii) in other cases, if such person is at any time during the accounting year, beneficially entitled to not less than 20% of the profits of such business or profession.

b. **Relative in relation to an Individual** means the spouse, brother or sister or any lineal ascendant or descendant of that individual.

(2) **Cash Payments exceeding Rs. 10,000 [Section 40A(3)]:** Where the assessee incurs any expenditure (while computing income under the heads Profit & Gains from Business and Profession and Income from Other sources) in respect of which **a payment or aggregate of payments made to a person in a day,** otherwise than by an account payee cheque drawn on a bank or account payee bank draft, or such other electronic modes as prescribed under Rule 6ABBA exceeds Rs. 10,000 (ten thousand rupees), no deduction shall be allowed in respect of such expenditure.

Prescribed Electronic Modes [Rule 6ABBA]

(a) Credit Card; (b) Debit Card; (c) Net Banking; (d) IMPS (Immediate Payment Service); (e) UPI (Unified Payment Interface); (f) RTGS (Real Time Gross Settlement); (g) NEFT (National Electronic Funds Transfer); and (h) BHIM (Bharat Interface for Money) Aadhar Pay. [**As Amended by Finance Act, 2020**]

Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profit and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds ten thousand rupees:

Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or such other electronic modes as may be prescribed, exceeds ten thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

Provided further that in the case of payment made **for plying, hiring or leasing goods carriages, the amount shall not exceed Rs. 35,000 (thirty-five thousand rupees)** instead of ten thousand rupees.

a) **Transaction of Loan**: It does not apply to loan transactions because advancing of loans or repayment of the principal amount of loans does not constitute an expenditure deductible in computing the taxable income. However, interest payments of amounts exceeding Rs. 10,000 at a time are required to be made by account payee cheques or drafts or electronic clearing system or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS(Immediate payment service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT(National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar pay as interest is a deductible expenditure.

b) **Payment made by commission agents**: This requirement does not apply to payment made by commission's agents for goods received by them for sale on commission or consignment basis because such payment is not an expenditure deductible in computing the taxable income of the commission agent.

For the same reason this requirement does not apply to advance payment made by the commission agent to the party concerned against supply of goods. However where commission agent purchases goods on his own account but not on commission basis the requirement will apply.

Under **Rule 6DD** of the Income-tax Rules, the following categories of payments are exempt for the purposes of this requirement. Consequently, the provisions of Section 40A (3) do not apply to the following cases and circumstances:

(i) Payments which are made to the Reserve Bank of India, State Bank of India or other banking institutions, including co-operative banks and land mortgage banks, primary credit societies, Life Insurance Corporation of India, Unit Trust of India and certain specified institute providing Industrial Finance.

(ii) Payments, which under the contracts entered into prior to 1.4.1969 have to be made only in legal tender.

(iii) Payments made to the Central or State Governments which under the Rules framed by the Government are required to be made in legal tender.

(iv) Payments in villages and towns having no banking facility, to persons ordinarily residing or carrying on business or profession in such villages or towns.

(v) Payments by means of book adjustment by the assessee in the account of the payee against money due to the assessee for any goods supplied or services rendered by him to the payee.

(vi) Payments made by any Letter of Credit arrangement through bank, a mail or telegraphic transfer through bank, a book adjustment from any account in a bank to any other account in that or any other bank and a bill of exchange made payable only to a bank.

(vii) Payments of terminal benefits made to an employee of an assessee such as gratuity, retrenchment compensation, etc. not exceeding Rs. 50,000.

(viii) Payments made to cultivators, growers or producers for the purchase of agricultural or forest produce, animal husbandry products including hides and skins, products of dairy or poultry farming, products of horticulture or fish, products of cottage industry run without the aid of power.

(ix) Where the payment is made to an employee temporarily but for a minimum period of fifteen days in a place other than his normal place of duty or on a ship provided tax has been deducted at source in terms of Section 192 of the Act and provided further that such employee has no bank account at such place of temporary posting or ship.

(x) Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike.

(xi) Where payment is made to an agent who in turn is required to make payment in cash for goods or services on behalf of the assessee.

Where an expense payable has been allowed in the assessment for any year in respect of any liability incurred by the assessee and in any subsequent year the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or such other electronic modes as prescribed under Rule 6ABBA, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, INR 10,000.

Will the provision of section 40A(3) be attracted in the following cases:

Questions	***Answers A.Y. 2023-24***
(a) Ashni purchases goods worth ₹ 60,000 from Ruchira against one bill but makes payment of ₹ 18,000, 18,000, 12,000 & 12,000 at different times on the same date.	Section 40A(3) shall be applicable and ₹ 60,000 shall be disallowed
(b) Ashni makes a payment of ₹ 50,000 as donation by cheque to National Defence Fund.	Section 40A(3) shall not be applicable. As donation is not allowable as deduction under section 30 to37 but allowable under section 80G from GTI
(c) Kiara makes a purchase of goods of ₹ 80,000 and makes payment of ₹ 65,000 by account payee cheque and ₹ 15,000 in cash.	Section 40A(3) will be applicable as the payment in cash exceeds ₹ 10,000. Hence, ₹ 15,000 shall be disallowed.
(d) Sarika, a dealer of machines purchases a machine for ₹ 1,50,000 and makes the payment by crossed cheque.	Entire ₹ 1,50,000 shall be disallowed as payment is not by account payee cheque
(e) Nitin pays a salary of ₹ 12,000 by crossed cheque to an employee.	₹ 12,000 shall be disallowed as the payment exceeds ₹ 10,000 and it has been made by a crossed cheque.
(f) Sachin purchases goods in cash from his brother for ₹ 60,000, whose market value is ₹ 55,000.	₹ 5,000 will be disallowed under section 40A(2) and ₹ 55,000 shall be disallowed under section 40A(3)
(g) Pooja purchases goods in cash for ₹ 40,000 from Nitin, a villager and makes payment to Nitin in his village where no banking facility is available.	No. As per rule 6DD, it is permissible.
(o) Big B makes a payment in cash amounting to ₹ 35,000 to a transporter on 5.11.2022.	Nothing shall be disallowed as payment is made to a transporter which can be made otherwise than by an account payee cheque upto ₹ 35,000.

(3) Provision for Gratuity [Section 40A(7)]: No deduction shall be allowed in respect of any provision made by the assessee for the payment of gratuity to his employees on their retirement or termination of their employment for any reason. However, any provision made by the assessee for the payment of

a sum by way of any contribution towards an approved gratuity fund or for the purpose of payment of any gratuity that has become payable during the previous year shall be allowed.

Where any provision made by the assessee for the payment of gratuity to his employees on their retirement or termination of their employment for any reason has been allowed as a deduction in computing the income of the assessee for any assessment year, any sum paid out of such provision by way of contribution towards an approved gratuity fund or by way of gratuity to any employee shall not be allowed as a deduction in computing the income of the assessee of the previous year in which the sum is so paid.

(4) Restriction on contribution by employers to non-statutory funds [Sections 40A(9), (10) and (11)]: With a view to discouraging creation of irrevocable or discretionary trusts funds, companies, associations of persons, societies, etc. the Finance Act, 1984 has provided that no deduction shall be allowed in the computation of taxable profits in respect of any sums paid by the assessee as an employer towards the setting up or formation of or as contribution to any fund, trust, company, association of persons, body of individuals or society or any other institution for any purpose, except where such sum is paid by the assessee as an employer or contributed (within the limits laid down under the relevant provisions) to a recognised provident fund or an approved gratuity fund or an approved superannuation fund or for the purposes of and to the extent required by or under any other law.

Disallowance of unpaid Statutory Liability [Section 43B]

Under the income-tax law, a person carrying on a business or profession can maintain account for his income either on cash or mercantile basis. The latter, however, have to reckon with the restrictions contained in Section 43B of the Income-tax Act. This section cuts into the freedom of a business to claim certain specified expenses on due basis. The section has broadly divided the targeted expenses into two, i.e., according to section 43B even if an assessee maintains books on mercantile system even then the following sums are allowed as deduction only on the basis of actual payment within the time limits specified in section 43B. In the first category are:

(a) Any sum payable by way of **taxes, duties, cess or fees,** by whatever name called under any law for the time being in force, or;

(b) **Bonus and commission** to employees;

(c) **Interest on any loan or borrowing** from public financial institutions, state financial corporations, state industrial investment corporations, non banking financial company (deposit taking & non deposit taking NBFCs) and on any loan or advance from a scheduled bank or co-operative bank (other than primary agricultural credit society or primary co-operative agricultural and rural development bank) in accordance with the terms and conditions of the agreement governing such loan or borrowing.

(d) **Leave encashment** paid by employer.

(e) Any sum payable by employer by way of **contribution to provident fund or super annuation fund or** any other fund for welfare of employees.

(f) Any sum payable by the assesee to the **Indian Railways** for use of railway assets

These expenses outstanding at the end of the previous year would be allowed as deduction only to the extent they have been actually paid on or before the due date of filing the income-tax return failing which they would be allowed in the previous year in which they have been actually paid.

The provisions of this section are applicable only to employer's contribution and are not applicable to employee's contribution for the welfare funds. Hence employer's contribution to various funds is allowed as deduction if the same is paid on or before the due date of filing return under section 139(1). However employee's contribution for

the welfare funds is first deemed as income of the assessee (employer) u/s 36(1)(va) and the same is allowed deduction only when such sums are deposited by the assessee to the employee's account in the relevant fund or funds on or before the due date as per the respective welfare acts.

It is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies."[Amendment vide Finance Act, 2021]

Note: Where there is default in the payment of such interest, such interest can be converted in to a loan. Such conversion of the unpaid interest in to loan, by itself, does not constitute the payment, for purposes of Section 43B. This shall be allowed proportionately in the previous year in which the converted interest is actually paid.

Any sum payable means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.

Illustration 11

During the Financial Year 2022-2023, the following payments / expenditure were made / incurred by Mr. Yuvan Raja, a Resident Individual (whose turnover during the year ended 31.03.2022 was ₹ 54 Lakhs):

1. Interest of ₹ 12,000 was paid to Rehman & Co, a Resident Partnership Firm.
2. Interest of ₹ 4,000 was paid as interest to Mr. R.D. Burman, a Non-Resident.
3. ₹ 3,00,000 was paid as salary to a resident individual.
4. He had sold goods worth ₹ 5 Lakhs to Mr. Deva. He gave Mr. Deva a cash discount of ₹ 12,000 later. Commission of ₹ 15,000 was paid to Mr. Vidyasagar on 02.07.2022.

In none of these transactions, tax was deducted at source. Briefly discuss whether any disallowance arises under the provisions of Sec. 40(a)(i) / 40(a)(ia) of the Income Tax Act, 1961.

Solution:

Assessee: Mr. Yuvan Raja Previous Year: 2022-2023 Assessment Year: 2023-2024

1. **Payment of Interest and Commission:** The Assessee is not subject to Tax Audit in the preceding PY since the Turnover of ₹ 54 Lakhs is less than the prescribed limit of u/s 44AB for PY 2021-2022. Therefore the Assessee is **not liable to deduct Tax** for both interest u/s 194A and commission u/s 194H. The amounts of ₹ 12,000 (Interest) and ₹ 15,000 (Commission) are allowable expenditure.
2. Interest, Royalty, Fees for Technical Services or other similar sum payable outside India or in India to a **Non-Resident** not being a Company, or to a **Foreign Company,** on which tax has not been paid or deducted at source or after deduction, tax has not been paid before the prescribed time u/s 139(1) will be allowed as a deduction in computing the income of the previous year in which such tax has been paid and not in the previous year to which it relates to. Hence, the interest of ₹ 4,000 paid to Mr. Burman without deduction of tax is **not an allowable expenditure** for the Previous Year 2022-2023. [Note: However, Where an Assessee fails to deduct tax at source but is **not** deemed to be an Assessee in Default u/s 201(1), then it shall be deemed that the Assessee has deducted and paid the tax on such sum, on the date of furnishing of Return of Income by the **Payee.**]
3. **Salary to a Resident:** TDS on Salaries to Resident Employees in India is also covered u/s 40(a)(ia). So, payment of ₹ 3,00,000 to a Resident Individual on which Tax was not deducted is disallowed to an extent of 30%. However, is allowed in the year of TDS remittance.
4. Sale of Goods and Cash Discount are business transactions and **TDS is not attracted** for these transactions. Therefore the amounts are **not disallowed u/s 40(a)(ia).**

Changes in Rate of Exchange [Section 43A]

As per Section 43Aof the Income-tax Act, where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment towards the whole or part of the cost of the asset or for payment of the whole or part of the moneys borrowed by him from any person directly or indirectly in any foreign currency specifically for the purpose of acquiring the capital asset. The amount by which the liability of the assessee in terms of Indian Rupees is increased or reduced as a result of change in the rate of exchange of the currency, would be added to or as the case may be deducted from the actual cost of the asset as defined in Section 43(1). Consequently, the amounts of depreciation allowable to assessee in respect of the asset would correspondingly be increased or reduced, as the case may be.

For these purposes, the expression **"rate of exchange"** must be taken to mean the rate of exchange determined or recognised by the Central Government for the conversion of Indian Rupee into foreign currency or *vice-versa*. In cases where the whole or part of the liability in respect of the payment for the cost of the asset or in respect of the money borrowed from a foreign source for acquiring the capital asset is not met by the assessee but directly or indirectly by any other person or authority, the liability so met by the other persons should not be taken into account for the purposes of any adjustment in the actual cost of the asset and consequently the depreciation allowable to the assessee arising from the change in the rate of exchange of the currency.

If, at the time of change in the rate of exchange arising on account of devaluation or otherwise the actual cost of the asset has been fully paid by the assessee and no money remains outstanding in respect of any sum borrowed specifically for the purpose, no adjustment would be permissible to the assessee. The special provision would, however, apply only in respect of capital expenditure or the value of the capital asset and would not in any way affect the value of the current assets, such as stock-in-trade or other trading assets.

The addition or deduction from the actual cost of the asset on account of change in the rate of exchange in any previous year shall be allowed to be made only on actual payment by the assessee towards the cost of the asset or repayment of the foreign loan or interest, irrespective of the method of accounting adopted by him.

DEEMED PROFITS

Section 41 of the Income-tax Act enumerates items of notional income which are deemed to be income from business or profession chargeable to tax. The liability to tax in respect of deemed profits would arise not only during the existence of the business but also after its discontinuance. The items of deemed profits are enlisted below:

(i) Remission of Liability or Recoupment of Loss or Expenditure: Where any allowance or deduction has been made in the assessment for any year in respect of losses, expenditure or trading liability incurred by the assessee and subsequently the assessee or his/its successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof during any subsequent accounting year, the amount so obtained or the value of the benefit so accruing to the assessee or his/its successor in business as the case may be, must be deemed to be the profits and gains of business or profession and must be charged to tax as the income of the assessee or his/its successor in business as the case may be for the year in which the remission or cessation takes place. This tax liability would arise irrespective of the fact whether the business or profession in respect of which the allowance or deduction has been made is being continued to be carried on by the assessee in the year of remission of liability or not. For instance, if sales tax is paid by the assessee in the year 1998-99 and the assessee gets a refund of sales-tax previously paid in the year 1999- 2000, the refund would be

taxable as the assessee's income of 1999-2000. But the taxability of any deemed profit on account of remission of liability or recoupment of loss would arise only if the liability in question or the amount of the loss was previously allowed as a deduction in computing the business income of the assessee. For instance, if the income-tax assessment for the year in which the expenditure or loss was claimed was made exparte or was a best judgement assessment and the income was estimated, it cannot be said that the expenditure was actually allowed as a deduction in the assessment. Consequently, if there is a remission of the liability subsequently, the assessee cannot be brought to charge in respect of the same. Unilateral write off of any liability would be taxable as deemed income.

(ii) Where any building, machinery plant or furniture owned by the assessee and used for the purpose of business for which depreciation under Section 32(1)(i) is claimed, is sold, discarded, demolished or destroyed and the money payable together with scrap value in respect of such assets exceeds the written down value, the excess to the extent of difference between the actual cost and the written down value shall be taxable as business income in the previous year in which the moneys payable become due.

Even if in the year the moneys payable becomes due, the business for which these assets were used is no longer in existence, the provisions of this section shall apply as if the business is in existence in that previous year.

(iii) **Capital expenditure on Scientific Research:** Where an assessee incurs capital expenditure on scientific research, the entire amount of such expenditure is allowable as a deduction in computing the business income of the assessee in the same year in which the expenditure is incurred. If subsequent to the incurring of the expenditure, the asset representing the capital expenditure is sold, without having been used for other purposes, the assessee would be liable to pay tax on the excess of sale proceeds together with the deduction allowed earlier over the amount of capital expenditure or the amount of deduction allowed earlier whichever is less.

Further, the assessee is liable to pay tax on the balancing charge even if the assessee's business is not in existence during the previous year in which the money payable in respect of any asset becomes due.

Explanation: For the purpose of Sub-section (3) -

1. "moneys payable in respect of any building, machinery, plant or furniture" includes -
   (a) any insurance, salvage or compensation moneys payable in respect thereof;
   (b) where the building, machinery, plant or furniture is sold, the price for which it is sold, so however, that where the actual cost of a motor car is, in accordance with the proviso to clause (1) of Section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso.
2. "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian Company.

(iv) **Recovery of Bad Debts:** Where the assessee claims a deduction in any year in respect of a debt which has become bad or irrecoverable and the Assessing Officer allows a deduction to the extent of the bad debts, if subsequently the assessee recovers either the full amount of the debt which was previously written off as bad or part thereof, the amount so recovered would be chargeable to tax as the business income of the assessee in the year of recovery. But if the amount claimed by the assessee as bad debt

was previously disallowed by the Assessing Officer on the ground that it had not actually become bad or it was not written off by the assessee, when the money is recovered, there would be no liability to tax in respect thereof. In cases where the Assessing Officer had allowed only a part thereof as bad, in the subsequent year of recovery, the tax liability under this section must be on the amount of difference between the amount recovered and the bad debt disallowed by the Assessing Officer.

(v) Withdrawal of any amount from special reserve: Where a deduction has been allowed in respect of any special reserve created and maintained under clauses (viii) of Sub-section (1) of Section 36 any amount subsequently withdrawn from such special reserve shall be deemed to be the profits and gains of business or profession and accordingly be chargeable to income tax as the income of the previous year in which such amount is withdrawn.

Where any amount is withdrawn from the special reserve in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

(vi) Set off of Losses of a Defunct Business against Deemed Profit : Where the business or profession referred to in this section is no longer in existence and there is income chargeable to tax under points (i), (iv) and (v) given above in respect of that business or profession, any loss, not being a loss sustained in speculation business, which arose in that business or profession during the previous year in which it ceased to exist and which could not be set off against any other income of that previous year shall as far as may be, be set off against the income chargeable to tax under the sub-section aforesaid.

Transfer of Immovable Property [Section 43CA]

Currently, when a capital asset, being immovable property, is transferred for a consideration which is less than the value adopted, assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, then such value (stamp duty value) is taken as full value of consideration under section 50C of the Income-tax Act.

It has been pointed out this variation between the stamp duty value and the value of sale consideration can occur in respect of similar properties in the same area because of a variety of factors such as shape of plot or location.

Hence in order to minimise the hardship to the assessee in case of genuine transactions it is provided that where the stamp duty value does not exceed 110% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset.

New Rates in case of Residential Unit [Amendment vide Finance Act, 2021]

In case of transfer of an asset, being a residential unit if the stamp duty value does not exceed 120% of the consideration received or accruing then, such consideration shall be deemed to be the full value of consideration for the purpose of computing profits and gains from transfer of such asset.

The new rate of 120% instead of 110% will be applicable only if the following conditions are satisfied, namely:

i. the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2020 and ending on the 30th day of June, 2021

ii. such transfer is by way of first time allotment of the residential unit to any person; and

iii. the consideration received or accruing as a result of such transfer does not exceed two crore rupees.

Meaning of Residential Unit: "Residential Unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.

These provisions do not apply to transfer of immovable property, held by the transferor as stock-in-trade. Where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable by any authority of state government for the purpose of payment of stamp duty in respect of such transfer the value so adopted or assessed or assessable shall for the purpose of computing income under the head "Profits and gains of business of profession" shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer. However, this exception shall apply only in those cases where amount of consideration or a part thereof for the transfer has been received by way of account payee cheque/bank draft or by use of electronic clearing system through a bank account or through such other prescribed electronic modes on or before the date of the agreement.

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

SPECIAL PROVISION IN CASE OF INCOME OF PUBLIC FINANCIAL INSTITUTIONS [SECTION 43D]

This section provides that in the case of a public financial institution or a scheduled bank or a state financial corporation or a state industrial investment corporation, the income by way of interest on such categories of bad and doubtful debts as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts shall be chargeable to tax in the previous year in which it is credited to profit and loss account by such institution referred above for that year or in the previous year in which it is actually received by them whichever is earlier.

With a view to improve the viability of leasing finance companies, the section has been amended to provide that in case of a public company, the income by way of interest in relation to such categories of bad and doubtful debts as may be prescribed having regard to the guidelines issued by the National Housing Bank established under the National Housing Bank Act, 1987 in relation to such debt shall be chargeable to tax in the previous year in which it is credited to the profit and loss account by the said public company for that year or in the previous year in which it is actually received by it, whichever is earlier. The benefit of Section 43D shall also be extended to co-operative banks (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank).

SPECIAL PROVISIONS RELATED TO INSURANCE BUSINESS [SECTION 44]

The profits and gains of any business of insurance must, according to Section 44, be computed in accordance with the rules contained in the First Schedule to the Income-tax Act. For the purpose of the computation, it is immaterial whether the insurance business is carried on by mutual insurance company or by a co-operative society or by any other person. The rules contained in the Schedule would apply notwithstanding anything to the contrary contained in the provisions of the Income-tax Act relating to the computation of income chargeable under the head 'Interest on Securities', 'income from house property', 'capital gains', or 'income from other sources' or under the head 'income from business or profession'.

COMPULSORY MAINTENANCE OF BOOKS OF ACCOUNT [SECTION 44AA]

1) Every person carrying on the legal / medical / engineering / architectural profession / accountancy / technical consultancy / interior decoration, or any other profession as notified by the Central Board of Direct Taxes (CBDT), in the Official Gazette, must statutorily maintain such books of account and other documents as may enable the Assessing Officer to compute his total income under the Act,

- If total **gross receipts exceeds Rs. 1,50,000 in all the three years** immediately preceding the previous year.
- if, where the **profession has been newly set** up in the previous year, his gross receipts are likely to exceed Rs. 1,50,000 in that year.

2) An **Individual or HUF** carrying on any business / profession **other than those specified above**, must maintain the books of accounts necessary for computation and assessment,
   - if the income from business / profession exceeds INR 250,000 OR the total turnover / gross receipts as the case may be, exceeds INR 25,00,000 in **any 1 of the 3 years immediately preceding** the accounting year and
   - **if the business / profession is newly set up**, if the income is likely to exceed **Rs. 2,50,000** or his **total sales, turnover or gross receipts**, as the case may be, in the business or profession **are likely to exceed** Rs. **25,00,000** during the previous year.

3) Every **person other than an Individual / HUF** carrying on any business / profession **other than those specified above,** must maintain the books of accounts necessary for computation and assessment, if the income from business / profession exceeds INR 120,000 OR the total turnover / gross receipts as the case may be, exceeds INR 10,00,000 in any 1 of the 3 years immediately preceding the accounting year and if the business / profession is newly set up, if the income / sales turnover is likely to exceed the thresholds mentioned i.e. Rs. 120,000 OR the total turnover / gross receipts as the case may be, exceeds Rs. 10,00,000, in the Previous Year.

4) Where profits and gains from business are deemed to be profits and gains under section 44AE or Section 44BB or Section 44BBB and assessee has claimed his income to be lower than the profits and gains then such profits and gains shall be deemed to be profits and gains of his business during the previous year or

5) Where the provisions of section 44AD(4) or section 44ADA are applicable to him and his total income exceeds the maximum amount which is not chargeable to income tax.

Under presumptive assessment under sections mentioned above, if assessee claims that his income is lower than that specified under these sections, assessee is required to gets his accounts audited by a Chartered Accountant and copy of that report needs to be attached alongwith his return of income. Therefore to gets his accounts audited he needs to maintain such books to substantiate his claim and also to enable Chartered Accountant to issue Audit Report to this effect.

The CBDT has the authority under the act to prescribe the books of accounts necessarily to be maintained having regard to the nature of business / profession, including their format and the details to be mentioned therein, and the place where these need to be maintained.

The books of accounts and other documents shall be kept and maintained for a period of 6 years from the end of relevant assessment year. For details students may refer to Rule 6F also for specified books to be maintained.

COMPULSORY AUDIT OF BOOKS OF ACCOUNT [SECTION 44AB]

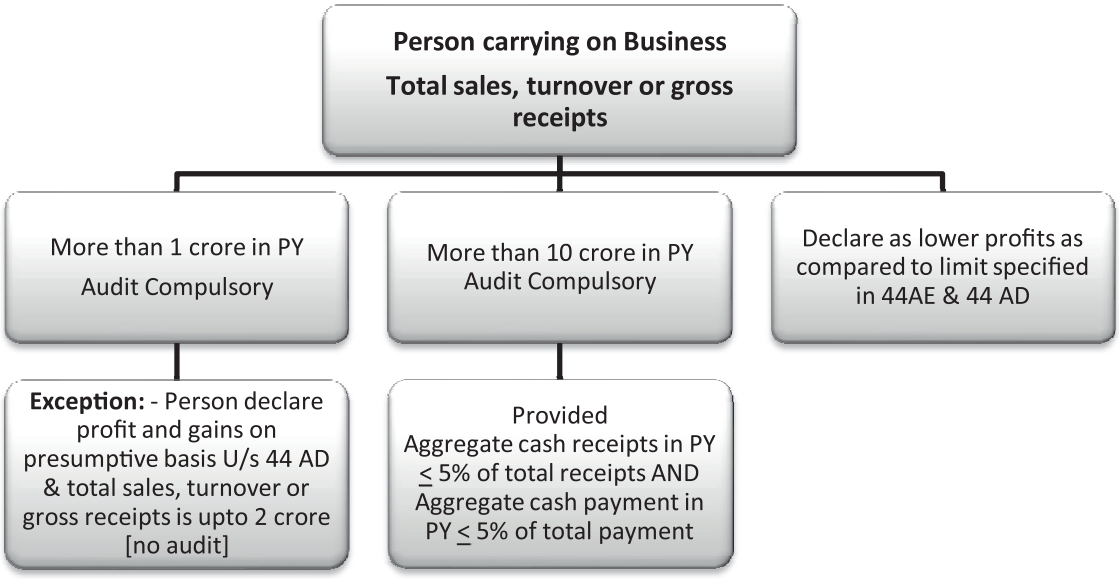
Section 44AB makes it obligatory for a person to get his accounts audited before the **"specified date"** by a "Chartered Accountant";

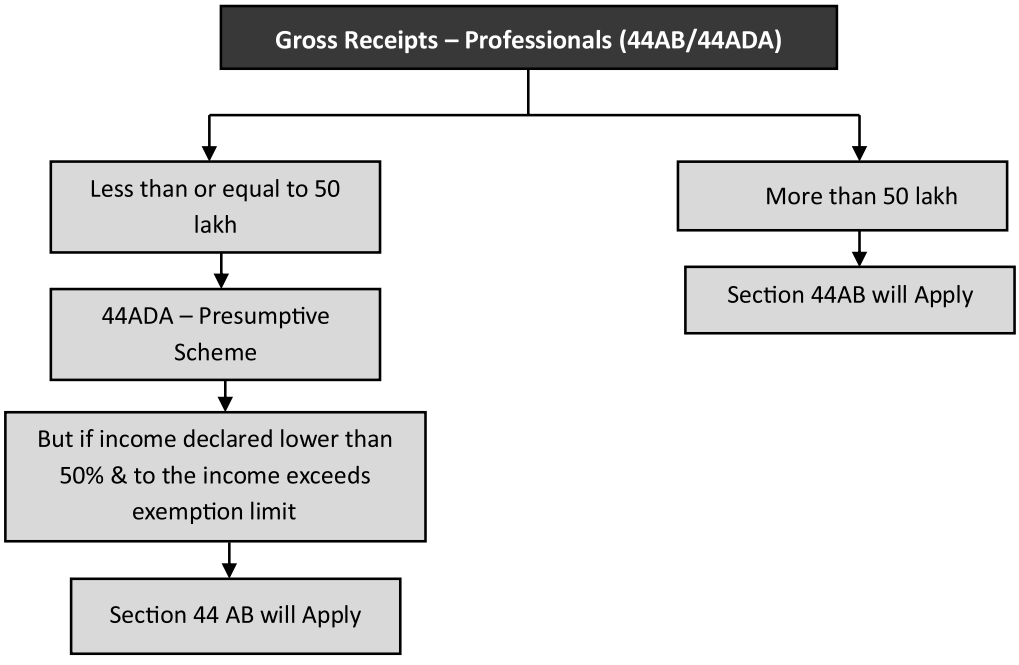
- if the total sales, turnover or gross receipts in business for the previous year exceeds INR 1 crore or
- if his gross receipts from profession for the previous year exceeds INR 50 lakhs. This includes professionals who are covered under the provisions of presumptive taxation and claim that their profits and gains from business / profession is lower than what computed under presumptive basis.

In order to reduce the compliance burden on the small and medium enterprises carrying on the Business, the threshold of turnover/sales limit for tax audit requirements has been increased from 1 Crore to 10 Crores [**limit has been increased from 5 crore to 10 crore vide Finance Act, 2021**], subject to following conditions:

a. Aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, **in cash,** does not **exceed 5%** of the said amount; and

b. Aggregate of all payments made including amount incurred for expenditure, **in cash,** during the previous year does not exceed 5% of the said payment.





The provision also casts an obligation on such persons to furnish by the "specified date", a report of the audit in the prescribed form duly signed and verified by the Chartered Accountant setting forth such particulars as may be prescribed by rules made in this behalf by the Central Board of Direct Taxes.(Form 3CA/3CB/3CD).

The requirement of audit u/s 44AB, doesn't apply to a person who declares profits / gains on a presumptive basis, u/s 44AD, and his total sales / turnover / gross receipts doesn't exceed INR 2 Cr.

Note: Specified Date is one month prior to the due date for filing Return of Income u/s 139(1) which shall be as under:

S. No.	*Type of Assessee*	*Due Date u/s 44AB for furnishing Tax Audit report*	*Due Date u/s 139(1) for furnishing Return of Income*
1.	Where the assessee is required to furnish a report of a CA u/s 92E relating to international transaction or specified domestic transaction (Transfer Pricing cases)	31st October of the relevant Assessment Year	30th November of the relevant Assessment Year
2.	Any other case	30th September of the relevant Assessment Year	31st October of the relevant Assessment Year

SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS OF BUSINESS ON PRESUMPTIVE BASIS [SECTION 44AD]

The provisions of this section shall be applicable to resident Individual, HUF, Firm (excluding LLP) carrying on any business **except** the business of plying, hiring or leasing goods carriages referred to in section 44AE and whose total turnover or gross receipts in the previous year does not exceed an amount of 2 Crores. This section aims at providing relief to all the small businesses from maintaining the books of accounts and to reduce the compliance and administrative burden.

- A sum equal to 8% of the total turnover or gross receipts of the assessees in the previous year shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

  Presumptive income u/s 44AD shall be calculated @ 6% instead of 8% in respect of those portions of turnover/ sales/gross receipts if following conditions are satisfied:

  a) Turnover / sales / gross receipts is received by an account payee cheque / draft / ECS through a bank account or such other modes as prescribed under Rule 6ABBA.

  b) The above payment is received during the previous year or before the due date of submission of return u/s 139(1) in the assessment year.

- **No deduction shall be allowed to the assessees under sections 30 to 38 and the salary and interest paid to the partners shall not be allowed for deduction subject to the conditions and limits specified in section 40(b).**

- The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessees had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

- The intent of this section is to reduce administrative and compliance burden on small businesses, and relieve them from the requirement of maintenance of books of accounts. Therefore, people opting for taxation on presumptive basis are not required to maintain books of account u/s 44AA or get them audited u/s 44AB. Assessee to maintain accounts and get them audited, if he claims the profits to be less than 6% or 8% (as applicable) of the gross receipts.

An assessee opting for section 44AD is required to pay advance tax by 15th March, every FY.

Persons not eligible for Presumptive Taxation Scheme: The following persons are specifically excluded from the applicability of the presumptive provisions of section 44AD -

(a) a person carrying on profession as referred to in section 44AA(1), i.e., legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board (namely, authorized representatives, film artists, company secretaries and profession of information technology have been notified by the Board for this purpose);

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

(c) a person carrying on any agency business.

Illustration 12

In the example below, the assessee has opted for presumptive taxation in AY 2019-20 and 2021-22 but in AY 2022-23, since his computed gains from business were lower than the presumptive, he didn't opt for it. Hence for 5 AY's subsequent to that year, i.e., from AY 2022-23 to AY 2026-27, he will not be able to opt for presumptive basis u/s 44AD.

	ASSESSMENT YEAR		
Particulars	***2019-20***	***2021-22***	***2022-23***
Gross Receipts	1,80,00,000	1,90,00,000	2,00,00,000
Presumptive Opted	Y	Y	N
Tax Rate	8%	8%	Not Applicable
Deemed Income for Taxation	14,40,000	15,20,000	10,00,000
Books of Accounts & Audit	N	N	Y

PRESUMPTIVE TAXATION FOR PROFESSIONALS [SECTION 44ADA]

This section allows presumptive basis, for a assessee being an individual, or a partnership firm other than a limited liability partnership as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, who is a resident in India who is engaged in the following professions: legal / medical / engineering / architectural / accountancy / technical consultancy / interior decoration, or any other profession as notified by the Central Board of Direct Taxes (CBDT), in the Official Gazette and whose gross receipts does not exceed INR 50,00,000 in the PY.

50% of the total gross receipts or such higher sum as may be declared by the assessee shall be deemed as income under the head Profit and Gains of Business and Profession (PGBP).

No deduction shall be allowed to the assessees under sections 30 to 38 and the salary and interest paid to the partners shall not be allowed for deduction subject to the conditions and limits specified in section 40(b).

The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessees had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

The intent of this section is to reduce administrative and compliance burden on small businesses, and relieve them from the requirement of maintenance of books of accounts. Therefore, people opting for taxation on presumptive basis are not required to maintain books of account u/s 44AA or get them audited u/s 44AB.

Assessee to maintain accounts and get them audited if he claims profits to be less than 50% of the Gross Receipts. An assessee opting for section 44ADA is required to pay advance tax by 15th March, every FY.

BUSINESS OF PLYING, HIRING OR LEASING GOODS CARRIAGES [SECTION 44AE]

This section provides a presumptive basis of taxation for estimating business income from plying, hiring or leasing goods carriages, so long as the assessee does not own > 10 vehicles at any time in the PY.

The current presumptive income scheme is applicable to all classes of goods carriages being less than 10 in number, irrespective of their tonnage capacity. Hence with amendment by Finance Act, 2018 the presumptive income shall be as under:

(i) In case of heavy goods vehicle (the gross vehicle weight of which exceeds 12,000 kilograms), the presumptive income would deemed to be an amount equal to Rs. 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher.

(ii) The vehicles other than heavy goods vehicle will continue to be taxed at as per the existing rates of Rs. 7,500 for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

An assessee may claim lower income than the presumptive income as specified under this section, if he keeps and maintains such books of account under section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.

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

No deduction shall be allowed to the assessees under sections 30 to 38 and the salary and interest paid to the partners shall be allowed for deduction subject to the conditions and limits specified in section 40(b).

The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessees had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

The intent of this section is to reduce administrative and compliance burden on small businesses, and relieve them from the requirement of maintenance of books of accounts. Therefore, people opting for taxation on presumptive basis are not required to maintain books of account u/s 44AA or get them audited u/s 44AB.

QUESTIONS AND ANSWERS

CASE 1

Ms. Priya is engaged in the business of generation and distribution of power and opts the WDV method for claiming Depreciation. She has an opening block of INR 50,00,000. She acquired new machinery for INR 25,00,000 on 15th Nov 2022. She also imported a new machinery from Zurich for INR 10,00,000 on 14th Apr 2022. This machine was used there earlier and she is the first user in India. Additionally, she bought computers for INR 500,000 on 9th Sep 2022.

You are required to compute the allowable depreciation under Income Tax Act, 1961 for AY 2023-24.

Answer

Items	*Date*	*INR*	*Category*	*Rate*	*Depreciation*
Opening WDV	1st Apr 2022	50,00,000	Full	15%	7,50,000
New Machinery	15th Nov 2022	25,00,000	Half	15%	1,87,500
Imported Machinery	14th Apr 2022	10,00,000	Full	15%	1,50,000
Computers	9th Sep 2022	5,00,000	Full	40%	2,00,000
Total Depreciation					12,87,500
Addl Depreciation					
New Machinery		25,00,000	Half	20%	2,50,000
Computers		5,00,000	Full	20%	1,00,000
Additional Depreciation					3,50,000
Annual Depreciation					16,37,500

Note: The machinery that was imported was first used therein at Zunich, earlier, before being imported into India and hence no depreciation will be allowed on the same.

CASE 2

Examine whether the following expenses incurred by Ms. Priyanka, a dealer in Securities, will be allowable?

(a) Expenses on CSR Activities INR 750,000

(b) Setting up a cold chain facility for specified products, INR 10,00,000

(c) Interest on loan paid to Mr. Shyam, INR 100,000 on which no TDS was affected. Her sales for the PY was INR 5 Crores

(d) Securities Transaction Tax paid INR 50,000

Answer:

(a) Expenses on CSR activities are not allowable as a deduction u/s 37 and hence the entire INR 750,000 would be disallowed

(b) This is a specified business for which she can claim 100% deduction u/s 35AD, hence entire INR 10,00,000 will be allowable

(c) The turnover of Ms. Priyanka exceeds the threshold of INR 100,00,000 and hence she was required to deduct tax at source. Since she didn't, 30% of the interest, i.e., 30% of INR 100,000, that is INR 30,000 would be disallowed u/s 40(a)(ia) and the balance INR 70,000 would be allowable for the assessee u/s 36(1)(iii)

(d) Securities Transaction Tax of INR 50,000 would be an allowable expense, assuming that income from such source, has been included under the head "Profits / Gains from Business / Profession".

CASE 3

Mr. Kundan Lal, a trader at Kolkata, submits the P&L as under, for FY 2022-23:

Profit & Loss Account for Year Ended 31st March, 2023			
Particulars	***INR***	***Particulars***	***INR***
To Opening Stock	1,00,000	By Sales	1,25,00,000
To Purchases	1,20,00,000	By Closing Stock	2,00,000
To Gross Profit	6,00,000		
Total	1,27,00,000	Total	1,27,00,000
To Rent, Rates, Taxes	1,08,000	By Gross Profit	6,00,000
To Salaries	1,25,000	By Interest Income	5,000
To Interest on loan	25,000		
To Depreciation	2,25,000		
To Printing & Stationery	25,000		
To Postage & Telegram	1,750		
To Loss on Sale of Shares (Short Term)	12,190		
To General Expenses	17,060		
To Net Profit	66,000		
Total	**6,05,000**	**Total**	**6,05,000**

Additional Information:

a) Closing Stock & Opening Stock was under-valued by 10%

b) Salary includes INR 20,000 paid to a relative which was considered unreasonable

c) The whole amount of Printing & Stationery was paid in Cash at one go

d) WDV of the Plant & Machinery on 1st April, 2022 was INR 12,00,000. Additions of INR 5,00,000 were made on 1st June 2021 and on 1st Oct 2022, Machinery was sold for INR 12,57,993

e) Rent & Rates included outstanding GST Liability for Mar' 22, of INR 27,000, duly paid within 7th April 2023

f) A donation of INR 12,000 was made to a public charitable trust during the year.

You are required to:

a) Calculate the Profits / Gains from Business Profession

b) Advise whether he should opt for the Presumptive scheme u/s 44AD

You can assume that the entire amount of turnover was received by account payee cheque.

Answer:

	Particulars	***INR***
	Net Profit	66,000
Add:	UV Closing Stock	2,22,222
	Salary (Relative)	20,000
	Printing & Stationery (Cash > 20000)	25,000
	Depreciation	2,25,000
	Donation	12,000
	Loss on Sale of Shares	12,190
		5,82,412
Less:	UV Opening Stock	1,11,111
	Allowable Depreciation	66,301
	Interest Income	5,000
	Profits / Gains from Business / Profession	4,00,000
	Under Presumptive Taxation	7,50,000

Since the tax liability on presumptive basis, i.e., 6% of Gross Receipts (INR 125,00,000 *6%) = INR 750,000 is higher than the computed Profits / Gains from Business Profession, he shouldn't adopt for presumptive basis. However, since his turnover is > INR 1 Crore, audit u/s 44AB would be mandatory, if he doesn't adopt presumptive basis.

Notes:

a) Under-valued closing stock added to Profits (100/90*200,000)

b) Under-valued opening stock reduced (100/90*100,000)

c) Salary to relative, to the extent considered reasonable, added back

d) Since the cash payment was > INR 10,000, entire amount disallowed u/s 40 A (3)

e) Depreciation added back and allowed as under:

Particulars	*INR*
Opening WDV	12,00,000
Additions	5,00,000
Disposals	12,57,993
Closing WDV	4,42,007
Depreciation @ 15%	66,301

f) Since the unpaid GST Liability was paid before the due date and before the date of filing return of income u/s 139(1), it is allowable.

CASE 4

Net profit as per profit and loss account of X is Rs. 6,86,000 for the year ending 31st March, 2023. The following information is noted from his accounts:

(a) Advertisement expenditure debited to profit and loss account include the following:

(i) Expenditure incurred outside India: Rs. 46,000 (permitted by RBI);

(ii) Articles presented by way of advertisement (60 articles cost of each being Rs. 900; and 36 articles cost of each being Rs. 1,700);

(iii) Rs 16,000 being cost of advertisement which appeared in a newspaper owned by a political party;

(iv) Rs. 11,400 being capital expenditure on advertisement;

(v) Rs. 12,000 paid in cash; and

(vi) Rs. 7,000 paid to a concern in which X has substantial interest (amount is excessive to the extent of Rs. 1,400).

(b) Out of salary to employees of Rs. 8,70,000 debited to the profit and loss account:

(i) Rs. 40,000 is employees' contribution to recognised provident fund, Rs. 37,500 of which is credited in the employees' account in the relevant fund before the 'due date';

(ii) Rs. 46,000 is bonus which is paid on 13th November, 2023;

(iii) Rs. 36,000 is commission which is paid on 1st December, 2022;

(iv) Rs. 20,000 is incentive to workers which is paid on 10th December, 2022;

(v) Rs. 40,000 is paid outside India in respect of which tax is not deducted at source;

(vi) Rs. 6,000 being capital expenditure for promoting family planning amongst employees; and

(vii) Rs. 40,000 being entertainment allowance given to employees;

(viii) Entertainment expenditure debited to profit and loss account is Rs. 9,000. Determine the net income of X for the assessment year 2022-23.

Answer:

Calculation of Net Income of X for Assessment Year 2022-23

Particular	***Amount***
Net Profit as per Profit and Loss Account	6,86,000
Add: Inadmissible items:	
Cash paid for advertisement expenses (Note 3)	12000
Cost of advertisement which appeared in a newspaper owned by a political party	16000
Excessive amount paid to a concern in which X has substantial interest	1400
Employee contribution to recognised provident fund (to the extent not credited in the employees' account in the relevant fund before the 'due date')	2500
Bonus being paid to employees after the 'due date' of filing the return	46000
Commission being paid to employees after the 'due date' of filing the return	36000
Salary paid outside India in respect of which tax is not deducted at source	40000
Capital expenditure for promoting family planning amongst employees (allowed only to a corporate assessee)	6000
Capital expenditure on Advertisements	11400
Net Income	8,57,300

Notes:

1. Restrictions on advertisement and entertainment abolished.
2. With the abolition of Section 37(3), which inter alia governed the deductibility of advertising expenses, advertising too has come within the fold of the omnibus Section 37(1) which specifically frowns on capital expenditure. The Himachal Pradesh High Court verdict in Mohan Meakin Breweries Ltd. v. CIT (1979) 118 ITR 101 allowing capital expenditure on advertising therefore has ceased to have the force of law as it was rendered in the context of Section 37(3).
3. Advertisement expenses of Rs. 12,000 (i.e., exceeding the limit of Rs. 10,000) is paid in cash, hence disallowed under section 40A(3).
4. The 'due date' for filing return where the assessee is a person (other than a company) who is required to get his accounts audited under the Income-tax Act or any other law is September 30; and where the assessee is a person deriving income from business and who is not required to get his accounts audited, the 'due date' is July, 31. Under the provisions of Section 43B of the Act - Bonus Rs. 46,000 paid on 13th Nov., 2022 and Commission Rs. 36,000 paid on 1st Dec., 2022 are not admissible since the payments are made after the above mentioned 'due date'.
5. Incentive to workers which is paid on 10th December, 2022 is admissible on 'due basis'.

CASE LAW

1.	*2010*	*Vijaya Bank v. Commissioner of Income Tax*	*Supreme Court*

"Actual write off" of individual debtor's account is not necessary under 36(1)(vii) Bad Debt, of the Income-tax Act, 1961

Decision: On a question before the Hon'ble Supreme Court whether it is imperative for assessee-bank to close individual account of each of its debtors in its books for claiming deduction under section 36(1)(vii) of the Income-tax Act, the Supreme Court referring to its judgement in Southern Technologies Limited v. Joint CIT9 held that in order to understand the term "write-off" one has to see how the write off has been effected. If an assessee debits an amount of doubtful debtors to profit and loss account and credits the asset account (i.e., sundry debtors) it would constitute an actual write off of a debt.

On the contrary, if the amount is credited to "current liabilities and provisions", then it would be a provision. In the latter case the assessee would not be entitled to the deduction after 1-4-1989. It was also held that the assessing officer was empowered to tax the subsequent repayment, if any, under section 41(1) of the Income-tax Act.

Reference may also be made to the Supreme Court decision in TRF Limited vs CIT10 wherein it was held that bad debts need not be proven to be irrecoverable under section 36(1)(vii). It is sufficient if they are written off.

2.	*2010*	*Commissioner of Income-tax v. Smt. Sita Devi Juneja*	*Punjab and Haryana High Court*

Remission of a liability under section 41(1) of the Income Tax Act, 1961

Decision: The High Court held that merely because liability was outstanding for the last six years, it could not be presumed that the said liability had ceased to exist. It was also conceded that there was no Bilateral Act between the assessee and the creditors, which indicated that the said liability had ceased to exist. In absence of any bilateral act, the said liability could not have been treated as ceased. In view of these facts, the Commissioner (Appeals) as well as the Tribunal had rightly come to the conclusion that the Assessing Officer had wrongly invoked the Explanation I to section 41(1) and made the aforesaid addition on the basis of presumptions, conjectures and surmises. It had been further found that the Assessing Officer had failed to show that in any earlier year allowance of deduction had been in respect of any trading liability incurred by the assessee. It was also not proved that any benefit was obtained by the assessee concerning such a trading liability by way of remission or cessation thereof during the concerned year. Thus, there did not accrue any benefit to the assessee which could be deemed to be the profit or gain of the assessee's business, which would otherwise not be the assessee's income. It had been further found as a fact that the assessee had filed the copies of accounts of sundry creditors signed by the concerned creditors.

3.	*2014*	*CIT v. K and Co.*	*Delhi High Court*

Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?

Decision: The High Court held that the interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession".

4.	2015	Additional CIT v. Dharmpur Sugar Mill (P) Ltd	Allahabad High Court

Is expenditure incurred for construction of transmission lines by the assessee for supply of power to UPPCL by the assessee deductible as revenue expenditure?

Decision: Following the principle of law laid down by the Supreme Court in Empire Jute Mills' case, the Allahabad High Court, in this case, held that the expenditure which was incurred by the assessee in the laying of transmission lines was clearly on the revenue account. The transmission lines, upon erection, vested absolutely in UPPCL. The expenditure which was incurred by the assessee was for aiding efficient conduct of its business since the assessee had to supply electricity to its sole consumer UPPCL. This was not an advantage of a capital nature.

5.	2013	CIT v. Orient Ceramics and Industries Ltd.	Delhi High Court

What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?

Decision: The Delhi High Court held that such expenditure on glow sign boards displayed at dealer outlets was revenue in nature.

6.	2011	CIT v. ITC Hotels Ltd.	Karnataka High Court

Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?

Decision: The Karnataka High Court held that the expenditure incurred on the issue and collection of debentures shall be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date.

7.	2012	CIT v. Kap Scan and Diagnostic Centre P. Ltd.	Punjab and Haryana High Court

Can the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure under section 37 or would it be treated as illegal and against public policy to attract disallowance?

Decision: The demanding as well as paying of such commission is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, the High Court held that commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure.

8.	2015	CIT v. KLN Agrotechs (P) Ltd	Karnataka High Court

Where the lump sum amount paid as One Time Settlement (OTS), without bifurcation of interest and principal, has been offered to tax under section 41(1), can the assesseee claim benefit of deduction of interest (interest paid plus interest waived) under section 43B?

Decision: The High Court concurred with the Tribunal's view that if out of the total sum of INR 256.54 lakhs which has been offered and subjected to tax by the assessee in its return, the amount of unpaid interest of INR 193.96 lakhs is deducted then the waived principal sum would come to 62.58 lakhs (i.e., INR 441.30 lakhs minus 378.72 lakhs), which is the amount which ought to have been taxed under section 41(1). Based on the above reasoning, the HC held that either the interest amount has to be allowed as deduction under section 43B or the sum offered for tax (as waived by the bank) has to be reduced by the amount of interest. In either case, the effective amount which is subjected to tax, would come to the same.

9.	***2016***	***Shasun Chemicals & Drugs Ltd v. CIT***	***Supreme Court***

In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable under section 36(1)(ii) while computing business income?

Decision: The Apex Court held that section 36(1) contains various kinds of expenses which are allowable as deduction while computing the business income. The amount paid by way of bonus is one such expenditure which is allowable as deduction under section 36(1)(ii).

It also held that the embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee's claim, since the bonus was ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction, as there is no dispute that the amount was paid by the assessee to its employees before the due date by which such payment is supposed to be made in order to claim deduction under section 36(1)(ii).

Note: In this case, the Supreme Court has held that the bonus was allowable as deduction under section 36(1) (ii), even though it was initially remitted to the trust created for this purpose, from which the payment was ultimately made to the employees before the due date. The Supreme Court has applied the concept of "substance over form" in allowing the deduction of bonus paid under section 36(1)(ii) by considering that the payment of bonus was ultimately made to employees before the stipulated due date. Applying the same concept, the intermittent process of creation of trust for remittance of bonus and subsequent payment therefrom to the employees, which formed the basis of disallowance of bonus by the Assessing Officer on the basis of the provisions of section 40A(9) has been ignored. However, had the payment to employees not been made before the stipulated due date, deduction under section 36(1)(ii) would not be allowable merely because the amount was remitted to the trust before the stipulated due date. It may be noted that as date of file of return of income under section 139(1) is a pre-requisite for claiming deduction under section 36(1)(ii).

Gains of Business or Profession". It is an admitted fact in the instant case that the assessee company has only one business and that is of leasing its property and earning rent there from. Thus, even on the factual aspect, we do not find any substance in what has been submitted by the learned counsel appearing for the Revenue".

"The judgment relied upon by the learned counsel appearing for the assessee squarely covers the facts of the case involved in the appeals. The business of the company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income".

10.	2016	M/s. Rayala Corporation Pvt. Ltd vs. Assistant Commissioner of Income Tax	Supreme Court

Income from Rent out Business is 'Profits & gains of business' not 'Income from House property

Decision: In a recent case between M/s. Rayala Corporation Pvt. Ltd vs. Assistant Commissioner of Income Tax, the Supreme Court of India has declared that, Income which was arises from Rent out business should be taxed under the Head "Profits and gains of business or profession' not 'Income from House property.

The appellant-assessee, a private limited company, is having house property, which has been rented and the assessee is receiving income from the said property by way of rent.

The division bench comprising of Justice Anil R Dave and Justice L Nageshwar Rao has relied the case *Chennai Properties and Investments Ltd. v. Commissioner of Income Tax [2015] 373 ITR 673 (SC)* that if an assessee is having his house property and by way of business he is giving the property on rent and if he is receiving rent from the said property as his business income, the said income, even if in the nature of rent, should be treated as "Business Income" because the assessee is having a business of renting his property and the rent which he receives is in the nature of his business income.

While setting aside the Madras High Court Judgment, the division bench of Supreme Court observed that, "the rent should be the main source of income or the purpose for which the company is incorporated should be to earn income from rent, so as to make the rental income to be the income taxable under the head "Profits and Gains of Business or Profession". It is an admitted fact in the instant case that the assessee company has only one business and that is of leasing its property and earning rent there from. Thus, even on the factual aspect, we do not find any substance in what has been submitted by the learned counsel appearing for the Revenue".

"The judgment relied upon by the learned counsel appearing for the assessee squarely covers the facts of the case involved in the appeals. The business of the company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income".

11.	2018	CIT v. Mahindra and Mahindra Ltd.	Supreme Court

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)?

Decision: The assessee, Mahindra and Mahindra is advanced with a loan for procurement of capital assets, namely, plant, machinery and tooling equipment from a foreign Company K. Later on, AMC took over K and agreed to waive the principal amount of loan advanced by K to the assessee-company. This was communicated to the assessee-company which filed its return showing Rs. 57,74,064 as cessation of its liability towards AMC. The Income-tax Officer concluded that the waiver of the loan amount represented income and held that the sum of Rs. 57,74,064 was taxable under section 28(iv) as a perquisite. The alternate argument of the revenue authorities was that the sum would be taxable under section 41(1) as a waiver of a trading liability.

The Supreme Court observed that for applicability of section 28(iv), income must arise from business or profession and the benefit received has to be in non-monetary form. The amount of Rs. 57,74,064, being a cash receipt, therefore, does not fall under section 28(iv).

For being covered under section 41(1), the assessee-company should have claimed an allowance or deduction in any assessment for any year in respect of a trading liability incurred by the assessee. In this case, the loan was taken for procurement of capital assets, namely, plant, machinery and tooling equipment. The purchase amount had not been debited to the trading account or to the profit and loss account in any of the assessment years. Hence, waiver of such loan would not tantamount to cessation of a trading liability.

LESSON ROUND-UP

- Sections 28 to 44D contain the provisions for computation of Income from Business and Profession. Section 28 defines the scope of income which can be taxed under this head.
- Section 29 specify the method of computation of income under the business or profession.
- Expenses/allowances expressly allowed by the Act are listed under sections 28 to 37, whereas sections 40 and 40A enumerate those expenses which are expressly disallowed and 43B expenses to be made on actual payment basis, while computing taxable income under this head.
- Section 44AA provides for maintenance of accounts by the assessee carrying on business or profession.
- Mandatory tax audit of accounts of the persons carrying on business or profession is prescribed in section 44AB.
- Computation of profit from business and profession on presumptive basis are covered under sections 44AD, 44ADA and 44AE.
- Section 44B laid down special provisions for computing profits and gains of shipping business in case of non-residents.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions "MCQs"

1. Preliminary Expenses u/s 35D, qualifying so would be deductible in equal installments
   a) Five
   b) Seven
   c) Ten
   d) One

   Answer : (a)
2. The rate of depreciation specified for intangible assets is?
   a) 25%
   b) 30%
   c) 40%
   d) 15%

   Answer : (a)
3. Salary, Bonus etc. under section 40(b) is allowed to:
   a) Working partner
   b) Non-working partner
   c) All the partners
   d) None of the partners

   Answer : (a)

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann

- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Capital Gains

Lesson 7

KEY CONCEPTS

■ Capital Assets ■ Transfer ■ Short Term Capital Gain ■ Long Term Capital Gain ■ Cost of Acquisition ■ Cost of Improvement ■ Indexed Cost of Acquisition ■ Indexed Cost of Improvement

Learning Objectives

To understand:

- The conditions to be satisfied for income chargeable under the head Capital Gains
- Which assets are classified as Capital Assets?
- Year of chargeability as Capital Gains
- Classification of Capital Gain into Short Term and Long Term
- Which transactions are not regarded as transfer?
- What are the various exemptions available in respect of computation of Capital Gains?
- When can the Assessing Officer make reference to the Valuation Officer?

Lesson Outline

- Introduction
- Chargeability
- Capital Asset [Section 2(14)]
- Impact of Section 115BAC under the head Capital Gains
- Transfer [Section 2(47)]
- Mode of Computation
- Ascertainment of Cost in Specified Circumstances [Section 49]
- Year of Chargeability as "Capital Gain"
- Capital Gains for Depreciable Assets [Section 50]
- Capital Gains in Respect of Slump Sale [Section 50B]
- Computation of Capital Gains in Real Estate Transaction [Section 50C]
- Capital gain of transfer of unlisted share in a company [Section 50CA]
- Fair market value to be full value of consideration in certain cases [Section 50D]
- Reference to Valuation Officer [Section 55A]
- Advanced Money Received [Section 51]
- Exemption from Capital Gain
- Tax on long-term capital gain in case of specified securities [Section 112A]
- Tax Rates
- Case Law
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

Sections	Income Tax Act, 1961
Section 2(14)	Capital Assets
Section 2(42A)	Short Term Capital Assets
Section 2(42B)	Short Term Capital Gains
Section 2(47)	Transfer
Section 45	Chargeability
Section 45(5A)	Taxability of Capital Gains in case of Specified Agreement
Section 48	Mode of Computation of Capital Gains
Section 55	Cost of Improvement
Section 49	Ascertainment of Cost in Specified Circumstances
Section 50	Capital Gains in respect of Depreciable Assets
Section 50B	Capital Gains in respect of Slump Sale
Section 2(42C)	Meaning of Slump Sale
Section 50C	Computation of Capital Gain in Real Estate Transaction
Section 50CA	Capital Gain on Transfer of unlisted Shares in a Company
Section 50D	Fair Market Value to be Full Value of Consideration in Certain Cases
Section 55A	Reference to Valuation Officer
Section 51	Advance Money Received
Section 54	Profit on sale of property used for Residential purpose
Section 54B	Transfer of land used for Agricultural purposes
Section 54D	Compulsory acquisition of lands and buildings
Section 54EC	Capital Gains Exemptions in case of Investments made in Specified Bonds
Section 54EE	Tax incentives for Start-ups
Section 54F	Capital gain on the transfer of certain capital assets not to be charged in case of investment in Residential House
Section 54GA	Exemption of capital gain on transfer of assets of shifting of industrial undertaking from urban area to a Special Economic Zone
Section 54GB	Capital Gain on Transfer of Residential property (a house or a plot of land)
Section 54H	Extension of Time for Acquiring New Asset or Depositing or Investing Amount of Capital Gain
Section 112A	Tax on long-term Capital Gains in case of Specified Securities

Chapter Overview				
Chapter under Income Tax Act	***Section 45***	***Section 2(14)***	***Section 48***	***Section 54 to 54GB***
IV	Charging Section	Capital Assets	Computation of Capital Gain	Exemptions

INTRODUCTION

The provisions for computation of Income from Capital Gains are covered under sections 45 to 55 of the Income Tax Act, 1961. Section 2(14) defines the term capital gain and section 45 is charging section which lays down the basis of charge for taxability of Capital Gain / Loss arises on transfer of Capital Asset.

Taxability of Capital Gain depends upon the nature of Capital Gain, i.e., short term capital gain or long term capital gain. The type of capital gain depends upon the period for which the capital asset is held. The taxability of capital gain shall satisfy the following conditions:

- There should be Capital Asset
- The Capital Asset is transferred by the Assessee
- Such Transfer takes place during the previous Year.

To give relief to the assessee, the concept of exemption introduced under section 54, 54B, 54D, 54EC, 54EE, 54f, 54G, 54GA, 54GB.

CHARGEABILITY [SECTION 45]

Sections 45 to 55A of the Income-tax Act, 1961 deal with Capital Gains. Section 45 of the Act, provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in various sections of Section 54, be chargeable to income-tax under the head 'Capital Gains' and shall be deemed to be the income of the previous year in which the transfer took place.

Doubts may arise as to whether 'Capital Gains' being a capital receipt can be brought to tax as income. It may be noted that the ordinary accounting canons of distinctions between a capital receipt and a revenue receipt are not always followed under the Income-tax Act. Section 2(24)(vi) of the Income-tax Act specifically provides that "Income" includes "any capital gains chargeable under Section 45(1)". It may not be out of place to mention here that in the absence of a specific provision in Section 2(24) capital gains has no logic to be taxed as income.

The Constitutional validity of the provisions of the Act relating to capital gains was challenged in *Navin Chandra Mafatlal* v. *C.I.T.* (1955). The Supreme Court while upholding the competence of parliament in legislating with regard to capital gains as a part of income observed that the term income should be given the widest connotation so as to include capital gains within its scope. However, all capital profit do not necessarily constitute capital gains. For instance, profit on re-issue of forfeited shares, profit on redemption of debentures, premium on issue of shares, are capital profit and not capital gains, hence, not liable to tax.

The requisites of a charge to income-tax, of capital gains under Section 45(1) are:

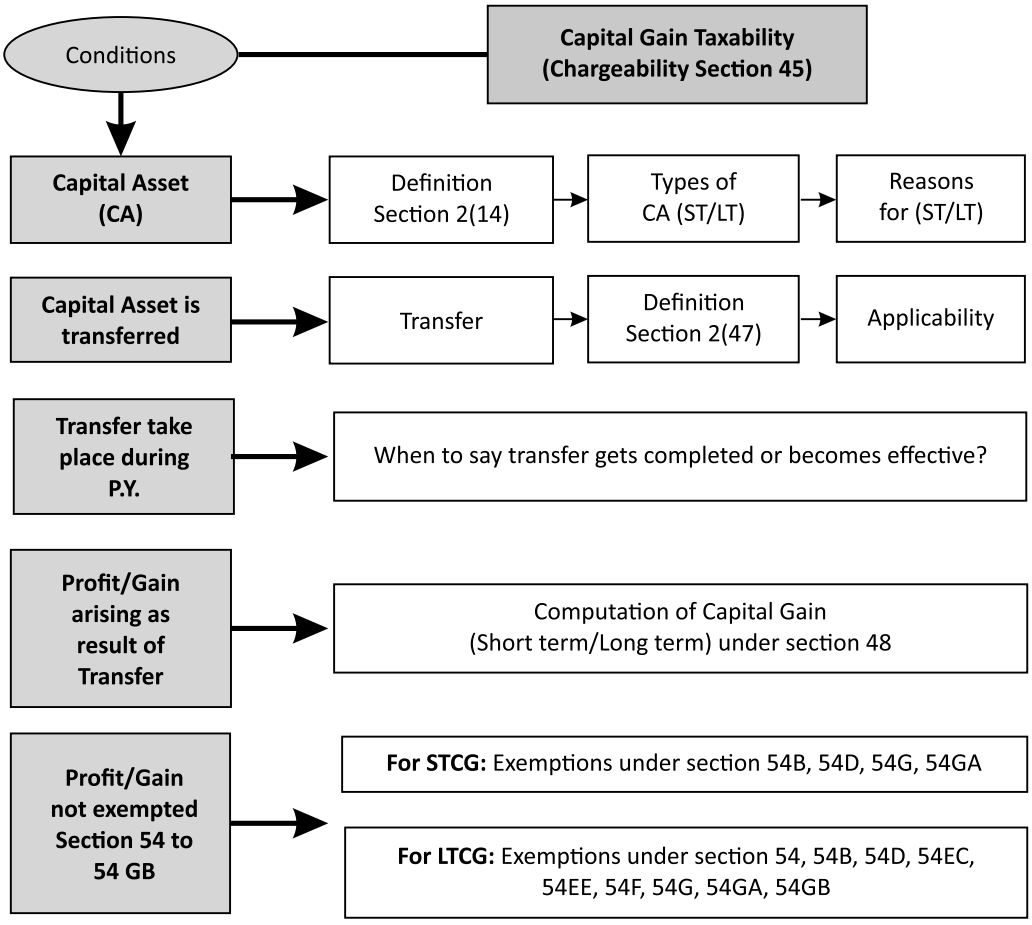
(i) There must be a Capital Asset.

(ii) The capital asset must have been transferred.

(iii) The transfer must have been effected in the previous Year.

(iv) There must be a gain arising on such transfer of a Capital Asset.

Such capital gain should not be exempt under Sections 54, 54B, 54D, 54EC, 54EE, 54ED, 54F, 54G, 54GA or 54GB.



CAPITAL ASSETS [SECTION 2(14)]

Definition Section 2(14)	**Property of any kind**	• Fixed / Circulating / Movable / Immovable / Tangible / Intangible whether connected with his business or profession
	Securities by FII	• Any securities held by a Foreign Institutional Investor which has invested in such securities as per SEBI Act,1992
	Any ULIP	• Any Unit Linked Insurance Policy (ULIP) to which exemption under section 10(10D) does not apply. (i.e. Payment / aggregate payment of premium > Rs 250000 made in any PY in case of ULIP issued on or after 1.2.2021. **(w.e.f AY 2021-22)**
	Includes	• Any rights of management / control • Jewellery, Drawings, Paintings, Scruptures, Work of art • Archaeological collections

<table>
<tr><td rowspan="2"></td><td>Excludes</td><td colspan="2">

Stock in trade, Consumable store, and Raw material held for business/ profession.
Personal Effects (Wearing apparel & Furniture)
Movable personal effects
Agriculture land situated in rural area
Gold deposit bonds issued under Gold Deposit Scheme, 1999 or Deposit certificate issued under Gold Monetization scheme, 2015 and 2019 as notified by CG
Special Bearer Bonds, 1991

</td></tr>
<tr><td>Rural Area</td><td colspan="2">

It refers outside jurisdiction of municipality (M) / cantonment board (CB) having population more than equal to 10,000 and also does not fall within below:

<table>
<tr><th>From local limit of M / CB</th><th>Population of M / CB</th></tr>
<tr><td>≤ 2 Km</td><td>> 10,000- Not > 1,00,000</td></tr>
<tr><td>> 2 km-≤ 6 Km</td><td>> 1,00,000 - Not > 10,00,000</td></tr>
<tr><td>> 6 km-≤ 8 Km</td><td>> 10,00,000</td></tr>
</table>
</td></tr>
<tr><td rowspan="8">Types of “Capital Assets”</td><td>Main Type</td><td colspan="2">

Long Term Capital Asset (LT)
Short Term Capital Asset (ST)

</td></tr>
<tr><td rowspan="2">36 Months immediately prior to date of transfer</td><td>Held for >36M</td><td>Long Term Capital Asset (LT)</td></tr>
<tr><td>Held for <36M</td><td>Short Term Capital Asset (ST)</td></tr>
<tr><td rowspan="3">24 Months immediately prior to date of transfer</td><td>Held for >24M</td><td>Long Term Capital Asset (LT)</td></tr>
<tr><td>Held for <24M</td><td>Short Term Capital Asset (ST)</td></tr>
<tr><td>Assets Coverage:</td><td>

Unlisted equity shares / Preference Shares
Immovable Property (Land/Building/Both)

</td></tr>
<tr><td rowspan="3">12 Months immediately prior to date of transfer</td><td>Held for >12M</td><td>Long Term Capital Asset (LT)</td></tr>
<tr><td>Held for <12M</td><td>Short Term Capital Asset (ST)</td></tr>
<tr><td>Assets Coverage:</td><td>

Listed (Equity shares, Preference Shares, Securities)
Units of Equity Oriented Fund / Zero Coupon Bond (ZCB)

</td></tr>
</table>

Notes: In determining the period for which a capital asset is held by an assessee, the following points must be noted:

(i) In the case of **shares held in a company in liquidation**, the period subsequent to the date on which the company goes into liquidation shall be excluded;

(ii) In case the **asset becomes the property of the assessee** under the circumstances mentioned in Section 49(1) - discussed later in this lesson - the period for which the asset was held by the previous owner shall be included;

(iii) In the case of the shares in an Indian Company which become the property of the assessee in a **scheme of amalgamation**, the period for which the shares in the amalgamating company were held by the assessee shall be included;

(iv) In the case of a capital asset, being **a share or any other security subscribed to by the assessee on the basis of his right to subscribe to such financial asset or subscribed to by the person in whose favour the assessee has renounced his right to subscribe to such financial asset,** the period shall be reckoned from the date of allotment of such financial asset;

(v) In the case of a capital assets, being the **right to subscribe to any financial asset,** which is renounced in favour of any other person, the period shall be reckoned from the date of the offer of such right by the company or institution, as the case may be, making such offer;

(vi) In the case of a **capital asset, being a financial asset, allotted without any payment and on the basis of holding of any other financial asset**, the period shall be reckoned from the date of the allotment of such financial asset;

(vii) In the case of a **capital asset, being a share or shares in an Indian company, which becomes the property of the Assessee in consideration of a demerger**, there shall be included the period for which the share or shares held in the demerged company were held by the Assessee;

(viii) In the case of a **capital asset, being trading or clearing rights of a recognized stock exchange in India acquired by a person pursuant to demutualization or corporatization of the recognized stock exchange in India as referred to in Clause (xiii) of Section 47,** there shall be included the period for which the person was a member of the recognized stock exchange in India immediately prior to such demutualization or corporatization;

(viiia) In the case of **a capital asset, being equity share or shares in a company allotted pursuant to demutualization or corporatization of a recognized stock exchange in India as referred to in Clause** (xiii) of Section 47, **there shall be included the period for which the person was a member of the recognized stock exchange in India immediately prior to such demutualization or corporatization**;

- Where preference shares are converted into equity shares, the period of holding shall be considered from the date of acquisition of preference shares. Cost of acquisition of preference shares shall be taken as cost of acquisition of equity shares in the hands of Assessee.

	• Where units are held by an Assessee in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of units, in the consolidated plan of that scheme of mutual fund, then the period of holding shall also include the period for which the units in consolidating plan of mutual fund scheme were held by him. Cost of acquisition of units in the consolidated plan of mutual fund scheme referred u/s 47(xix) shall be the cost of acquisition of units in the consolidating plan of mutual fund scheme.
Reasons for diving ST and LT	• Tax incidence depends upon whether capital gain is ST or LT. In fact, LTCG is taxable at lower rate.

The Supreme Court in the case of Vodafone International holdings B.V vs. union of India [2012] held that influence/ persuasion of a parent company over its subsidiary could not be construed as a right in the legal sense.

To supersede this ruling with retrospective effect from 1st April 1962, an Explanation has been inserted to clarify that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Provisions of local land laws should be considered while determining the land as agricultural land. The Court held that if activities performed by Assessee on the land are recognized as 'agricultural' activities under the Local land law, than the land can be treated as Agricultural land, even if actual growing does not take place. **[Shankar Dalal & Others v/s CIT (Bombay High Court)]**

IMPACT OF SECTION 115BAC UNDER THE HEAD CAPITAL GAINS

Finance Act, 2020 has introduced a new Optional Tax System for Individuals and HUFs u/s 115BAC of the Income Tax Act, 1961 w.e.f. AY 2021-22 to provide for concessional rate of Slab Rates to be applied on Total Income calculated without claiming specified deductions and exemptions.

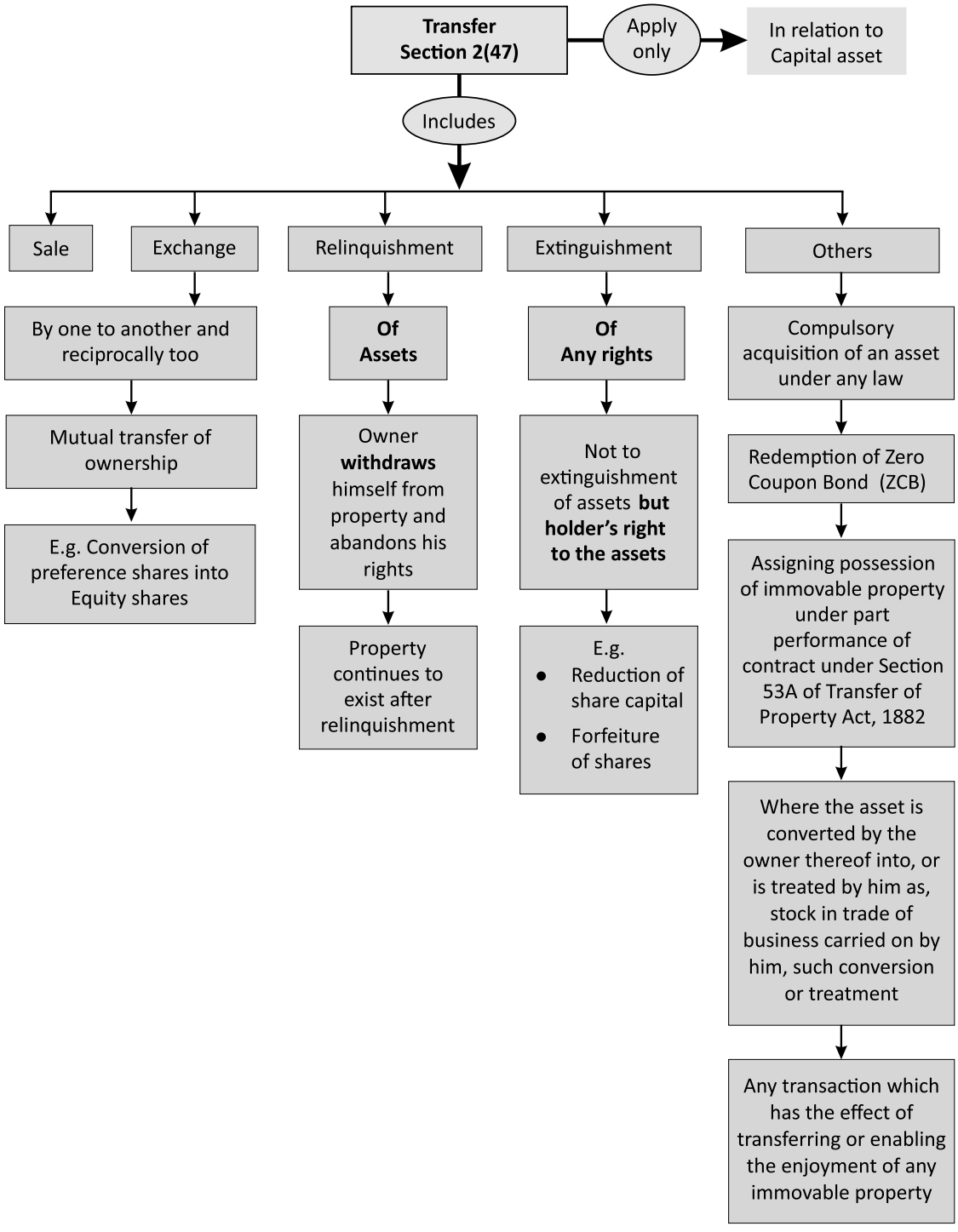
Hence, from AY 2021-22 or FY 2020-21, there are two operative tax systems:

1. One is the Existing tax system where all the applicable deductions and exemptions are allowed and the tax rates are as per the Slab rates of tax specified in the Finance Act, 2020.
2. The second one is section 115BAC which is a Optional Tax System and under which many deductions and exemptions have not been allowed but lower slab tax rates are provided in section 115BAC itself.

Individual and HUF opting for concessional tax regime under section 115BAC: The deduction under Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA not available to the Individual and HUF opting to pay tax under concessional tax regime under section 115BAC of the Income Tax Act, 1961.

Under the new tax system, many deductions & exemptions are not allowed but under the head Capital Gains, **all exemptions and deductions are allowed even under the new tax system. So, the computation of Capital Gain Income will not be effected under the New Tax System.**

TRANSFER [SECTION 2(47)]



The Supreme Court in the case of *Vodafone International holdings B.V.* vs. *Union of India* [2012] gave the following ruling-

(a) the transfer of shares in the foreign holding company does not result in an extinguishment of the foreign company's control of the Indian company.

(b) It does not constitute an extinguishment and transfer of an asset situated in India.

(c) Transfer of foreign holding company shares offshore, cannot result in an extinguishment of the holding companies right of control of the Indian company and the same does not constitute extinguishment and transfer of an asset/management and control of property situated in India.

To supersede this ruling with retrospective effect from 1st April 1962, Explanation 2 to section 2(47) has been inserted which defines transfer as follows:

"Transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

The above transactions would be deemed as a transfer notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

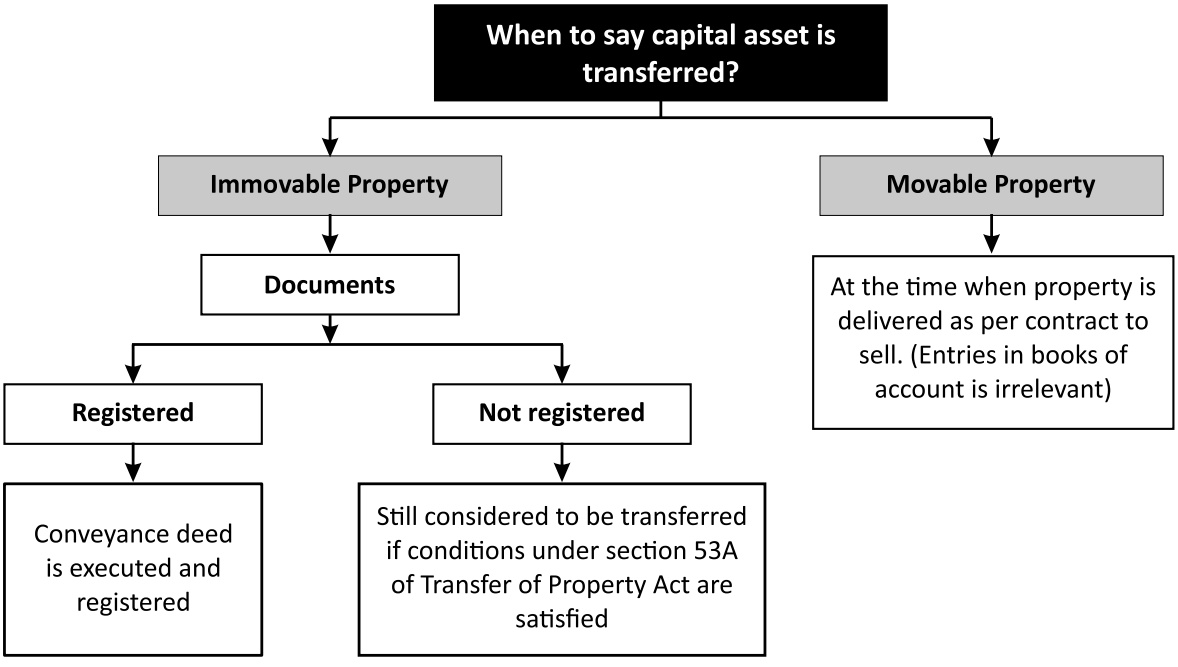
The distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons, is also regarded as transfer liable to capital gains tax. For the purposes of computing capital gain in such cases, the fair-market value of the capital asset on the date of such distribution will be deemed to be the full value of consideration received or accruing as a result of transfer of the capital asset.

What does not constitute Transfer?

Section 47 specifies certain transactions which will not be regarded as a transfer, as below:

- Any distribution of capital assets on **total / partial partition of HUF**
- Any transfer of a capital asset under a **gift / irrevocable trust** (doesn't include ESOP's)
- Transfer of asset from **Holding Company to its wholly owned Indian Subsidiary and vice-versa**
- Transfer of capital asset from **amalgamating company to amalgamated company**, in a scheme of amalgamation, as long as the resultant company is an Indian Company
- Transfer of capital asset from **demerged company to resulting company**, in a scheme of demerger, as long as the resultant company is an Indian Company
- **Transfer / issue of shares by the resulting company to the shareholders of the demerged company**, if such transfer was made in consideration of such demerger
- Transfer of shares by a shareholder, held in the amalgamating company, in a scheme of amalgamation, if such transfer is made as a consideration, by way of **allotment of shares in the amalgamated Indian company**
- Transfer of **rupee denominated bonds / any government security**, outside India, by a non-resident to another non-resident
- **Redemption of sovereign gold bonds**, issued by RBI, by an individual
- **Transfer of any capital asset to the Government / University / National Museum** / national Art Gallery, any work of art, book, manuscript, drawing, painting, print
- **Transfer made outside India of Rupee Denominated Bond (RDB's) of an Indian Company,** issued outside India by a non-resident to another non-resident.

- **Transfer by way of conversion of bonds / debentures / preference shares into equity shares of that Company**
- Transfer of capital asset under **reverse mortgage**
- Transfer by a unit holder under **consolidation plans / schemes of Mutual Fund.**



MODE OF COMPUTATION [SECTION 48]

Computation of Capital Gain			
Short Term Capital Assets		***Long Term Capital Assets***	
Sale Consideration *Less*: Expense on transfer		Sale Consideration *Less*: Expense on transfer	
Net sale consideration *Less*: ● Cost of Acquisition ● Cost of Improvement		Net sale consideration *Less*: ● Indexed Cost of Acquisition ● Indexed Cost of Improvement	
Short Term Capital Gain *Less*: Exemption under section 54B, 54D, 54G, 54GA		Long Term Capital Gain *Less*: Exemption under section 54,54B, 54D, 54EC, 54EE, 54F, 54G, 54GA, 54GB	
STCG/STCL		**LTCG/LTCL**	
*No deduction will be allowed in respect of Securities Transaction Tax (STT) paid			

Expenses on Transfer

Meaning:

It means any **expenditure incurred wholly and exclusively in connection with such transfer.** It also refers to expenses incurred which is **necessary (Absolutely necessary)** to effect the transfer

Examples: Brokerage or commission incurred for securing buyer, cost of stamp and registration fee by the vendor, traveling expenses, Litigation exp etc.

Points to be considered:

- Expenses in connection with transfer **before/after passing of title** shall be considered.
- Legal expense for getting compensation for compulsory acquisition of his/her land (including expense on enhanced compensation) shall be considered.
- Payment made to co-operative society for getting NOC is considered to be "Expense on transfer". *Damodar G. Nagalia v. CIT [2007] 12 SOT 600 (Mum)*

Cost of Acquisition (COA) [Section 55(2)]

Meaning:

Cost of acquisition includes expenditure incurred for acquiring the asset or completing the title of the Asset. It includes the following:

- Interest on borrowed capital for purchase of assets.
- Expenses on amendment of AOA and a part of shares.
- Litigation expense on registration of shares etc.
- Advocate fees, brokerage in relation to acquisition of property.

Points to be considered:

- Cost of Estate duty for inherited property shall be not being considered as "Cost of Acquisition" or "Cost of Improvement".
- When at the time of acquisition of land, it was agriculture and later on it is being sold after converting into Non Agriculture land, then Cost of Acquisition of Agriculture land shall be considered as "Cost of Acquisition".
- In case of Waiver of loan by associate company, then amount of waiver shall be reduced from Cost of Acquisition. (i.e. COA less Waiver amt.)

Cost of Improvement (COI) [Section 55(1)(b)]

Meaning:

- Cost of improvement means expenditure incurred to increase the productive quality of the asset. It includes all expenditures of a capital nature incurred in making any additions or alterations to the capital asset.
- Any improvement took place before 1.4.2001 shall be ignored.
- Any Capital Expenditure (CAPEX) incurred by previous owner shall also be considered as Cost of improvement if assets acquired after 1.4.2001.

- Capital assets such as Goodwill of business or profession or right to manufacture, produce or process any article or thing or right to carry on business or profession (Self Generated), cost improvement shall be **NIL.**

Points to be considered:

- Only CAPEX (Not routine Expenses) shall be considered as Cost of Improvement.
- COI excludes any expenses which is deductible while computing income chargeable under head "House property", "PGBP" or "Other Source".

Indexed Cost of Acquisition (ICOA)

Meaning:

- The COA is indexed on the basis of certain % of Consumer Price Index (CPI) keeping in the mind of rice in prices due to inflation.
- Base year for Indexation is PY2001-02, hence CII for 2001-02=100

Case:1 Acquisition of assets by Assessee himself/herself

(If Acquisition on or after 1.4.2001)

ICOA = [(COA)*(CII for the year of Transfer/CII for the year of Acquisition)]

(If Acquisition before 1.4.2001)

ICOA = [(COA or FMV as on 1.4.2001 whichever is higher)*(CII for the year of Transfer/100)]

FMV = Fair Market Value

Case: 2 Acquisition of assets from previous owner by Assessee in any mode u/s 49(1)

ICOA = [(COA to the previous owner)*(CII for the year of Transfer/CII of year in which assets is first held by Assessee)]

Cases where indexation benefit is not available even on transfer of Long Term Capital Asset

- Debenture or Bonds
- Shares or debentures acquired by NR in foreign currency
- Slump Sale
- Equity shares and equity oriented fund, unit of business trust
- Certain transactions by a non-resident u/s 115AB, 115AC, etc.
- Transfer of Global Depository Receipt
- Transfer of securities by FII (Section 115AD)
- Transfer of Forex by NRI (Section 115D)
- Transfer of unlisted securities by NR under section 115(1)(c)
- Depreciable assets other than power generating units providing SLM.

Indexed Cost of Improvement (ICOI)

Meaning:

- The COI is indexed on the basis of certain % of Consumer Price Index (CPI) keeping in the mind of rice in prices due to inflation.
- Any improvement took place before 1.4.2001 shall be ignored.

ICOI = [(COI after 1.4.2001) * (CII for the year of Transfer/CII for the year of Improvement by assessee or previous owner]

Cost Inflation Index (CII) (Table below)

FY	CII
2001-02	100
2002-03	105
2003-04	109
2004-05	113
2005-06	117
2006-07	122
2007-08	129
2008-09	137
2009-10	148
2010-11	167
2011-12	184
2012-13	200
2013-14	220
2014-15	240
2015-16	254
2016-17	264
2017-18	272
2018-19	280
2019-20	289
2020-21	301
2021-22	317
2022-23	**331**

Cost of Acquisition of Certain Assets

Asset	*Cost of Acquisition*
Goodwill, if Self-Generated	Nil
Goodwill, if acquired	Purchase price
On Gift/inheritance/distribution of assets of HUF on partition	Cost to the previous owner
Bonus Shares allotted prior to 1st April 2001	FMV (1st April 2001)
Bonus Shares allotted post 1st April 2001	Nil
Rights Shares	Amount paid to acquire the shares
Rights shares which are purchased by person in whose favour the assessee has renounced the rights entitlement	Purchase price paid to the renouncer + price paid for acquiring rights shares

CASE 1

On 25th December, 2021, Mr. X sold 450 grams of gold, the sale consideration of which was Rs 14,50,000. He had acquired this gold on 20th August, 2000 for Rs 4,00,000. Fair market value of 500 grams of gold on 1st April, 2001 was Rs 3,40,000. Find out the amount of capital gain chargeable to tax for the assessment year 2022-23.

Solution:

Statement showing computation of Capital Gain

Particulars		*Amount (Rs)*
Sale consideration		14,50,000
Less: Indexed Cost of Acquisition (If Acquisition before 1.4.2001) **ICOA =** [(COA or FMV^ as on 1.4.2001 whichever is higher)*(CII for the year of Transfer/100)]	Cost=4,00,000 FMV=3,40,000 Whichever is higher i.e. 4,00,000 = [(4,00,000)*(317/100)	(12,68,000)
Long Term Capital Gain		**1,82,000**

CASE 2: (Where indexation benefit is not available even on transfer of long term capital asset)

Ms. Dixita has 1,000 9% Debentures of DD Ltd. acquired on 15.04.2009 for Rs 85 each. As on 01.02.2022, she sold such asset for Rs 1,25,500. Brokerage @ ½ % of sale value was paid by her. Compute capital gain for AY2022-23.

Solution:

Statement showing computation of capital gain

Particulars	*Amount (Rs)*
Sale Consideration	1,25,500
Less:	
Expense on transfer (i.e. Brokerage 0.5% of Rs 1,25,500)	628
Cost of Acquisition (85*1000) (Note: No indexation benefit is available as Capital Asset is Debenture)	85000
Long Term Capital Gain	**39,872**

CASE 3: Self Generated Assets

Nisha transferred the following assets on 02.06.2021, determine capital gain for the A.Y. 2022-23 assuming Brokerage paid on transfer @ 2%

Particulars	*Cost*	*MV (1.4.2021)*	*Sale value*
Land acquired in 1976	25,000	1,00,000	30,00,000
Goodwill of business [Business commenced on 1-05-1995]	Nil	40,000	2,00,000
Tenancy right	Nil	30,000	3,00,000

Solution:

Computation of capital gains in the hands of Nisha for the A.Y. 2022-23

Particulars	*Land*	*Goodwill of business*	*Tenancy right*
Sale Consideration	30,00,000	2,00,000	3,00,000
Less:			
Expense on transfer (2% Brokerage on sale)	60,000	4,000	6,000
COA or ICOA (Acquisition of land before 1.4.2001) Cost= Rs. 25000, FMV=Rs100000 whichever is higher i.e. 1,00,000 shall be considered for indexation	3,17,000 [(100000)*(317/100)]	Nil As per section 55(2)(a)	Nil As per section 55(2)(a)
LTCG	26,23,000	1,96,000	2,94,000

Illustration 1:

Mr. Nagendra Kumar converts his capital asset acquired for an amount of INR 125000 in 2005-06, into stock in trade in the FY 2016-17. He thereafter sells this asset for INR 10,00,000 in 2022-23. Please advise on the taxability.

Solution:

It is to be noted that when the owner of a capital asset, converts it in to stock in trade, the "capital gains" arises in the year of such conversion, that is regarded as transfer, i.e., in the year in which the transfer (conversion) was effected. Therefore, in this case the Capital Gains arises in FY 2016-17. however, the same will be taxable only in the year the asset was sold, and along with it shall be chargeable to tax, the relevant income under the head "profits / Gains from Business / profession".

Particulars	***INR***
FMV of asset on date of conversion	7,50,000
Indexed Cost of acquisition [See note 1]	2,82,051
Capital Gain arises in FY 2016-17	4,67,949
Finally sold for	10,00,000
Cost of Acquisition	7,50,000
Business Income arises in FY 2022-23	2,50,000

Note:

1) Indexed Cost of Acquisition is INR 125000/117*264 (refer to the CII table for the indices of respective years).
2) The Capital Gain arises in FY 2016-17.
3) The Capital Gain is taxable only in FY 2022-23 when the asset is sold, along with the Business Income.

Illustration 2:

Mr. Srinivasan, purchases 2000 equity shares in ABC Ltd., for INR 50 per share (Brokerage 1%), in Feb 1997. He gets 200 Bonus shares in September, 2000. He again gets 2200 bonus shares in September, 2007. FMV of the Shares on 1st April, 2001 was INR 125.

In January, 2022, he sells all the shares for INR 500 per share (Brokerage 2%).

Compute the Capital Gains Tax in the hands of Mr. Srinivasan in FY 2021-22.

Solution:

Cost of Acquisition	***Nos.***	***Per Share***	***Total INR***
Original	2,000	50.50	1,01,000
Bonus Shares prior to 1st April, 2001	200	-	25,000
Bonus Share post 1st April, 2001	2,200	-	-

Full value of Consideration	4,400	490.00	21,56,000
Indexed Cost of Acquisition			
Original (2000 x 125 x 317/100)		7,92,500	
Bonus (200 x 125 x 317/100)		79,250	(8,71,750)
Capital Gains (Long Term)			**12,84,250**

Note:

- The brokerage is netted against the costs and sales vales
- The Cost of Acquisition of Bonus Shares acquired prior to 1st April, 2001 is the FMV on 1st April, 2001 and for the ones acquired post 1st April, 2001 is NIL
- For the Original Shares, since the acquisition cost (INR 50) is less than the FMV (INR 125) as on 1st April, 2001, the FMV as on 1st April, 2001 is considered for computing the indexed cost of acquisition
- Refer to the tables for the Indices used in the computation.

Illustration 3:

M & Sons, HUF, had purchased a land for INR 150,000 in 2002-03. In the PY 2006-07, a partition takes place and the Coparcener, Mr. B, gets this plot, valued at INR 2,00,000. In PY 2007-08, he incurs expenses of INR 2,50,000 on the plot towards fencing of the plot of land. Mr. B then sells this plot at INR 15,00,000 in PY 2021-22. You are required to compute the capital gains for AY 2022-23.

Solution:

Particulars	***(Rs.)***
Cost of acquisition	1,50,000
Cost of Improvement	2,50,000
Full Value of Consideration	15,00,000
Indexed Cost	
Acquisition [See note (b)]	(4,52,857)
Improvement [See note (c)]	(6,14,341)
Capital Gains	**4,32,802**

Note:

a) Although the cost of acquisition for the land, in case of partition of HUF would be the cost to the previous owner, the year would be the year in which he gets the asset upon partition, that is FY 2006-07

b) Indexed Cost of Acquisition therefore is INR (1,50,000/105) * 317= 4,52,857

c) Indexed Cost of Improvement therefore is INR (2,50,000/129) * 317=6,14,341

Illustration 4:

Mr. X purchases a property for INR 50,000 on 3rd May 1975. The following expenses were incurred by him:

- Improvement of property in 1998-99 INR 2,50,000
- Construction of two floors in 2002-03 INR 8,00,000
- Reconstruction and refurbishment of property in 2012-13 INR 15,00,000

FMV of property on 1st April, 2001 is 10,00,000. He sells the house on 9th September, 2021 for INR 90,00,000 and incurs INR 2,50,000 on transfer. Compute the Capital Gains taxable in his hands in AY 2022-23.

Solution:

Particulars		***INR***
	Net Sale of Consideration	87,50,000
Less	Indexed Cost of Acquisition [(FMV as on 01.04.2001 or cost of acquisition whichever is higher i.e. 10,00,000*317/100]	(31,70,000)
	Indexed Cost of Improvement [8,00,000*317/105]	(24,15,238)
	Indexed Cost of Improvement [15,00,000*317/200]	(23,77,500)
	Long Term Capital Gains	**7,87,262**

Note: The Cost of Improvement to the property only after 1st April, 2001 are considered. The costs are indexed using the indices from the CII table.

ASCERTAINMENT OF COST IN SPECIFIED CIRCUMSTANCES [SECTION 49]

A person becomes the owner of a capital asset not only by purchase but also by several other methods. Section 49 gives guidelines as to how to compute the cost under different circumstances.

(1) Cost to previous owner deemed as cost of acquisition of asset: In the following cases, the cost of acquisition of the asset shall be deemed to be cost for which the previous owner of the property acquired it. To this cost, the cost of improvement to the asset incurred by the previous owner or the assessee must be added:

Where the capital asset became the property of the assessee:

(i) on any distribution of assets on the total or partition of a HUF;

(ii) under a gift or will;

(iii) by succession, inheritance or devolution;

(iv) on any distribution of assets on the liquidation of a company;

(v) under a transfer to revocable or an irrevocable trust;

(vi) under any transfer of capital asset by a holding company to its wholly owned subsidiary Indian company or by a subsidiary company to its 100% holding Indian company, referred to in sections 47(iv) and 47(v) respectively;

(vii) under any transfer referred to in section 47(vi) of a capital asset by amalgamating company to the amalgamated Indian company, in a scheme of amalgamation;

(viii) under any transfer referred to in section 47(vib), of a capital asset by the demerged company to the resulting Indian company, in a scheme of demerger;

(ix) by conversion by an individual of his separate property into a HUF property, by the mode referred to in section 64(2).

Accordingly, section 2(42A) provides that in all such cases, for determining the period for which the capital asset is held by the transferee, the period of holding of the asset by the previous owner shall also be considered.

Indexation benefit from which year?

The issue as to whether indexation benefit in respect of a gifted asset shall apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner was taken up by the Bombay high Court in *CIT v. Manjula J. Shah 16 Taxman 42 (Bom.).*

As per *Explanation 1* to section 2(42A), in case the capital asset becomes the property of the assessee in the circumstances mentioned in section 49(1), *inter alia,* by way of gift by the previous owner, then for determining the nature of the capital asset, the aggregate period for which the capital asset is held by the assessee and the previous owner shall be considered.

As per the provisions of section 48, the profit and gains arising on transfer of a long-term capital asset shall be computed by reducing the indexed cost of acquisition from the net sale consideration.

The indexed cost of acquisition means the amount which bears to the cost of acquisition the same proportion as Cost Inflation Index (CII) for the year in which the asset is transferred bears to the CII for the year in which the asset was first held by the assessee transferring it, i.e., the year in which the asset was gifted to the assessee in case of transfer by the previous owner by way of gift.

The issue under consideration was whether, in a case where the assessee had acquired a capital asset by way of gift from the previous owner, the said asset can be treated as a long-term capital asset considering the period of holding by the assessee as well as the previous owner.

The Bombay high Court held that the indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.

As per the plain reading of the provisions of section 48, however, the indexed cost of acquisition would be determined by taking CII for the year in which in which asset is first held by the assessee.

(1) Cost of acquisition of shares received under the scheme of Amalgamation: Where shares in an amalgamated company which is an Indian company become the property of the assessee in consideration of the transfer of shares referred to in section 47(vii) held by him in the amalgamating company under a scheme of amalgamation, the cost of acquisition to him of the shares in the amalgamated company shall be taken as the cost of acquisition of the shares in the amalgamating company [Section 49(2)]

(2) Cost of acquisition of shares received during the process of conversion of bonds or debentures, debenture stock or deposit certificates: It is possible that a person might have become the owner of shares or debentures in a company during the process of conversion of bonds or debentures, debenture stock or deposit certificates referred under section 47(x).

In such a case, the cost of acquisition to the person shall be deemed to be that part of the cost of debentures, debenture stock, bond or deposit certificate in relation to which such asset is acquired by that person.

(3) Cost of acquisition of specified security or sweat equity shares: Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in section 17(2)(vi), the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for perquisite valuation [Section 49(2AA)].

(4) **Cost of acquisition of units acquired under consolidated scheme of Mutual Fund:** The cost of acquisition of the units acquired by the assessee in consolidated scheme of mutual fund in consideration of transfer referred in section 47(xviii) shall be deemed to be the cost of acquisition to him of the units in the consolidating scheme of mutual fund [Section 49(2AD)].

(5) **Cost of acquisition of equity shares received at the time of conversion of preference shares:** Cost of acquisition of the equity share of a company, which became the property of the assessee in consideration of transfer referred to in section 47(xb), shall be deemed to be that part of the cost of the preference share in relation to which such asset is acquired by the assessee [Section 49(2AE)].

(6) **Cost of acquisition of units acquired under consolidated plan of Mutual Fund scheme:** Cost of acquisition of the unit or units in the consolidated plan of the scheme of the mutual fund in consideration of a transfer referred to in section 47(xix) shall be deemed to be the cost of acquisition to him of the unit or units in consolidating plan of the scheme of the mutual fund [Section 49(2AF)].

(7) **Cost of acquisition of shares received in the resulting company, in the scheme of demerger:** In the case of a demerger, the cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger [Section 49(2C)].

$$\text{Cost of acquisition of shares in the resulting company} = \frac{B}{A \times C}$$

A = Cost of acquisition of shares held in the demerged company

B = net book value of the assets transferred in a demerger.

C = net worth of the demerged company, i.e., the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.

(8) **Cost of acquisition of the shares held in the demerged company:** The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived under the sub-section (2C) [Section 49(2D)].

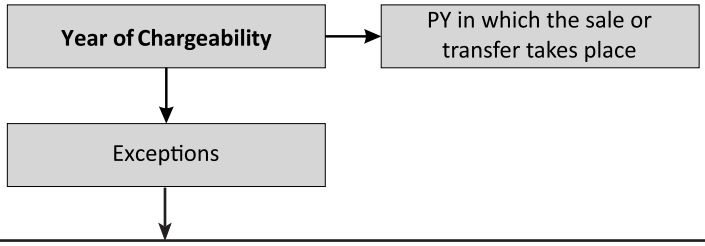
(9) **Cost of acquisition of property subject to tax under section 56(2)(x):** Where the capital gain arises from the transfer of such property which has been subject to tax under section 56(2)(x), the cost of acquisition of the property shall be deemed to be the value taken into account for the purposes of section 56(2)(x) [Section 49(4)].

(10) **Cost of acquisition of capital asset, being share in the project referred under section 45(5A):** Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in section 45(5A) which is chargeable to tax in the previous year in which the completion of certificate for the whole or part of the project is issued by the competent authority), the cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub- section, i.e., stamp duty value on the date of issue of certificate of completion plus cash consideration. However, this does not apply to a capital asset, being share in the project which is transferred on or before the date of issue of said completion certificate [Section 49(7)].

(11) **Cost of acquisition of a capital asset which was used by the assessee as an inventory:** Where the capital gain arises from the transfer of a capital asset which was used by the assessee as inventory earlier before its conversion into capital asset, the cost of acquisition of such capital asset shall be deemed to be the fair market value of the inventory as on the date on such conversion determined in the prescribed manner. [Section 49(9)]

YEAR OF CHARGEABILITY AS "CAPITAL GAINS"

Capital gains shall be chargeable in the previous year in which the transfer takes place even if the consideration is received or realized in a later year. Some exceptions to this Rule are as under:



1. Insurance Receipts [Section 45(1A)]
2. Amount received under a Unit Linked Insurance Policy [Section 45(1B)]
3. Conversion or treatment of a capital asset as stock-in-trade [Section 45(2)]
4. Transfer of beneficial interest in any securities [Section 45(2A)]
5. Introduction of capital asset as capital contribution [Section 45(3)]
6. Receipt of money or capital assets from specified entity [Section 45(4)] Replaced by Finance Act, 2021
7. Compensation on compulsory acquisition [Section 45(5)]
8. Taxability of Capital Gains in case of Specified Agreement [Section 45(5A)].

(i) Insurance Receipts [Section 45(1A)]

Where any person receives at any time during any previous year any money or other assets under an insurance from an insurer on account of damage to or destruction of any capital asset, as a result of

- flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or
- riot or civil disturbance; or
- accidental fire or explosion; or
- action by an enemy or action taken in combating an enemy (whether with or without declaration of war), then,

any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of such person for the previous year in which such money or other asset was received and for the purpose of section 48, value of any money or the FMV of other assets on the date of such receipt shall be deemed to be the full value of consideration received or accruing as a result of the transfer of such capital asset.

Summarized Provision	
Remarks	***Taxability***
➢ **Compensation received is due to Flood, Hurricane, cyclone, earthquake, riots, accidental fire, explosion, Action by enemy**	➢ **Sale consideration= Amt of compensation** ➢ Taxable in the year of receipt. ➢ Compensation received for other than any other reason is not taxable.

CASE 4

If XP owns a house property which was acquired on 1.5.1979 for Rs. 3,00,000 and it was destroyed by flood on 3.4.2021 and received Rs.5,00,0000 insurance compensation during the year. The market value of the said property as on 1.4.2001 was Rs. 15,00,000. Compute the capital gain for the AY 2022-23.

Solution: Statement showing computation of Capital Gain

Particulars	***Amount (Rs)***	***Amount (Rs)***
Sale consideration (In this case, **Sale consideration= Amt of compensation)**		50,00,000
Less: Indexed Cost of Acquisition (If Acquisition before 1.4.2001) **ICOA =** [(COA or FMV^ as on 1.4.2001 whichever is higher)*(CII for the year of Transfer/100)]	(3,00,000 or 15,00,000 whichever is higher) i.e. 15,00,000 = (15,00,000)*(317/100)	(47,55,000)
LTCG		**2,45,000**

(ii) Amount received under a Unit Linked Insurance Policy [Section 45(1B)]

Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any amount under a unit linked insurance policy, to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth proviso thereof, including the amount allocated by way of bonus on such policy, then, any profits or gains arising from receipt of such amount by such person shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of such person of the previous year in which such amount was received and the income taxable shall be calculated in such manner as may be prescribed. **[Inserted by Finance Act, 2021]**

(iii) Conversion or treatment of a capital asset as stock-in-trade [Section 45(2)]

A person who is the owner of a capital asset may convert the same or treat it as stock-in-trade of the business carried on by him. As noted above, the above transaction is a transfer.

As per section 45(2), notwithstanding anything contained in section 45(1), being the charging section, the profits or gains arising from the above conversion or treatment will be **chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him** and for the purpose of section 48, the **fair market value of the asset on the date of such conversion** or treatment shall be deemed to be the full value of the consideration received as a result of the transfer of the capital asset.

Income arising on account of Stock in trade:

1. Business Income = Sale price of stock in trade (-) FMV on the date of conversion
2. Capital Gain= FMV on the date of conversion (-) Cost/Indexed cost of acquisition / improvement [Indexation benefit would be considered in relation to the year of conversion of capital asset into stock in trade.
3. Both Capital Gains and Business income are chargeable to tax in the year in which stock-in-trade is sold or otherwise transferred.

CASE 5

NX invested Rs. 1,65,000 on the purchase of gold ornaments on 4.1.2005 for investment purpose. On 12.1.2016, he started a Jewellery business and converts his investment into stock in trade. Moreover, the Market value as on date of conversion was Rs. 4,50,000. These ornaments were sold in PY2021-22 for Rs. 5,50,000. Compute the capital gain and business income.

Solution:

Year of Acquisition : 2004-05 (i.e. 4.1.2005)

Year of Conversion : 2015-16 (i.e. on 12.1.2016)

Year of taxability : 2021-22 (In the year in which stock is transferred)

Sale Consideration : FMV as on date of conversion

Statement showing computation of Capital Gain

Particulars		***Amount (Rs)***
Sale consideration (In this case, **Sale consideration= FMV as on date of conversion)**		4,50,000
Less: Indexed Cost of Acquisition (If Acquisition on or after 1.4.2001) **ICOA =** [(COA)*(CII for the year of Conversion /CII for Year of Acquisition)]	= [(165000)*(254/113)	(3,70,885)
LTCG		**79,115**

Computation of Business Income

Sale consideration	5,50,000
Less: FMV as on date of conversion	4,50,000
Business Income	**1,00,000**

CASE 6

Mr. X converts his capital asset acquired for an amount of Rs 55,000 in June, 2003 into stock-in-trade in the month of November, 2019. The fair market value of the asset on the date of conversion is Rs 4,50,000. The stock-in-trade was sold for an amount of Rs 7,50,000 in the month of September, 2022. Compute the capital gain and business income.

Solution:

Year of Acquisition : 2003-04 (i.e. June 2003)

Year of Conversion : 2019-20 (i.e. November 2019)

Year of taxability : 2022-23 (In the year in which stock is transferred)

Sale Consideration : FMV as on date of conversion

Statement showing computation of Capital Gain

Particulars		*Amount Rs*
Sale consideration (In this case, **Sale consideration= FMV as on date of conversion)**		4,50,000
Less: Indexed Cost of Acquisition (If Acquisition on or after 1.4.2001) **ICOA =** [(COA)*(CII for the year of Conversion /CII for Year of Acquisition)]	= [(55000)*(289/109)	(1,45,826)
LTCG		**3,04,174**

Computation of Business Income

Sale consideration	7,50,000
Less: FMV as on date of conversion	4,50,000
Business Income	**3,00,000**

Practice Question

Mr. X converts his plot of land purchased in July, 2004 for Rs 80,000 into stock-in-trade on 31st March, 2022. The fair market value as on 31.3.2022 was Rs 3,00,000. The stock-in-trade was sold for Rs 3,25,000 in the month of January, 2023. You are required to compute business income and Capital gain for the AY 2022-23. Details of CII are as below:

Cost Inflation Index: F.Y. 2004-05:113; F.Y. 2021-22: 317.

[**Answer: LTCG=Rs 75,575, Business Income=Rs 25,000**]

(iv) Transfer of beneficial interest in any securities [Section 45(2A)]

As per section 45(2A), where any person has had at any time during the previous year any beneficial interest in any securities, then, any profits or gains arising from the transfer made by the Depository or participant of such beneficial interest in respect of securities shall be chargeable to tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of the securities by virtue of section 10(1) of the Depositories Act, 1996 and for the purposes of section 48 and proviso to section 2(42A), the cost of acquisition and the period of holding of securities shall be determined on the basis of the first-in-first-out (FIFO) method.

(v) Introduction of capital asset as capital contribution [Section 45(3)]

Where a person transfers a capital asset to a firm, AOP or BOI in which he is already a partner/ member or is to become a partner/ member by way of capital contribution or otherwise, the profits or gains arising from such transfer will be chargeable to tax as income of the previous year in which such transfer takes place and for the purpose of section 48, the value of the consideration will be the amount recorded in the books of account of the firm, AOP or BOI as the value of the capital asset.

Year of taxability : In the year of transfer

Taxability Status : In the hands of partners or members

Sale Consideration : Amount recorded in books of account

CASE 7

Mr. Raja has acquired assets in terms of gift from his father dated 12.5.2006 where FMV as on date was Rs475000. It is interesting to note that father had acquired such asset on 16.10.2003 for Rs875000 and it was given as capital contribution to Partnership firm in which Raja become partner on 5.6.2021. Market Value of asset as on such date was Rs2500000 but it was recorded in the books of account at Rs2600000. Compute the capital gain for the AY2022-23.

Solution:

Year of Acquisition : 2003-04 (i.e. 16.10.2003)

Year of taxability : 2021-22 (In the year of transfer)

Sale Consideration : Amount recorded in books of account

Statement showing computation of Capital Gain

Particulars	***Amount (Rs)***
Sale consideration (In this case, **Sale consideration= Amount recorded in books of account)**	26,00,000
Less: Indexed Cost of Acquisition (If Acquisition on or after 1.4.2001) **ICOA** = [(COA)*(CII for the year of transfer /CII for Year of Acquisition)] = [(875000)*(317/109)	(25,44,725)
LTCG	**55,275**

CASE 8

DP & Co. has three partners D, P and N sharing profit or loss in the ratio 5:3:2. They admitted X as a new partner on 31/03/2021 for 1/5th share and X is to bring Rs 4,00,000 as his capital which he brought in form of furniture (earlier used in his home) Rs 1,00,000 immediately & further brought jewellery of which fair market value is Rs 2,50,000 on 2/04/2021 (however such assets was recorded in the books at Rs 1,80,000). X had acquired such jewellery for Rs 55,000 on 7/07/2001. Compute capital gain in the hands of Mr. X.

Solution:

Statement showing computation of Capital Gain

Particulars		***Amount (Rs)***
Sale consideration (In this case, **Sale consideration = Amount recorded in books of account)**		1,80,000
Less: Indexed Cost of Acquisition	= [(55000)*(317/100)	(1,74,350)
LTCG		**5,650**

(vi) Receipt of money or capital assets from specified entity [Section 45(4)] Replaced by Finance Act, 2021

Notwithstanding anything contained in sub-section (1), where a specified person receives during the previous year any money or capital asset or both from a specified entity in connection with the reconstitution of such specified entity, then any profits or gains arising from receipt of such money by the specified person shall be chargeable to income-tax as income of such specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which such money or capital asset or both were received by the specified person, and notwithstanding anything to the contrary contained in this Act, such profits or gains shall be determined in accordance with the following formula, namely:

A = B+C-D

Where,

A = income chargeable to income-tax under this sub-section as income of the specified entity under the head "Capital gains";

B = value of any money received by the specified person from the specified entity on the date of such receipt;

C = the amount of fair market value of the capital asset received by the specified person from the specified entity on the date of such receipt; and

D = the amount of balance in the capital account (represented in any manner) of the specified person in the books of account of the specified entity at the time of its reconstitution:

provided that if the value of "A" in the above formula is negative, its value shall be deemed to be zero:

provided further that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account the increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

Explanation 1:

(i) the expressions "reconstitution of the specified entity", "specified entity" and "specified person" shall have the meanings respectively assigned to them in section 9B;

(ii) "self-generated goodwill" and "self-generated asset" mean goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.

Explanation 2: for the removal of doubts, it is clarified that when a capital asseet is received by a specified person from a specified entity in connection with the reconstitution of such specified entity, the provisions of this sub-section shall operate in addition to the provisions of section 9B and the taxation under the said provisions thereof shall be worked out independently.

Special point: Section 48: in case of value of any money or capital asset received by a specified person from a specified entity referred to in sub-section (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner".

(vii) Compensation on compulsory acquisition [Section 45(5)]

Sometimes, a building or some other capital asset belonging to a person is taken over by the Central Government by way of compulsory acquisition. In that case, the consideration for the transfer is determined or approved by the Central Government or RBI. Such capital gains are chargeable as income of the previous year in which such compensation or part thereof is received.

Enhanced Compensation - Many times, persons whose capital assets have been taken over by the Central Government and who get compensation from the Government go to the Court of law for enhancement of compensation. If the court awards a compensation which is higher than the original compensation, the difference thereof will be chargeable to capital gains in the year in which the same is received from the government.

Cost of acquisition/improvement in case of enhanced compensation - for this purpose, the cost of acquisition and cost of improvement shall be taken to be nil.

Compensation received in pursuance of an interim order deemed as income chargeable to tax in the year of final order - In order to remove the uncertainty regarding the year in which the amount of compensation received in pursuance of an interim order of the Court, Tribunal or other authority is to be charged to tax, a proviso has been inserted after clause (b) to provide that such compensation shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such Court, Tribunal or other authority is made.

Reduction of enhanced compensation - Where capital gain has been charged on the compensation received by the assessee for the compulsory acquisition of any capital asset or enhanced compensation received by the assessee and subsequently such compensation is reduced by any Court, Tribunal or any authority, the assessed capital gain of that year shall be recomputed by taking into consideration the reduced amount. This re-computation shall be done by way of rectification.

Death of the transferor- It is possible that the transferor may die before he receives the enhanced compensation. In that case, the enhanced compensation or consideration will be chargeable to tax in the hands of the person who received the same.

Initial compensation: Sale Consideration= Initial Compensation	➢ Taxable in year first received ➢ Indexation is available
Additional/Enhanced compensation: ➢ COA/COI = Nil ➢ Litigation exp, incidental exp for addition are deductible	➢ Taxable in the year of receipt ➢ Taxable in hands of recipient if received other than main recipient

CASE 9

Mr. AP acquired a house for Rs240000 in 1997-98. Upon his death, it was acquired by his son KP. The market value as on 1.4.2001 was Rs.250000. But Government has acquired on 15.3.2013 for Rs1260000 as it will be used by rail transport. Government paid compensation of Rs.1020000 on 25.3.2014 and balance of Rs.240000 on 15.4.2014. Mr KP filed suit for challenging compensation of Govt. and court ordered for giving additional compensation of Rs.400000 (Incurred an expense in connection with Rs.10000). It was received on 14.3.2022. Compute the Capital Gain for AY 2022-23.

Solution:

Computation of Initial Compensation

Particulars		*Amount (Rs)*
Sale consideration (In this case, **Sale consideration = Initial compensation)**		12,60,000
Less: Indexed Cost of Acquisition If Acquisition before 1.4.2001) **ICOA =** [(COA or FMV^ as on 1.4.2001 Whichever)*(CII for the year of compulsory acquisition (12-13)/100)]	Cost = 240000 MV = 250000 Whichever is higher = 250000 = [(250000)*(200/100)	(5,00,000)
LTCG		**7,60,000**

Computation of Additional/Enhanced Compensation

Particulars		*Amount (Rs)*
Sale consideration (In this case, **Sale consideration = Additional compensation)**		4,00,000
Less: • Expense on transfer • COA • COI	 10000 - -	(10,000)
LTCG		**3,90,000**

(viii) Taxability of Capital Gains in case of Specified Agreement [Section 45(5A)]

In case of an assessee being individual or hindu undivided family, who enters into a specified agreement for development of a project, the capital gain arising from such transfer shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.

Full value of consideration: for this purpose, the stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

Non-applicability of the beneficial provision: It may, however, be noted that these beneficial provisions would not apply, where the assessee transfers his share in the project on or before the date of issue of said completion certificate and the capital gains tax liability would be deemed to arise in the previous year in which such transfer took place. In such a case, full value of consideration received or accruing shall be determined by the general provisions of the Act.

Meaning of certain terms:

Competent authority: The authority empowered to approve the building plan by or under any law for the time being in force.

Meaning of Specified Agreement: Specified agreement means the registered agreement in which a person owing land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

Stamp duty value: The value adopted or assessed or re-assessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

CASE 10

Mr. J purchased a residential plot for Rs. 32,50,000 on first of July 1998. Fair Market Value as on 1.4.2001 was Rs. 96,50,000. Y ltd (Builder) enters into registered Joint Development Agreement with Mr. J on 1.7.2019 and paid Rs. 1,25,00,000. Company will construct 6 residential units on a plot of land and will give 3 units to Mr. J Moreover the construction of all 6 units was completed and certificate of completion would also be issued by competent authority on dated 20.3.2022. The stamp duty of each flat on same date is Rs. 80,50,000. Later on, Mr. J sold his one flat to Mr. DP on 25th September 2022 for Rs. 1,32,50,000. You are required to compute capital gain for AY2022-23.

Solution:

Date of transfer 1.7.2019 (i.e. Date of agreement) [PY2019-2020]

Year of taxability PY 2021-2022 (i.e. 20.3.2022 – Date of completion certificate received)

Statement showing computation of capital gain for AY 2022-23

Particulars		***Amount (Rs.)***
Sale Consideration (i.e. Stamp duty) [(80,50,000*3) + 1,25,00,000]		3,66,50,000
Less:		
Indexed Cost of Acquisition**:** (If Acquisition before 1.4.2001) **ICOA =** [(96,50,000)*(289/100)] = [(COA or FMV^ as on 1.4.2001 Whichever is higher)*(CII for the year of Transfer (19-20)/100)]	Cost=3250000 FMV=9650000 Whichever is higher=9650000	2,78,88,500
Long term Capital Gain		**87,61,500**

CAPITAL GAINS FOR DEPRECIABLE ASSETS [SECTION 50]

Where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed, the provisions of sections 48 and 49 shall be subject to the following modification:

Where the full value of consideration received or accruing for the transfer of the asset plus the full value of such consideration for the transfer of any other capital asset falling within the block of assets during previous year exceeds the aggregate of the following amounts namely:

i) expenditure incurred wholly and exclusively in connection with such transfer;

ii) WDV of the block of assets at the beginning of the previous year;

iii) the actual cost of any asset falling within the block of assets acquired during the previous year such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets;

iv) Where all assets in a block are transferred during the previous year, the block itself will cease to exist. In such a situation, the difference between the sale value of the assets and the WDV of the block of assets at the beginning of the previous year together with the actual cost of any asset falling within that block of assets acquired by the assessee during the previous year will be deemed to be the capital gains arising from the transfer of short- term capital assets;

v) In a case where goodwill of a business or profession forms part of a block of asset for the assessment year beginning on the 1st day of April, 2020 and depreciation thereon has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in such manner as may be prescribed**. [Inserted by Finance Act, 2021]**

Cost of acquisition in case of power sector assets [Section 50A]: With respect to the power sector, in case of depreciable assets referred to in section 32(1)(i), the provisions of sections 48 and 49 shall apply subject to the modification that the WDV of the asset [as defined in section 43(6)], as adjusted, shall be taken to be the cost of acquisition.

CASE 11: (Block is partly sold)

Mr. provides following information towards his WDV of assets as on 1.4.2021 having rate of depreciation of 15%

Plant –A Rs. 1,00,000 and Plant B of Rs. 20,000. He has also purchased Plant C and Plant D for same rate of depreciation for Rs. 60,000 and Rs. 40,000 dated 15.4.2021 and 15.9.2021 respectively. At the same time, he has sold plant A on 15.3.2022 for Rs. 2,40,000. Compute the capital gain for AY2022-23. Does your view change if Plant A has sold for Rs. 2,00,000?

Solution:

Particulars	***Amount (Rs.)***
Sale Consideration	2,40,000
Less:	
Opening WDV as on 1.4.2021 (100000+20000)	(120000)
Cost the acquisition during year (60000+40000)	(100000)
Short Term Capital Gain	**20,000**

Note: if Plant A has sold for Rs. 2,00,000, there will be no capital gain in the cited case as Sale consideration (Rs. 2,00,000) < Value of Block of assets (i.e. Opening + during the year purchase) (Rs. 2,20,000). At the same time, allowable depreciation shall be Rs20000. (i.e. 220000-200000) because still the block exist.

CASE 12 (Block is entirely sold)

Mr. provides following information towards his WDV of assets as on 1.4.2021 having rate of depreciation of 15%

Plant –A Rs. 1,00,000 and Plant B of Rs. 20,000. He has also purchased Plant C and Plant D for same rate of depreciation for Rs. 60,000 and Rs. 40,000 dated 15.4.2021 and 15.9.2021 respectively. At the same time, he has sold all the plants for Rs. 2,40,000 on 15.3.2022. Compute the capital gain for AY2022-23. Does your view change if Plant A has sold for Rs. 2,00,000?

Solution:

Particulars	*Amount (Rs.)*
Sale Consideration	2,40,000
Less	
Opening WDV as on 1.4.2021 (100000+20000)	(120000)
Cost the acquisition during year (60000+40000)	(100000)
Short Term Capital Gain	**20,000**

If Plant A has sold for Rs. 2,00,000?

Particulars	*Amount (Rs.)*
Sale Consideration	200000
Less	
Opening WDV as on 1.4.2021 (100000+20000)	(120000)
Cost the acquisition during year (60000+40000)	(100000)
Short Term Capital Loss	**20,000**

Note:

It is interesting to note that no depreciation shall be allowed as entire block gets empty (i.e. all plant have been sold)

CAPITAL GAINS IN RESPECT OF SLUMP SALE [SECTION 50B]

Meaning of Slump Sale [Section 2(42C)]

'Slump Sale' means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. In other words it is a sale where the assessee transfers one or more undertaking as a whole including all the assets and liabilities as a going concern. The consideration is fixed for the whole undertaking and received by the transferor it is not fixed for each of the asset of the undertaking as a whole by way of such sale. Thus it may be noted that the undertaking as a whole or the division transferred shall be a capital asset.

- Any gains arising from the slump sale of one / more undertakings held for more than 36 months, shall be chargeable to tax as Long-Term Capital Gains in the previous Year in which the slump sale was effected.
- Any gains arising from the slump sale of one / more undertakings held for less than 36 months, shall be chargeable to tax as Short-Term Capital Gains in the previous Year in which the slump sale was effected.

In relation to capital assets being an undertaking or division transferred by way of such slump sale,—

(i) the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48;

(ii) fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset. [Inserted by Finance Act, 2021]

Every assessee, in the case of slump sale, shall furnish in the prescribed form a report of an accountant as defined indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section. **[Amended by Finance Act, 2020]**

Meaning of Certain Terms:

Net Worth: Aggregate value of total assets of the undertaking or division **as reduced by** the value of liabilities of such undertaking or division as appearing in the books of account. **However, any change in the value of assets on account of revaluation of assets shall not be considered for this purpose:**

Aggregate value of total assets of undertaking or division:

In the case of depreciable assets: The written down value of block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of section 43(6)(c);

In the case of capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner, nil **[Inserted by Finance Act, 2021]**

Capital asset in respect of which 100% deduction is claimed: In case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD: **Nil**;

For all other assets: Book value

CIT v/s Equinox Solution Pvt. Ltd (SC): If an undertaking is sold as a running business with all assets and liabilities for a slump price, consideration in respect of depreciable assets cannot be assessed as a short-term capital gain u/s 50(2).

The Apex Court, however, opined that where the entire running business with assets and liabilities stood transferred in one go, such sale could not be treated as short-term capital assets and is in the nature of long term capital gains.

Illustration 5:

Mohan is the proprietor of photo film Agencies which has 2 units, one for printing and the other for binding. He transferred, by way of slump sale, one of the units (unit 2) on 1st April, 2022, for a total consideration of INR 50,00,000. Expenses on sale were 0.5%. This unit was started in the year 2013-14.

Appended below is the Balance Sheet:

Particulars	*Unit 1*	*Unit 2*
Building	7,50,000	15,00,000
Machinery	5,00,000	10,00,000
Debtors	2,50,000	5,00,000
Other Assets	1,00,000	2,00,000
	16,00,000	**32,00,000**

Capital		40,00,000
Revaluation Reserve		2,50,000
Bank Loan		3,50,000
Creditors		2,00,000
		48,00,000

The Revaluation Reserve was created by upward revaluation of Buildings in unit 2. Other Assets of unit 2 include, INR 1,00,000 of patents acquired on 1st July, 2017, on which no depreciation has been charged. 75% of Creditors and 25% of Bank Loan is for unit 2.

Compute the Capital Gains on the slump sale for AY 2023-24.

Solution:

The Capital Gains from Slump Sale are as under:

Particulars	***(Rs.)***
Full Value of Consideration	50,00,000
Expenses on Sale	(25,000)
Net Sale Consideration	49,75,000
Net Worth	(26,44,141)
Long Term Capital Gains	23,30,859

Working Notes

(1) The first note details the computation of net worth for unit 2

	Net Worth	***Amount (Rs.)***	***Amount (Rs.)***
	Buildings	15,00,000	
Less :	Revaluation Reserve	(2,50,000)	
	Net for Buildings		12,50,000
	Machinery		10,00,000
	Debtors		5,00,000
	Other Assets		1,00,000
	Patents		31,641
	Total Assets		28,81,641
Less:	Creditors	1,50,000	
	Bank Loan	87,500	
	Total Liabilities		(2,37,500)
	Net Worth		26,44,141

(2) The second note details the valuation of WDV of patents

Patents	*Amount (Rs.)*
Opening Block	1,00,000
Depreciation Y1	(25,000)
Written Down Value EOY1	75,000
Depreciation Y2	(18,750)
Written Down Value EOY2	56,250
Depreciation Y3	(14,063)
Written Down Value EOY3	42,188
Depreciation Y4	(10,547)
Written Down Value EOY4	31,641

COMPUTATION OF CAPITAL GAIN IN REAL ESTATE TRANSACTION [SECTION 50C]

Section 50C makes a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed by any authority of a State Government (i.e., "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration, and capital gains shall be computed on the basis of such consideration under Section 48 of the Income-tax Act, Provided that where the stamp duty value does not exceed 110% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration. **(Amended by the Finance Act, 2020)**

Rationalization of section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property.

- Section 50C of the Act has been amended in line with section 43CA to provide that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.
- It is further provided that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other prescribed electronic mode as may be prescribed on or before the date of the agreement of transfer of such immovable property.

Summarized Provision [Section 50C]

Applicability of section	Capital asset (being **land or building or both** is transferred)
Taxability	A. Value adopted/assessed/assessable by the stamp valuation authority B. 110% of actual consideration
A>B	Sale Consideration = Value adopted/assessed/assessable by the stamp authority
A<B	Sale Consideration = Actual consideration

CASE 13

Mr. Kaka has a self-occupied house property acquired 10 months ago for Rs 5,00,000. He sold such property for Rs 6,00,000 to Dada. Stamp duty authority for the purpose of levying stamp duty adopted value of Rs 6,25,000. You are required to compute the capital gain for AY2022-23. Does your view towards taxability change if stamp duty adopted value will be Rs. 675000?

Solution:

(If value adopted for stamp duty is Rs. 6,25,000)

Nature of Capital Asset : House Property

Value adopted for stamp duty : Rs. 6,25,000

Actual consideration : Rs. 6,00,000

Computation of Sale consideration

A.	Value adopted/assessed/assessable by the stamp valuation authority	6,25,000
B.	110% of actual consideration (110% * 6,00,000)	6,60,000
	A<B, Hence, Sale Consideration = Actual consideration	= **Rs 6,00,000**

Computation of Capital gain for AY2022-23

Particulars	***Amount (Rs.)***
Sale consideration	6,00,000
Less:	
Expense on transfer	-
Cost of Acquisition	5,00,000
Short Term Capital Gain	1,00,000

(If value adopted for stamp duty is Rs. 6,75,000)

Nature of Capital Asset : House Property

Value adopted for stamp duty : Rs. 6,75,000

Actual consideration : Rs. 6,00,000

Computation of Sale consideration

C.	Value adopted/assessed/assessable by the stamp valuation authority	6,75,000
D.	110% of actual consideration (110% * 6,00,000)	6,60,000
	A>B, Hence, Sale Consideration = Value adopted by Stamp Value authority	= **Rs. 6,75,000**

Computation of Capital gain for AY 2022-23

Particulars	***Amount (Rs.)***
Sale consideration	6,75,000
Less:	
Expense on transfer	-
Cost of Acquisition	5,00,000
Short Term Capital Gain	**1,75,000**

Reference to Valuation Officer:

Where

- the assessee claims before an Assessing Officer that the value so adopted or assessed or assessable by the authority for payment of stamp duty exceeds the fair market value of the property as on the date of transfer; and
- the value so adopted or assessed or assessable by such authority has not been disputed in any appeal or revision or no reference has been made before any other authority, court or high Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer as defined in section 2(r) of the Wealth-tax Act, 1957 [Section 50C(2)].
- **Where the value ascertained by such Valuation Officer exceeds the value adopted or assessed or assessable by the Stamp authority:** The value adopted or assessed or assessable shall be taken as the full value of the consideration received or accruing as a result of the transfer [Section 50C(3)].
- **Consequences where the value is determined by the Valuation Officer:**
  A. The value determined by the Valuation Officer
  B. The value adopted or assessed or assessable for the purpose of stamp duty

Case	***Sale Consideration***
(A>B)	B (i.e. Value adopted or assessed or assessable for the purpose of stamp duty)
(A<B)	A (i.e. The value determined by the Valuation Officer)

Points to be considered:

- The amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through specified electronic modes, on or before the date of the agreement for transfer.
- As per section 155, If the value adopted for stamp duty purposes is revised in any appeal, revision or reference, the assessment earlier made shall be amended to re-compute the capital gains by taking the revised value as sale consideration.
- The value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

CASE 14

Mr. Divyesh has a house property acquired on 14/10/2020 for Rs 8,00,000. He sold such property for Rs. 7,00,000 to Vatsal as on 16/08/2021. Stamp duty authority for the purpose of levying stamp duty adopted value of Rs. 12,00,000. Assessing Officer for computing capital gain on such transfer is taking sale consideration Rs. 12,00,000 u/s 50C. On request of Mr. Divyesh, the matter being referred to Valuation Officer and value determined by the Valuation Officer is Rs. 11,00,000. Compute capital gain for AY2022-23. What will be the tax treatment if value determined by the Valuation Officer is Rs. 12,25,000.

Solution:

Nature of Capital Asset	:	House Property
Value adopted for stamp duty	:	Rs. 12,00,000
The value determined by the Valuation Officer	:	Rs. 11,00,000

Computation of Sale consideration

A. The value determined by the Valuation Officer 11,00,000

B. The value adopted or assessed or assessable for the purpose of stamp duty 12,00,000

A<B , Hence Sale Consideration=**A (i.e. Value determined by Valuation officer) 11,00,000**

Computation of Capital gain for AY 2022-23

Particulars	*Amount (Rs.)*
Sale consideration	11,00,000
Less:	
Expense on transfer	-
Cost of Acquisition	8,00,000
Short Term Capital Gain	**3,00,000**

if value determined by the Valuation Officer is Rs. 12,25,000.

A. The value determined by the Valuation Officer 12,25,000

B. The value adopted or assessed or assessable for the purpose of stamp duty 12,00,000

A>B , Hence Sale Consideration=**B (i.e. adopted for stamp duty) 12,00,000**

Computation of Capital gain for AY2022-23

Particulars	*Amount (Rs.)*
Sale consideration	12,00,000
Less:	
Expense on transfer	-
Cost of Acquisition	8,00,000
Short Term Capital Gain	**4,00,000**

CAPITAL GAIN ON TRANSFER OF UNLISTED SHARES IN A COMPANY [SECTION 50CA]

This Section is applicable if an assessee transfers shares in a company (other than quoted shares) at less than the fair market value of such share determined in accordance with prescribed manner. In such case, the FMV of such shares shall be deemed to be the full value of consideration for the purpose of computation of capital gain provided that the provisions of this section shall not apply to such transactions undertaken by certain class of persons and subject to such conditions as may be prescribed by CBDT.

FAIR MARKET VALUE TO BE FULL VALUE OF CONSIDERATION IN CERTAIN CASES [SECTION 50D]

Capital gains are calculated on transfer of a capital asset, as sale consideration minus cost of acquisition. In some recent rulings, it has been held that where the consideration in respect of transfer of an asset is not determinable under the existing provisions of the Income-tax Act, then, as the machinery provision fails, the gains arising from the transfer of such assets is not taxable. Section 50D has been inserted to provide that fair market value of the asset on the date of transfer shall be deemed to be the full value of consideration if actual consideration is not attributable or determinable.

REFERENCE TO VALUATION OFFICER [SECTION 55A]

With a view to ascertaining the fair market value of a capital asset, the concerned Assessing Officer may refer the valuation of the capital asset to a Valuation Officer appointed by the Income-tax Department in the following cases:

(a) Where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer (who works in a private capacity under a licence issued by the Board and his valuation is not binding on the Assessing Officer), but the Assessing Officer is of the opinion that the value so claimed is less than its fair market value (upto June 30, 2012) w.e.f 1st July 2012, the Assessing Officer is enabled to make a reference to the Valuation Officer where in his opinion the value declared by the assessee is at variance from the fair market value [Section 55A(a)].

(b) Where the Assessing Officer is of the opinion that the fair market value of the asset exceeds the value of the asset by more than Rs. 25,000 or 15% of the value claimed by the assessee whichever is less [Section 55A(b)(i) read with Rule 111AA].

(c) Where the Assessing Officer is of the opinion that, having regard to the nature of an asset and relevant circumstances, it is necessary so to make a reference to the Valuation Officer [Section 55A(b)(ii)].

It may be noted that in a case where the assessee has opted for substitution of the cost of acquisition of an asset by its fair market value as on 1.4.1981, the fair market value as claimed by him may be higher than its actual fair market value. The provisions of Section 55A(a) and (b)(i) are, therefore, not applicable to such a case. It is, however, open to the Assessing Officer to make a reference to the Valuation Officer under Section 55A(b) (ii).

Note that in cases covered by Section 55A(a) and (b)(i) above it is the duty of the Assessing Officer to refer the valuation of the capital asset in question to the Valuation Officer attached to the department and not to decide the question of the valuation on his own.

Illustration 6:

A has the following incomes for the Previous Year 2022-23:

Particular	***Rs.***	
Business Income	(--) 30,000	(viz. business loss of 30,000)
Short-term capital gains	6,000	
Long-term capital gains	1,90,000	

A deposits Rs. 9,000 in public provident fund account. You are required to find out his tax liability for the Assessment Year 2023-24.

Solution:

Computation of net Income of Mr. A for the Assessment Year 2023-24

Particulars	***Rs.***	***Rs.***
Business Income		(-) 30,000
Capital gain		
– Short-term	6,000	
– Long-term	1,90,000	1,96,000
		1,66,000

Computation of Tax Liability for the assessment year 2023-24

Tax on Total income Nil

Notes:

(1) If the net income (other than long-term capital gain) is below the amount of first slab which is not taxable (i.e., Rs. 2,50,000), then the long-term capital gain is to be reduced by the amount by which the total income (other than long-term capital gain) falls short of the maximum amount which is not chargeable to tax.

(2) In this case, net income (other than long-term capital gain is (-) Rs. 24,000 which will be allowed to be carried forward, i.e., not to be deducted from Rs. 2,50,000. Therefore, long-term capital gain shall be reduced by Rs. 2,50,000. Thus, no tax shall be leviable on long-term capital gain.

ADVANCE MONEY RECEIVED [SECTION 51]

Section 51 provides that while calculating capital gains, the advance money retained by the assessee must go to reduce the cost of acquisition. However, if advance money has been received and retained by the previous owner and not the assessee himself, then the same will not go to reduce the cost of acquisition of the assessee.

Section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Consequently, such sum shall be chargeable to income-tax under the head 'Income from other sources', if such sum is forfeited on or after 1st April, 2014 and the negotiations do not result in transfer of such capital asset.

In order to avoid double taxation of the advance received and retained, section 51 provides that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset has been included in the total income of the assessee for any previous year in accordance with section 56(2)(ix), then, such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

However, any such sum of money forfeited before 1st April, 2014, will be deducted from the cost of acquisition for computing capital gains.

CASE 15

Mr. X acquired a house in Mumbai on 16.12.2012 for Rs. 12,50,000. After few years i.e. on March-2016, he entered into agreement to sell the property to Mr. Y for Rs. 20,50,000 and received Rs. 2,50,000 as an advance money and balance money to be paid within period of a month as per the terms of agreement subject to forfeiture if not paid within stipulated time. Mr. Y failed to make payment within stipulated time and consequently it was forfeited. Later on it was sold to Mr. Z for Rs. 25,50,000 by Mr. X and paid 2% of brokerage of sale. You are required to compute Capital Gain for AY 2022-23.

Solution:

Statement showing computation of capital gain for AY 2022-23

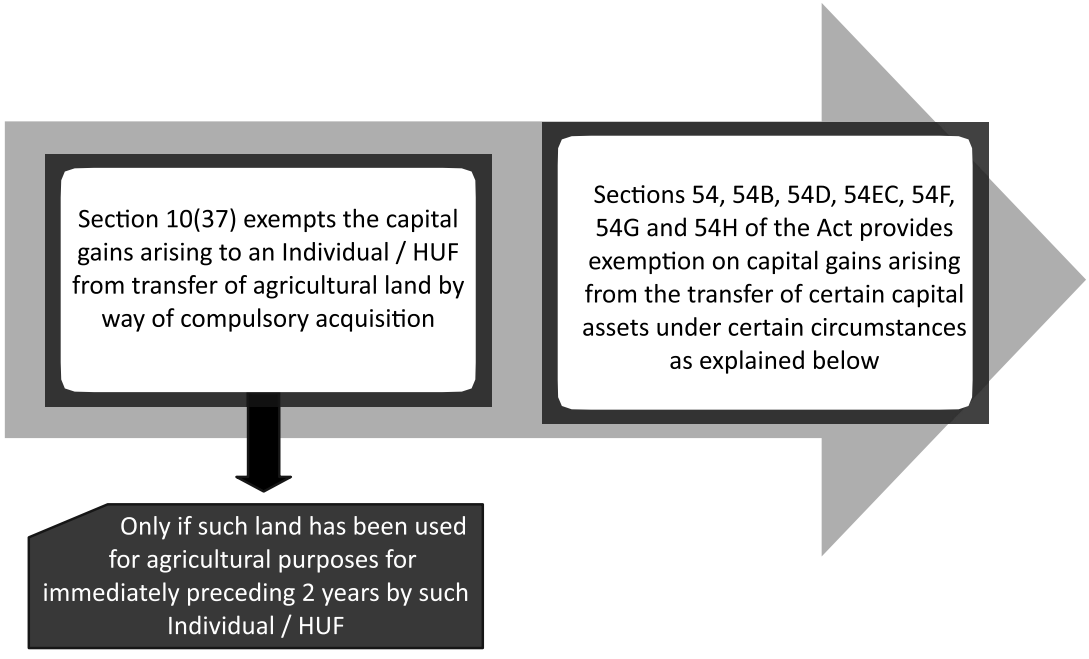
Particulars	***Amount (Rs.)***
Sale Consideration	25,50,000
Less:	

Expense on transfer (2% of 25,50,000)	51,000
Indexed Cost of Acquisition (If Acquisition on or after 1.4.2001) ICOA = [(COA)*(CII for the year of transfer /CII for Year of Acquisition)] ICOA = [(12,50,000)*(317/200)]	19,81,250
Short Term Capital Gain	**5,17,750**

Treatment of Advance Money Forfeited

Forfeited amount of Rs. 2,50,000 by Mr. X shall be taxable under the head "Income From House Property" as per section 56 (2) (ix).

EXEMPTION FROM CAPITAL GAINS



Profit on sale of property used for Residential Purposes [Section 54]

Conditions for claiming exemption:

- Assessee: Individual or HUF
- Which Asset to transfer: Residential House (buildings or lands appurtenant there to)
- It must be a long-term capital asset
- Income from such house should be chargeable to tax under the head "Income from house property"

S. No.	Situation	Investment
1.	Where the amount of capital gains exceeds Rs. 2 crore	One Residential house in India should be – ● Purchased within 1 year before or 2 years after the date of transfer (or) ● Constructed within a period of 3 years after the date of transfer.
2.	Where the amount of capital gains does not exceed Rs. 2 crore	● Purchase two residential houses in India within 1 year before or 2 years after the date of transfer (or) ● Construct two residential houses in India within a period of 3 years after the date of transfer.

Where during any assessment year, the assessee has exercised the option to purchase or construct two residential houses in India, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

This implies that if an assessee has availed the option of claiming benefit of section 54 in respect of purchase of two residential houses in Jaipur and Jodhpur, say, in respect of capital gains of Rs. 1.50 crores arising from transfer of residential house at Bombay in the P.Y.2021-22 then, he will not be entitled to avail the benefit of section 54 again in respect of purchase of two residential houses in future even though the capital gains arising on transfer of the residential house does not exceed Rs. 2 crore.

Amount of Exemption under section 54 will be lower of:

- Long term capital gains arising on transfer of residential house; or
- Amount invested in purchase/construction of new residential house or houses. (including the amount deposited in CGAS before due date of filing of return.

If till the date of filing the return of income, the LTCG on such transfer of the house is not utilised (in whole or in part) to purchase or construct another house, then the benefit of exemption can be availed by depositing the unutilised amount into Capital Gains Deposit Account Scheme (CGAS) with any scheduled bank.

If the amount deposited in the Capital Gains Account Scheme in respect of which the assessee has claimed exemption under section 54 is not utilised within the specified period for purchase/construction of the residential house, then the unutilised amount (for which exemption is claimed) will be taxed as income by way of long- term capital gains of the year in which the specified period of 2 years/3 years gets over.

If the new house is also transferred within 3 years from date of acquisition or construction, the cost of new house would be reduced by the capital gains exempted earlier under section 54.

Illustration 7:

Mr. Khan purchased a residential house in the previous year 2005-06 for Rs. 2 crores. The house property is sold for Rs. 10 crores in the previous year 2021-22 and the capital gain is invested in two residential house proper- ties worth Rs. 4 crores each. Can he claim the benefit of section 54 in respect of both houses?

Solution:

Exemption under section 54 can be claimed in respect of capital gains arising on transfer of capital asset, being long-term residential house property. An assessee has an option to make investment in two

residential house properties in India to claim section 54 exemption. This option can be exercised by the assessee only once in his lifetime provided the amount of long-term capital gain does not exceed Rs. 2 crores. Since, the gain arising in hands of Mr. Khan is Rs. 5.06 crores which is more than Rs. 2 crore, he cannot claim the benefit of section 54 by making investment in both the house properties. However, he can claim the benefit only in respect of one residential property invested.

Computation of Long Term Capital Gains (LTCG)

	Particulars	***Amount (Rs.)***
	Sale Consideration	10 Crores
Less	Indexed Cost of Acquisition (2*317/117)	5.42 Crores
	Long Term Capital Gains (LTCG)	4.58 Crores
Less	Deduction u/s 54	4 Crores
	Taxable LTCG	0.58 Crores

Transfer of land used for Agricultural purposes [Section 54B]

Conditions for claiming exemption:

- Assessee: Individual or HUF
- There should be a transfer of an urban agricultural land
- Asset must be either short term or long term capital asset
- Such land has been used for agricultural purposes for immediately preceding 2 years by such Individual or his parent or HUF
- He should purchase another agricultural land (urban or rural) within 2 years from the date of transfer
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS
- Amount utilized by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

Amount of Exemption:

- If cost of new agricultural land ≥ capital gains, entire capital gain is exempt.
- If cost of new agricultural land < capital gains, capital gain to the extent of cost of new agricultural land is exempt.

If the new agricultural land is also transferred within 3 years from date of acquisition, the cost of land would be reduced by the capital gains exempted earlier (not applicable if the new land was rural).

Compulsory acquisition of lands and buildings [Section 54D]

Conditions for claiming exemption:

- Assessee: Any Assessee
- There must be a compulsory acquisition of land & building or any right in land or building forming part of an industrial undertaking

- Such land & building should have been used for business purposes of the industrial undertaking for 2 years immediately preceding the date of transfer
- The assessee must purchase any another land / building / construct any building (for shifting or re-establishing the existing undertaking or setting up a new industrial undertaking) within 3 years from date of transfer
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS. Amount utilized by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

In such a case, if the cost of the new land & building is > the Capital Gains, the entire LTCG will be exempt, and if less, then the LTCG will be exempt only to the extent of the cost of new land & building.

If the new land & building is also transferred within 3 years from date of acquisition, the cost of such land & building would be reduced by the capital gains exempted earlier.

Capital Gains Exemption in case of investments is made in Specified Bonds [Section 54EC]

Conditions for claiming exemption:

- Assessee: Any Assessee.
- There should be a transfer of a long-term capital asset being land or building or both.
- Such asset can also be a depreciable asset held for more than 36 months.
- The capital gains arising from transfer of such asset should be invested in a long-term specified asset within 6 months from the date of transfer.
- Long-term specified assets would imply, bonds redeemable after 5 years issued on or after 1.4.2018 by national highways Authority of India (NHAI), or Rural Electrification Corporation Limited or, power finance Corporation Ltd., Indian Railway finance Corporation Limited or any other bond notified by central government in this behalf.
- The assessee should neither transfer nor convert / avail loan or advance with this bond as security for a period of 5 years from date of acquisition of such bonds, and in case that does happen before 5 years, the capital gain exempted earlier shall be taxed as long-term capital gain in that year.

In this case, the entire LTCG or amount invested in the specified bonds, whichever is lower, is exempt.

The maximum investment which can be made in notified bonds or bonds of NHAI and RECL, out of capital gains arising from transfer of one or more assets, during the previous year in which the original asset is transferred and in the subsequent financial year cannot exceed Rs. 50 Lacs.

Practical Questions (MCQs)

State with reason whether the following statements are true or false with regard to the provisions of the Income-tax Act, 1961 for the Assessment year 2023-24:

(1) Capital gain of Rs. 75 lakh arising from transfer of long term capital assets will be exempt from tax if such capital gain is invested in the bonds redeemable after three years, issued by NHAI u/s 54 EC of the Act.

Answer : False : Because the maximum limit of investment in bond of NHAI u/s 54 EC, is just Rs. 50 lakhs.

(2) In order to enjoy exemption under section 54EC, the resultant long-term capital gains should be invested in specified bonds within a period of ..... from the date of transfer.

(a) 36 Months (b) 4 Months

(c) 6 Months (d) 12 Months.

Answer: (c) 6 Months

(3) Long-term capital gains on sale of a long-term capital asset in October, 2021 is Rs. 105 lakh. The assessee invested Rs. 50 lakh in REC bonds in March, 2023 and Rs. 55 lakh in NHAI bonds in May, 2023. The amount of exemption eligible under section 54EC is —

(a) Nil (b) Rs. 50 lakh

(c) Rs. 55 lakh (d) Rs. 105 lakh.

Answer: (b) Rs. 50 lakh

(4) Mr. Madan sold a vacant land for Rs. 120 lakhs on 10-10- 2022. The indexed cost of acquisition amounts to Rs. 18 lakhs. He deposited Rs. 50 lakhs in REC bonds in January 2023 and another Rs. 50 lakhs in March, 2023. The amount of capital gain liable to tax after deduction under section 54EC is :

(a) Rs. 2 lakhs (b) Rs. 18 lakhs

(c) Rs. 102 lakhs (d) Rs. 52 lakhs

Answer: (d) Rs. 52 lakhs

Tax incentives for Start-ups [Section 54EE]

Conditions for claiming exemption:

- Assessee: Any Assesse
- Which asset to transfer: One or more original Assets
- Investment of Long-term Capital Gains in units of a specified fund (to finance start-ups in India) issued before 1st April, 2019 of such fund, as may be notified by the Central Government in this behalf
- Within 6 months from date of transfer
- Maximum Investment Allowed in any financial year or years is INR 50,00,000.

In such case, the entire LTCG or amount invested in the bonds, whichever is lower is exempt. Units so acquired should not be transferred for a period of 3 years, and if that does happen before 3 years, the capital gain exempted earlier shall be taxed as long-term capital gain in that year. Further, if the assessee takes any loan or advance on the security of such units, he shall be deemed to have transferred such units on the date on which such loan or advance is taken.

Capital gain on the transfer of certain capital assets not to be charged in case of investment in residential house [Section 54F]

Conditions for claiming exemption:

- Assessee: Individual or HUF
- There must be a transfer of a long-term capital asset other than a residential house
- The assessee should purchase 1 residential house situated in India within 1 year before OR 2 years after the date of transfer OR construct one residential house in India within 3 years from date of transfer

- If such investment is not made before the date of filing of return of income, then the net sale consideration has to be deposited under the CGAS. Amount utilized by the assessee for purchase or construction of new asset and the amount so deposited shall be deemed to be the cost of new asset.

If the cost of the investment in a new residential house is > the net Sale Consideration, the entire LTCG is exempt, and if less than net Sale Consideration, then, LTCG is exempt proportionately (that is: LTCG * Investment in new house / net Sale Consideration).

There is also a condition, that the assessee should not own more than one residential house on the date of transfer and should not purchase any other residential house within 2 years OR construct any other residential house within 3 years from date of transfer of original asset, and if that does happen then, the entire LTCG exempted earlier will be chargeable to tax as LTCG in that year.

Additionally, if the new house is transferred within 3 years of purchase, capital gains would arise on transfer and the LTCG exempt earlier would be taxable as LTCG in that year.

Illustration 8:

Under which section, the assessee has to reinvest the entire net consideration to claim full exemption for the long-term capital gains earned during a previous year —

(a) Section 54EC (b) Section 54F

(c) Section 54GA (d) Section 54D.

Answer: Section 54F

Exemption of capital gain on transfer of assets of shifting of industrial undertaking from urban area to a Special Economic Zone [Section 54GA]

Conditions for claiming exemption:

Assessee: Any Assessee

The exemption is available to all categories of assesses in respect of capital gain arising on the transfer of fixed assets other than furniture and fittings of industrial undertaking effected in the course of shifting of such industrial undertaking to any Special Economic Zone.

The conditions for claiming exemptions are as under:

(i) The transfer is effected in the course of or in consequence of shifting the undertaking from an urban area to any Special Economic Zone. The special Economic Zone may be developed in any urban area or any other area.

1. Any other area means an area not declared as an urban area.
2. 'urban Area' means any such area within the limits of a municipal corporation of municipality, as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order, declare to be an urban area for the purposes of this sub-section.
3. "Special Economic Zone" means each Special Economic Zone notified under the proviso to Sub-section (4) of Section 3 and Sub-section (1) of Section 4 of the Special Economic Zone Act, 2005 (including free Trade and Warehousing Zone) and includes an existing Special Economic Zone. [Section 2(za) of the Special Economic Act, 2005].

(ii) Asset transferred is machinery, plant, building, land or any right in building or land used for the business of industrial undertaking in an urban area;

(iii) The capital gain arising on the asset transferred may be short-term or long-term capital gain. Normally, it will be short-term capital gain because most of the assets of the industrial undertaking will be depreciable assets;

(iv) The capital gain is utilized within 1 year before or 3 years after the date of transfer for the specified purpose.

Specified purpose includes the following:

(a) for purchase of new machinery or plant for the purpose of business of the Industrial undertaking in the Special Economic Zone to which the said undertaking is shifted;

(b) acquisition of building or land or construction of building for the purposes of the assessee's business in the Special Economic Zone;

(c) expenses on shifting of the old undertaking and its establishment to the Special Economic Zone; and

(d) incurring of expenditure on such other purposes as specified by the Central Government for this purpose.

Capital Gain on Transfer of Residential Property (a house or a plot of land) [Section 54GB]

Who can claim exemption	An Individual or a Hindu undivided family.
Which specified asset is eligible	On transfer of a long term residential property (a house or a plot of land) if transfer takes place during April 1, 2012 and March 31, 2017. (in case of eligible start up, residential property can be transferred up to March 31, 2022. [Extended from 31st March 21 to 31st March 22 by Finance Act, 2021]
Which asset the taxpayer should acquire to get benefit of exemption	Equity shares of 25% of share capital or voting rights in an "eligible company.
What is the time-limit for acquiring the new assets	Equity shares in an "eligible company" should be acquired on or before the due date of furnishing of return of income under section 139(1). The "eligible company" should utilize this amount for the purchase of a "new asset" within one year from the date of subscription in equity shares.
how much is exempt	Investment in "new asset" by the eligible company net sale consideration x capital gain. Exemption cannot exceed capital gain.
It is possible to revoke the exemption	In the following cases, exemption will be taken back and the amount of exemption (or proportionate exemption) given earlier under section 54 GB will become long-term capital gain of the assessee (i.e. transferor of residential property). It shall be taxable in the year in which the assessee or the eligible company commits the following defaults- If the equity shares in the eligible company are sold or otherwise transferred by the assessee within 5 years from the date of acquisition.

	If the "new asset" is sold or otherwise transferred by the eligible company within 5 years from the date of acquisition. If the deposit account is not utilized fully or partly by the eligible company for purchasing the new asset within 1 year from the date of subscription in equity shares (by the assessee).

Extension of Time for Acquiring New Asset or Depositing or Investing Amount of Capital Gain [Section 54H]

This section states that where the transfer of the original asset is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period of acquiring the new asset by the assessee referred to in Sections 54, 54B, 54D, 54EC and 54F or for depositing or investing the amount of capital gain shall be extended. This extended period shall be reckoned from the date of receipt of such compensation.

TAX ON LONG-TERM CAPITAL GAINS IN CASE OF SPECIFIED SECURITIES [SECTION 112A]

Applicable on sale of equity share listed on a recognised Stock exchange or unit of equity oriented fund or unit of business trust, where such sale transaction is chargeable to securities transaction tax (STT).

Prior to 01.04.2018 any LTCG on sale of such specified securities was exempt under Section 10(38). This exemption has been withdrawn by the Finance Act, 2018 w.e.f. Assessment Year 2020-21 and a new section 112A is introduced in the Income-tax Act.

As per this new section, where the total income of an assessee, includes any LTCG income [which was earlier exempt under section 10(38) upto 31.03.2018] shall now be taxed at the rate of 10% on such capital gains exceeding Rs. 1,00,000 [excess will be taxable]. The benefit of indexation shall not be allowed on such LTCG. Deductions under Chapter VIA (section 80C to 80u) not to be allowed from such LTCG. Rebate of tax under section 87A not to be allowed from the tax payable on such LTCG.

The cost of acquisitions for computing LTCG in respect of a listed equity share acquired by the assessee before February 1, 2018, shall be deemed to be the higher of following:

(a) The actual cost of acquisition of such asset; or

(b) Lower of following :

  (i) fair market value of such shares as on January 31, 2018; or

  (ii) Actual sales consideration accruing on its transfer.

Note: The fair market value of listed equity share shall mean its highest price quoted on the stock exchange as on January 31, 2018.

Illustration 9:

Mr. Raman is a salaried employee. In the month of January, 2014 He purchased 100 shares of X Ltd. @ Rs. 1,400 per share from Bombay Stock Exchange. These shares were sold through BSE in April, 2021 @ Rs. 2,600 per share. The highest price of X Ltd. share quoted on the stock exchange on January 31, 2018 was Rs. 1,800 per share. What will be the nature of capital gain in this case?

Solution

Shares were purchased in January, 2014 and were sold in April, 2021, i.e., sold after holding them for a period of more than 12 months and, hence, the gain will be long-term capital gain (LTCG). In the given case, shares are sold after holding them for a period of more than 12 months, shares are sold through recognised

stock exchange and the transaction is liable to STT. Therefore, section 112A is applicable in this case.

The cost of acquisition of X Ltd. shares shall be higher of:

a) Cost of acquisition, i.e., 1,40,000 (1,400 × 100)

b) Lower of:

i) Highest price quoted as on 31.1.2018. i.e., 1,80,000 (1,800 × 100);

ii) Sales consideration, i.e., 2,60,000 (2,600 × 100)

Thus, the cost of acquisition of shares shall be Rs. 1,80,000. Accordingly, Long-term capital gains in hands of Mr. Raman would be Rs. 80,000 (i.e., 2,60,000 – 1,80,000). Since long-term capital gains doesn't exceed Rs. 1,00,000, nothing is taxable in hands of Mr. Raman.

TAX RATES

Short-term Capital Gains (STCG)

- STCG is clubbed with Total Income and therefore charged to tax at normal rates. However, STCG on transfer of listed equity shares / unit of an equity-oriented fund / unit of a business trust, where STT has been paid, STCG is taxable @ 15% under section 111A.
- Further, short-term capital gains arising from transactions undertaken in foreign currency on a recognized stock exchange located in an International financial Services Centre (IFSC) would be taxable at a concessional rate of 15% even though STT is not leviable in respect of such transaction.
- Deductions under Chapter VI-A cannot be availed in respect of such short-term capital gains on equity shares of a company or units of an equity oriented mutual fund or unit of a business trust included in the total income of the assessee.
- Unexhausted basic exemption limit can be exhausted against Short Term Capital Gains taxable u/s 111A for Resident Individual & Resident HUF

Long-term Capital Gains (LTCG)

<table>
<tr><th colspan="2">Person</th><th>Rate of tax</th><th colspan="2">Particulars</th></tr>
<tr><td rowspan="4">1.</td><td rowspan="4">Resident persons, Other than Companies

Resident Individuals and HUF

Resident AOPs and BOIs

Resident Firms and LLPs</td><td>

20%

20%

20%</td><td rowspan="4">Unexhausted basic exemption limit can be exhausted against LTCG taxable u/s 112 / 112A for Resident Individual & Resident HUF</td><td rowspan="5">In case of transfer of listed securities (other than units) and Zero Coupon Bonds, LTCG would be taxable

at the lower of the following rates –

(1) 10% without indexation benefit; and

(2) 20% with Indexation benefit.</td></tr>
<tr><td>2.</td><td>Domestic Companies</td><td>20%</td></tr>
<tr><td rowspan="2">3.</td><td rowspan="2">Non-Corporate, Non Residents and Foreign Companies</td><td>10%</td><td>Capital Assets, other than unlisted securities or shares of closely held companies</td></tr>
<tr><td>20%</td><td>Unlisted securities or shares of closely held companies (without benefit of indexation or foreign currency fluctuation)</td></tr>
</table>

Note: STT is not allowed as a deduction in the computation of Capital Gains. Also note, that the unexhausted basic exemption limit can be exhausted under LTCG only for individuals / HUF's

Illustration 10:

(1) Long-term capital gains on zero coupon bonds are chargeable to tax —

(a) @ 20% computed after indexation of such bonds

(b) @ 10% computed without indexation of such bonds

(c) Higher of (a) or (b)

(d) Lower of (a) or (b).

Answer: (d) Lower of (a) or (b).

(2) Short-term capital gains arising from the transfer of equity shares in a company or units of an equity oriented fund or units of a business trust charged with security transaction tax are subject to income-tax at the rate of —

(a) 10% (b) 15%

(b) 20% (d) normal rate.

Answer: (b) 15%

CASE STUDY 1

Mr. Kapoor (age 67 years and resident) is a retired person earning total pension of Rs. 1,00,000. He purchased gold in December, 2010 and sold the same in April, 2021. Taxable LTCG amounted to Rs. 2,80,000. What will be his tax liability for the A.Y. 2022-23?

Option 1 : Assessee has not opted for Section 115BAC

Option 2 : Assessee has opted for Section 115BAC

Solution: Computation of tax liability for the AY 2022-23 is as under:

Option 1 : Assessee has not opted for Section 115BAC

Gross Salary (pension income)	Rs. 1,00,000
Less: Standard deduction u/s 16(ia)	Rs. 50,000
Income under the head Salary	Rs. 50,000
LTCG on sale gold	Rs. 2,80,000
Total income	Rs. 3,30,000
Tax on LTCG u/s 112 on Rs. 30,000 @ 20%*	Rs. 6,000
Less : Rebate as per section 87A	Rs. 6,000
Tax after Rebate	NIL

* Resident individual above 60 years but below 80 years of age has basic exemption limit of Rs. 3,00,000. Which can be adjusted against LTCG of Rs. 2,80,000 but after the adjustment of salary income of Rs. 50,000. Hence, the balance LTCG taxable will come to Rs. 30,000 @ 20%.

Option 2: Assessee has opted for Section 115BAC

Computation of tax liability for the A/Y is as under :

Gross Salary (pension income)	Rs. 1,00,000
Less: Standard Deduction u/s 16 (ia)	N/A
Income under the head Salary	Rs. 1,00,000
LTCG on sale of gold	Rs. 2,80,000
Total income	Rs. 3,80,000
Tax on LTCG u/s 112 on Rs. 1,30,000 @ 20%*	Rs. 26,000
Less : Rebate as per section 87A	Rs. 12,500
Tax after Rebate	Rs. 13,500
Add: health and Education Cess @4% on Rs. 13500	Rs. 540
Tax Liability	Rs. 13,940

* u/s 115BAC Basic exemption limit is 2,50,000 irrespective of age. Unutilised exemption limit of Rs. 2.50,000 - 1,00,000, i.e., Rs. 1,50,000, can be adjusted against LTCG of Rs. 2,80,000. Hence, the balance LTCG taxable will come to Rs.1,30,000 @ 20%.

CASE STUDY 2

Mr. Gagan (age 69 years and non-resident) is a retired person earning total pension of Rs. 1,00,000 from Indian employer. He purchased a piece of land in Delhi in December, 2010 and sold the same in April, 2021. Taxable LTCG amounted to Rs. 2,30,000. What will be his tax liability for the year 2021-22?

Option 1 : Assessee has not opted for Section 115BAC

Option 2 : Assessee has opted for Section 115BAC **Solution :**

Option 1 : Assessee has not opted for Section 115BAC

Computation of tax liability for the A.Y. 2022-23 is as under:

Gross Salary (pension income)	Rs. 1,00,000
Less: Standard deduction u/s 16 (ia)	(Rs. 50,000)
Income under the head Salary	Rs. 50,000
LTCG on sale of gold	Rs. 2,30,000
Total income	Rs. 2,80,000
Tax on LTCG u/s 112 on Rs. 2,30,000 @ 20%*	Rs. 46,000
Less : Rebate as per section 87A (not available to non-resident)	NIL
Tax after Rebate	Rs. 46,000
Add : Health & education cess @ 4%	Rs. 1,840
Net tax payable	Rs. 47,840

*non-Resident individual (of any age) has basic exemption limit of Rs. 2,50,000. Which cannot be adjusted against LTCG of Rs. 2,30,000 but the same can be adjusted against salary income of Rs. 50,000. Hence, the whole amount of LTCG is taxable @ 20%.

Solution :

Option 2 : Assessee has opted for Section 115BAC

Computation of tax liability for the A.Yr. 2022-23 is as under :

Gross Salary (pension income)	Rs. 1,00,000
Less: Standard deduction u/s 16 (ia)	N/A
Income under the head Salary	Rs. 1,00,000
LTCG on sale of gold	Rs. 2,30,000
Total income	Rs. 3,30,000
Tax on LTCG u/s 112 on Rs. 2,30,000 @ 20%*	Rs. 46,000
Less : Rebate as per section 87A (not available to non-resident)	NIL
Tax after Rebate	Rs. 46,000
Add : health & Education cess @ 4%	Rs. 1840
Net tax payable	Rs. 47840

*non-Resident individual (of any age) has basic exemption limit of Rs. 2,50,000. Which cannot be adjusted against LTCG of Rs. 2,30,000 but the same can be adjusted against salary income of Rs. 1,00,000. Hence, the whole amount of LTCG is taxable @ 20%.

CASE STUDY 3

Priyanka furnishes the following data for the PY ended 31st Mar' 22.

- She had unlisted shares of XYZ Ltd., 1,00,000 in number, which she sold on 30th Jun'21 for INR 800 per share.
- The above shares were acquired as under:
- Gift from father: 50.000 shares on 3rd May' 99 (FMV on 1st April 2001 is INR 300)
- Bonus Shares on 21st June 2009: 20,000 shares
- purchased 30,000 shares on 1st January 2011 @ INR 525 per share

Thereafter, she invested the proceeds to buy a residential house at INR 4,00,00,000 on 3rd May'21 and she was already owing a residential house prior to the purchase of this one.

You are required to compute the taxable capital gains.

Solution:

	Particulars	*Number*	*Rate per Share*	*Amount*	*Date*
	Full Value of Consideration	1,00,000	750	8,00,00,000	30th Jun'2
Less:	Indexed COA				
	Gift from father	50,000	300	4,75,50,000	3rd May'99
	Bonus	20,000	0	-	21st Jun'09
	Purchased	30,000	525	2,98,96,707	1st Jan'11
	Total Indexed COA			7,74,46,707	
	LTCG			25,53,293	
	New Residential house			4,00,00,000	
	LTCG exempt			12,76,647	
	Taxable LTCG			12,76,646	

Note:

(a) The bonus shares were granted after 1st Apr'01 and hence the cost of acquisition is NIL

(b) for the shares gifted by her father prior to 1st Apr'01, the FMV as on 1st Apr'01 would be considered as the Cost of Acquisition

(c) Indexed COA for the gifted shares therefore is 50,000*300/100*317

(d) Indexed COA for the acquired shares therefore is 30,000*525/167*317

(e) In the case above the necessary conditions u/s 54f have been fulfilled and therefore she is entitled to a proportionate exemption from LTCG (i.e., INR 4 Crores/INR 8 Crores * 25,53,293).

CASE STUDY 4

Mrs. Shanti Devi, a resident individual, sold her residential property on 18th Jul'21 for INR 75,00,000. She had purchased the same for INR 25,00,000 on 3rd May 2006. She paid INR 1,00,000 towards brokerage for the sale. The stamp duty valuation was INR 100,00,000.

She bought another property for INR 20,00,000 on 14th Dec'21 and deposited another INR 5,00,000 on 21st Jun'22 in the capital gain deposit scheme with SBI for construction of an additional floor in the property.

She also deposited INR 5,00,000 on 30th nov'21 in the NHAI Bonds. Compute the Capital Gains and Tax Liability. Assuming the assessee has not opted for section 115BAC

Solution :

Particulars	*INR*
Full Value of Consideration	1,00,00,000
Brokerage	1,00,000
Net Sale Consideration	99,00,000
Less: Indexed COA [25 lakh *317/122]	64,95,902
LTCG	34,04,098
Exemption u/s 54	25,00,000
Exemption u/s 54EC	5,00,000
Taxable LTCG (Total Income)	**4,04,098**
Tax payable	–

Notes:

a) As per Section 50C, in case the actual sale consideration is less than the stamp duty value, the stamp duty valuation would be the full value of the consideration.

b) Exemptions u/s 54 are towards purchase of another house within 2 years of date of transfer and Deposit in Capital Gains Accounts Scheme (CGAS) on or before the due date of filing return of Income.

c) Exemption u/s 54EC is towards investment in specified bonds (NHAI) within 6 months from date of transfer.

d) Since the Taxable LTCG, which is less than basic exemption limit of Rs. 2,50,000, therefore no tax will be payable.

CASE STUDY 5

Mr. X purchased a house on 01.04.2001 for Rs. 2,00,000 and incurred Rs. 3,00,000 on improvement on 01.07.2002 and it was received by his son Mr. Y on 01.07.2011 and Mr. Y incurred Rs. 4,00,000 on improvement on 01.07.2013 and the house was sold by him on 01.07.2021 for Rs. 1,00,00,000. He is entitled to Deduction u/s 80C of Rs. 1,00,000. Compute the tax liability of Mr. Y

Option 1 : Assessee has not opted for Section 115BAC

Option 2 : Assessee has opted for Section 115BAC

Solution :

Option 1 : Assessee has not opted for Section 115BAC

Particulars	*INR*
Full value of consideration	1,00,00,000

Less: Indexed cost of acquisition = 2,00,000 / 100 x 317	(6,34,000)
Less: Indexed Cost of improvement = 3,00,000 / 105 x 317	(9,05,714)
Less: Indexed Cost of improvement = 4,00,000 / 220 x 317	(5,76,364)
Long term Capital Gains	78,83,922
Gross Total Income	78,83,922
Less: Deduction u/s 80C	(1,00,000)
Total Income (rounded off u/s 288A)	77,83,920
Computation of Tax Liability	
Tax on LTCG Rs. 75,33,920 (77,83,920 – 2,50,000) @ 20%	15,06,784
Add: Surcharge @ 10%	1,50,678
Tax before health & education cess	16,57,462
Add: HEC @ 4%	66,298
Tax Liability	17,23,760

Option 2 : Assessee has opted for Section 115BAC

Particulars	***INR***
Full value of consideration	1,00,00,000
Less: Indexed cost of acquisition = 2,00,000 / 100 x 317	(6,34,000)
Less: Indexed Cost of improvement = 3,00,000 / 105 x 317	(9,05,714)
Less: Indexed Cost of improvement = 4,00,000 / 220 x 317	(5,76,364)
Long term Capital Gains	78,83,922
Gross Total Income	78,83,922
Less: Deduction u/s 80C	N/A
Total Income (rounded off u/s 288A)	78,83,920
Computation of Tax Liability	
Tax on LTCG Rs. 77,40,730 (78,83,920 – 2,50,000) @ 20%	15,26,784
Add: Surcharge @ 10%	1,52,678
Tax before health & education cess	16,79,462
Add: HEC @ 4%	67,178
Tax Liability (ROUND OFF)	17,46,640

CASE STUDY 6

State, giving reason, whether the asset is Short term or Long term in the cases given below –

1. L purchases a house property on March 10, 2020 and transfers it on June 6, 2021
2. M purchases listed shares in an Indian Company on March 10, 2020 and transfers it on June 6, 2021
3. N acquires units of equity oriented mutual fund on July 7, 2020 and he transfers these units on July 10, 2021 & purchases diamonds on September 12, 2018 and gifts the same to his friend p on December 31, 2020. p transfers the assets on October 20, 2021.
4. P purchases shares in a company through a NSE broker (Date of purchase by the broker: November 21, 2020 the company transfers shares in the name of P: January 5, 2021). These shares are transferred by P on December 20, 2021.

Solution:

Taxpayer	*Asset*	*Minimum period to become long-term capital asset*	*Short term or long term*
L	**House property**	24 months	Short term
M	**Listed Shares**	12 months	Long term
N	**Units of EOMF**	12 months	Long term
P	**Diamonds**	36 months	Long term
P	**Listed Shares**	12 months	Long term

CASE STUDY 7

State, giving reasons the assessment year for which capital gain is chargeable to tax in the cases given below –

1. K sells a house property to Q as per sale deed dated March 30, 2021. The documents are, however, registered on April 6, 2021.
2. H sells a house property to C as per agreement to sale dated May 6, 2020, A pays the consideration on the same day. The possession is given on June 1, 2020, the sale deed is yet to be registered.
3. V sells shares to M on March, 1, 2020. Transfer deed is signed on the same day. Share certificates are delivered at the time of signing the transfer deed. Shares are, however, transferred in the name of M in the records of the company on May 10, 2020.

Solution:

1. **"Transfer" takes effect** from the date of execution of the sale deed (and not from the date of registration Therefore in this case transfer takes place during the p/y 2019-20 and, consequently Capital Gain is taxable for the A/Y 2021-22.
2. Even if sale deed is not registered, an immovable property is transferred when the three conditions of section 53A of the Transfer of property Act are satisfied. The three conditions are satisfied on June 1, 2020. Therefore capital gains is taxable for the A/Y 2021-22.
3. When a movable property is delivered pursuant to a contract to sell, the ownership is transferred. In this case, ownership is transferred on March 1, 2021 and, consequently Gain is taxable for the assessment year 2021-22.

CASE LAWS

1. ***Whether, for the purpose of computing the period of holding of the property, the date of allotment letter issued by the builder of the flat or the date of registration of the property has to be considered for determining the nature of capital asset – long-term or short-term?***

   CIT v. S.R. Jeyashankar (2015) [Madras High Court]

   In effect, the P&H HC (in a similar case) held that the allottee gets the title to the property on issuance of allotment letter and payment in installments is only a consequential act upon which delivery of possession to the property flows. The Madras HC also noted that the Punjab & Haryana HC had taken a similar view in Vinod Kumar Jain's case. Accordingly, the Madras HC held that the assessee had rightly claimed the benefit of long-term capital gain, since the holding period exceeded 36 months (i.e., from 22.02.2005, being the date of agreement, to 10.04.2008, being the date of sale of property).

2. ***What would be the period of holding to determine whether the capital gains on renunciation of right to subscribe for additional shares is short-term or long-term?***

   Navin Jindal v. ACIT (2010) [Supreme Court]

   For determining whether the capital gains on renunciation of right to subscribe for additional shares is short term or long-term, the period of holding would be from the date on which such right to subscribe for additional shares comes into existence upto the date of renunciation of such right.

3. ***Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner?***

   CIT v. Manjula J. Shah (2013) [Bombay High Court]

   The indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.

4. ***Would an assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point?***

   CIT v. Syed Ali Adil (2013) [Andhra Pradesh High Court]

   The Andhra pradesh high Court, on the basis of the above rulings of the Karnataka high Court, held that in this case, the assessee was entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point, thus, making it a single residential unit.

5. ***Can exemption under section 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six month period?***

   Hindustan Unilever Ltd. v. DCIT (2010) [Bombay High Court]

   For the purpose of the provisions of section 54EC, the date of investment by the assessee must be regarded as the date on which payment is made. The high Court, therefore, held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption under section 54EC.

6. ***Sale of a Running Business with all Assets and Liabilities is a Slump Sale, would not attract Section 50(2) of Income Tax Act***

CIT v. Equinox Solution Pvt. Ltd

In CIT v. Equinox Solution pvt. Ltd, the two-judge bench of the Supreme Court held that the sale of a running business with all its assets and liabilities would not be covered by section 50(2) of the Income Tax Act since such transactions are slump sale of a "long term capital asset" within the ambit of section 48(2) of the Income Tax Act.

The factual settings of the case are that the assessee-Company sold its entire business- a running concern to another Company. for the year under consideration, the assessee filed return claiming deduction under section 48 of the IT Act stating that the sale is in the nature of "slump sale" of the going concern being in the nature of long term capital gain in the hands of the assessee.

The assessing officer rejected the contention of the assessee and denied the claim by invoking section 50(2). he was of the view that the transaction was in the nature of short term capital gain as specified in Section 50 (2) of the Act.

Assessee successfully appealed the impugned order before the first appellate authority. Though the order was challenged before the ITAT and high Court, the Revenue couldn't secure any relief. Dissatisfied by the orders of the appellate authorities and the high Court, the Revenue carried the matter before the Apex Court.

Concurring with the orders of the lower authorities, the bench comprising Justice R.K Agarwal and Justice Ajay Manohar Sapre held that the transaction was rightly treated as slum sale under section 48. "Section 50 (2) applies to a case where any block of assets are transferred by the assessee but where the entire running business with assets and liabilities is sold by the assessee in one go, such sale, in our view, cannot be considered as "short-term capital assets". In other words, the provisions of Section 50 (2) of the Income Tax Act would apply to a case where the assessee transfers one or more block of assets, which he was using in running of his business. Such is not the case here because in this case, the assessee sold the entire business as a running concern."

7. ***Can exemption under section 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?***

CIT v. Kamal Wahal (2013) [Delhi High Court]

High Court's Decision: The Delhi high Court, having regard to the rule of purposive construction and the object of enactment of section 54F, held that the assessee is entitled to claim exemption under section 54F in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.

8. ***Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?***

Fibre Boards (P) Ltd v. CIT (2015) [Supreme Court]

Supreme Court's Decision: To avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and / or plant and machinery.

LESSON ROUND-UP

- Sections 45 to 55A of the Income-tax Act, 1961 deal with capital gains. Section 45 of the Act, provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in Sections 54, 54B, 54D, 54EC, 54EE, 54ED, 54f, 54G, 54GA be chargeable to income-tax under the head "Capital Gains" and shall be deemed to be the income of the previous year in which the transfer took place.
- Section 2(14) of the Income-tax Act defines the term "capital asset" to means property of any kind held by an assessee whether or not connected with his business or profession but does not include any stock- in-trade, personal effects, agricultural land in India, 6% Gold Bonds, Special Bearer Bonds, Gold Deposit Bonds.
- The essential requirement for the incidence of tax on capital gains is the transfer of a 'capital asset'.- Any capital gain arising as a result of transfer of a short-term capital asset is known as short-term capital gain. "Short term" capital asset means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. In the case of capital assets (being equity or preference share in a company) held by an assessee for not more than 12 months immediately prior to its transfer.
- Assets other than short-term capital assets are known as 'long-term capital assets' and the gains arising therefrom are known as 'long-term capital gains'. Section 48 of the Act provides that the income chargeable under the head 'capital gains' shall be computed by deducting from the full value of consideration received or accruing as a result of the transfer of the capital asset, the amount of expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the capital asset and the cost of any improvement thereto.
- 'Cost of acquisition' of goodwill of a business or a right to manufacture, produce or process any article or thing, tenancy rights, stage carriage permits or loom hours is in the case of acquisition of such asset by the assessee by purchase from a previous owner, cost of acquisition means the amount of the purchase price; and in any other case cost of acquisition shall be nil.
- Cost of improvement means all capital expenditure in making any additions or alterations by the assessee after it became his property and where the capital asset became the property of the assessee by any of the modes specified in Section 49(1) by the previous owner as the case may be.
- Sections 54, 54B, 54D, 54EC, 54EE, 54F, 54G of the Act, provides exemption from capital gains arising from the transfer of certain capital assets under certain circumstances.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Practical Questions (MCQs)

1. Capital asset excludes all except-

   (a) Stock-in-trade (b) Personal effects

   (c) Jewellery (d) Agricultural land in India

   Answer: (c) Jewellery

2. In terms of section 2(42A), listed securities are treated as long-term capital asset, if they are held for a period of more than –

   (a) 12 Months (b) 36 Months

   (c) 24 Months (d) 48 Months.

   Answer: (a) 12 Months

3. Which of the following is not a requisite for charging income-tax on capital gains –

   (a) The transfer must have been effected in the relevant assessment year

   (b) There must be a gain arising on transfer of capital asset

   (c) Capital gains should not be exempt under section 54

   (d) Capital gains should not be exempt under section 54EC.

   Answer: (a) The transfer must have been effected in the relevant assessment year

4 Rajat purchased a car for his personal use for Rs. 5,00,000 in April, 2019 and sold the same for Rs. 5,50,000 in July, 2022. The taxable capital gains is –

   (a) Nil (b) Rs. 5,50,000

   (c) Rs. 50,000 (d) Rs. 4,00,000

   Answer: (a) Nil [Car for personal use is not capital asset. Therefore, no capital gain shall arise.]

5. Which of the following is not a capital asset for Mr. Rao who is employed in a public sector bank?

   (a) urban land

   (b) Agricultural land within 2 kms from local limits of municipality

   (c) Deposit certificate issued under Gold Monetization Scheme, 2015

   (d) Jewellery

   Answer: (c) Deposit certificate issued under Gold Monetization Scheme, 2015

6. Land or building, or both, if transferred on or after 1st April, 2022 shall be treated as a long term capital asset, if it is being held immediately prior to the date of its transfer for more than :

   (a) 36 months (b) 12 months

   (c) 24 months (d) none of the above

   Answer: (c) 24 months

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann

- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Income from Other Sources

Lesson 8

KEY CONCEPTS

■ Casual Income ■ Gifts ■ Relatives ■ Movable Property ■ Immovable Property ■ Deemed Income

Learning Objectives

To understand:

- Which are the income chargeable under the head income from other sources?
- What are admissible deductions?
- Which are the inadmissible deductions?
- Taxability of Gifts
- Taxability of Casual Income
- Deemed Incomes under the head other Sources

Lesson Outline

- Basis of Charge of Income from Other Sources
- Casual Income
- Income from family pension
- Taxation of Dividends
- Deductions allowable in computing income from other Sources
- Amounts not Deductible
- Deemed Income
- Impact of Section 115BAC under the head “other Sources”
- Computation of Income under the head “Other Sources”
- Case Law
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

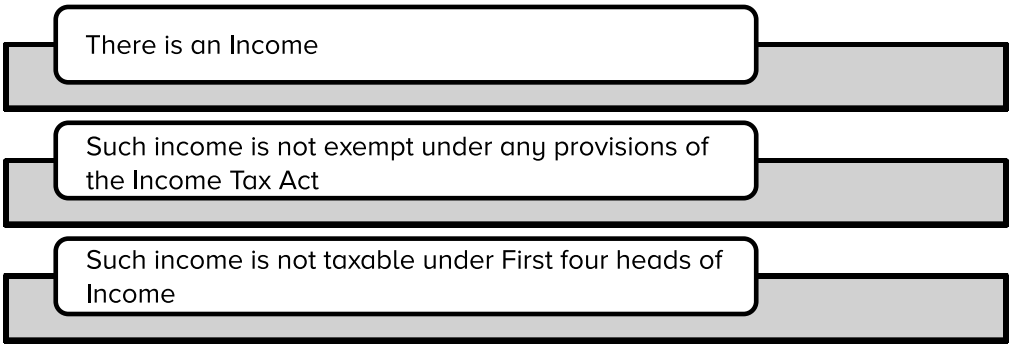
Sections	Income Tax Act, 1961
Section 56	Basis of Charge of Income from other Sources
Section 56(2)(IB)	Casual Income
Section 52 (iia)	Income from Family Pension
Section 57	Deduction allowable in computing Income from other Sources
Section 58	Inadmissible Deduction
Section 59	Deemed Income

BASIS OF CHARGE OF INCOME FROM OTHER SOURCES [SECTION 56]

Income which does not specifically fall for assessment under any of the heads of Income must be charged to tax as "income from other sources". This head is thus a residuary head of income under which income can be computed only after deciding whether the particular item of income is otherwise assessable under any of the first four heads. Section 56(1) covers all the residual incomes which are not covered by first four heads of Income. Section 56(2) covers certain specific incomes which are chargeable under the head "Income from Other Sources".

The incomes which are neither covered under the head salary, house property, business income or capital gains shall be taxable under the head Income from other sources. This head of income is a residual head because it covers all other incomes which are uncovered and which are not exempt from tax.

In other words any income is taxable under this head if following conditions are satisfied:



The following specific incomes are chargeable to Income Tax under the head "Income from other sources" under Section 56(2)

Nature of Income	***Details***
Dividends Section 56(2)(i)]	**Dividend from an Indian company:** Under section 115BBDA of the income tax act, if an individual/HUF/firm receives dividends from Indian companies that exceed ₹ 10 lakh, the excess is taxable at 10%. **Dividend from a foreign company:** Dividends received from foreign companies are taxed as income from other sources.

Nature of Income	*Details*
Keyman Insurance policy	Amount received under a keyman insurance Policy, including bonus on such Policy, if it is not taxable under any other head of income.
Winnings from lotteries [Section 56(2)(ib)]	Any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature. The entire income of winnings, without any expenditure or allowance or deductions under Sections 80C to 80U, will be taxable. However, expenses relating to the activity of owning and maintaining race horses are allowable. Further, such income is taxable at a special rate of income-tax i.e., 30% + surcharge + cess @ 4% [Section115BB]
Contribution to Provident fund	Income of the nature referred to in Section 2(24)(x) (relating to certain contributions to any provident fund or superannuation fund or any fund set up under the provisions of the ESI Act or any other fund for the welfare of such employees received by the assessee from his employees in his capacity as an employer) will be chargeable to income-tax under the head "income from other sources" if such income is not chargeable to income-tax under the head "profits and gains of business or profession". However, if the employer deposits such amount on or before due date of deposit applicable for such contribution, he will be allowed a deduction on account of the same. [Section 56(2)(ic)].
Income by way of interest on securities	If the income by way of interest on securities is not chargeable to income-tax under the head, "Profits and gains of business or profession", then such income shall be taxable under Income from other sources. It is chargeable on "receipt" basis if books of accounts are maintained on "Cash Basis", however if books are maintained on "Mercantile System" then interest is taxable on "accrual" basis.
Income from hiring of machinery, etc. [Section 56(2)(ii)]	Income from machinery, plant or furniture belonging to the assessee and let on hire; if the income is not chargeable to income-tax under the head "profit and gains of business or profession".
Hiring out of building with machinery etc. [Section 56(2)(iii)]	Where an assessee lets on hire machinery, plant or furniture belonging to him and also building and the letting of the building is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession".
Share premiums in excess of the fair market value to be treated as income [Section 56(2) (viib)]	Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be taxable under Income from other sources. However, this clause shall not apply where the consideration for issue of shares is received: (a) by a venture capital undertaking from a venture capital company or a venture capital fund [or a specified fund having Category I or Category II Alternative Investment Fund Certificate (w.e.f. Assessment Year 20-21)] or

Nature of Income	*Details*
	(b) by a company from a class or classes of persons as may be notified by the Central Government in this behalf (for this purpose Govt. has notified that provisions of this section are not applicable in case consideration is received by a company for issue of shares of a "startup" company). Provided where the class of companies notified by Central Government does not comply on account of fulfilment of conditions specified in the notification issued under clause (ii), then, any consideration received for issue of share that exceeds the face value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place. The fair market value of the shares shall be the value: (i) as may be determined in accordance with such method as may be prescribed (value is to be determined as per method given in rule 11UA); or (ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher.
Section 56(2)(viii)	Income by way of interest received on compensation or on enhanced compensation referred to in clause of section 145A.
Advance Money Section 56(2)(ix)	Advance money received- any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset is chargeable to income-tax under the head "Income from other sources", if such sum is forfeited and the negotiations do not result in transfer of such capital asset.
Gift Section 56(2)(x)]	Please refer below chart for understanding taxability of Gift.
Compensation Section 56(2)(xi)]	Any compensation or other payment, due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto. If the same is not taxable under the head Salary.

Receipt of Money or Property without consideration or without adequate consideration by any person [Section 56(2)(x)]

The following properties are chargeable under section 56(2)(x).

Nature of receipts	*When taxable*	*What is taxable*	*Taxed individually or on aggregate*
Any sum of money whether in cash or by cheque/draft/ pay order or any other mode	If received without consideration	If the aggregate value of such sum of money exceeds Rs 50000, then the entire amount	On aggregate basis. Money received on different dates or from different person to be clubbed to arrive at the amount of Rs. 50000

Nature of receipts	*When taxable*	*What is taxable*	*Taxed individually or on aggregate*
Any immovable property received without consideration	If received without consideration	If the stamp value of such property exceeds fifty thousand rupees, the stamp duty value of such property	Taxed individually. Each transaction will be separately assessed.
Any immoveable property received for a consideration less than stamp duty value of property	The Finance Act 2018 provides that where any person receives, in any previous year, from any person or persons any immovable property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:- (i) the amount of fifty thousand rupees; and (ii) the amount equal to ten per cent of the consideration	* [Note 1] The difference between stamp duty value of such property and consideration shall be taxed as income from other sources	Taxed Individually. Each transaction will be separately taxed.
Any property other than immovable property received without consideration	If received without consideration	If the aggregate fair market value of such property exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property	Taxed on aggregate basis. Value of property received on different dates or from different person to be clubbed to arrive at amount of Rs. 50000.
Any Property other than immoveable property, received for a consideration less than fair market value	If received for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees	Aggregate fair market value of such property as exceeds such consideration	Taxed on aggregate basis. Value of property received on different dates or from different person to be clubbed to arrive at amount of Rs. 50000.

*** Note 1:**

- where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause. This shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque

or an account payee bank draft or by use of electronic clearing system through a bank account, or through such other electronic mode as may be prescribed [Inserted vide Finance Act, 2020] on or before the date of agreement for transfer of such immovable property.

- Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub- section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections.
- Provided also that in case of property being referred to in the second proviso to sub-section (1) of section 43CA, the provisions of sub-item (ii) of item (B) shall have effect as if for the words "ten percent.", the words "twenty percent." had been substituted [Amendment by Finance Act, 2021].

Exclusions- Section 56(2)(x) shall not apply to any sum of money or any property received:

i. from any relative; or

ii. on occasion of the marriage of the individual; or

iii. under a will or by way of inheritance; or

iv. in contemplation of death of the payer or donor, as the case may be; or

v. from any local authority as defined in the explanation to clause (20) of section 10; or

vi. from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

vii. from or by any trust or institution registered under section 12A or section 12AA; or

viii. by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

ix. by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) [from AY 2019-20] or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47; or

x. From an individual by a trust created or established solely for the benefit of relative of the individual;

xi. any compensation or other payment, due to or received by any person, by whatever named called, in connection with the termination of his management or the modification of the terms and conditions relating thereto; [From AY 2019-20.]

xii. From such class of persons and subject to prescribed condition [from AY 2020-21]."

Explanation – For the purposes of this clause:

(a) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;

(b) "property" means the following capital asset of the assessee, namely:—

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

(iv) archaeological collections;

(v) drawings;

(vi) paintings;

(vii) sculptures;

(viii) any work of art; or

(ix) bullion.

(c) "relative" means, –

(i) in case of an individual –

(A) spouse of the individual;

(B) brother or sister of the individual;

(C) brother or sister of the spouse of the individual;

(D) brother or sister of either of the parents of the individual;

(E) any lineal ascendant or descendant of the individual;

(F) any lineal ascendant or descendant of the spouse of the individual;

(G) spouse of the person referred to in items (B) to (F); and

(ii) in case of a Hindu undivided family, any member thereof.

CASUAL INCOME [SECTION 56(2)(IB)]

Casual income includes income by way of winnings from lotteries; crossword puzzles; races including horse races; gambling and betting of any nature or form; card games, game show or entertainment program on television or electronic mode and any other game of any sort. All these incomes are chargeable to tax under the head income from other sources. However, following incomes are not chargeable under the head "income from other sources":

(a) Lottery held as stock in trade: Winning from lottery to an agent or trader out of its unsold stock of lottery tickets shall be treated as incidental to business and taxed under the head "profit and gains of business or profession".

(b) Income of jockey: Income of jockey from such profession is not treated as winning from the horse races.

(c) Winning from a motor car rally: Winning from a motor car rally is a return for skill and effort and cannot be created as casual income, these are taxable as normal income.

Note: No deduction or exemption is provided in respect of the casual income. [Section 58 (4)]. Also, no deduction can be claimed from such income even if such expenditure is incurred exclusively and wholly for earning such income. Further, deduction under section 80C to 80U is also not available from such income.

Example of Income that will be taxable under the head Other Sources

If any income is neither covered by first Four Heads of Income nor it falls under Section 56(2) then it is taxable under Section 56(1).

(1) Any fees or commission received by an employee from a person other than his employer.

(2) Any annuity received under a Will. It does not include an annuity received by an employee from his employer.

(3) All interest other than interest on securities, e.g. interest on bank deposits, interest on loan, etc.

(4) Income of a tenant from sub-letting the whole or a part of the house property.

(5) Remuneration received by a teacher or a lawyer for doing examination work.

(6) Income of Royalty.

(7) Director's fees.

(8) Rent of land not appurtenant to any building.

(9) Agricultural Income from land situated outside India.

(10) Income from markets, ferries and fisheries, etc.

(11) Income from leasehold property.

(12) Remuneration received for writing articles in Journals.

(13) Income from undisclosed sources.

(14) Interest received by an employee on his own contributions to an unrecognised provident fund.

(15) Casual income

(16) Salary of a Member of Parliament, Member of Legislative Assembly or Council.

(17) Interest received on securities of co-operative society.

(18) Gratuity received by a director who is not an employee of the company.

(19) Director's commission for giving guarantee to bank.

(20) Director's commission for underwriting shares of a new company.

Further, under the provisions of Section 60 to 65 an assessee may be chargeable to tax in respect of income arising to other persons, e.g. spouse or minor children. In such cases, the income in question will be first computed under the appropriate head after allowing various deductions and includible in the total income of the assessee under the head "income from other sources". In other words, wherever the assessee is taxable in respect of income of somebody else, the income must be charged to tax in the hands of the assessee only under this head; even if the income is of a character which would otherwise fall for assessment under any other head of income.

INCOME FROM FAMILY PENSION

Family pension is a regular amount payable by the employer to a family member of a deceased employee. It is taxable under the head income from other sources. The income by way of family pension is eligible for a standard deduction under section 57(iia) which is either 1/3rd of such pension or Rs. 15,000 whichever is lower.

Above Standard Deduction from family pension is not applicable for Assessee opting for section 115BAC.

Family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including paramilitary forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed, shall be exempt from tax u/s 10. Further, income by way of family pension received as family pension of an individual who has been in the service of Central/State Government and has been awarded Param Vir Chakra or Maha Vir Chakra or Vir Chakra or such other gallantry award as may be notified is also exempt from tax u/s 10.

TAXATION OF DIVIDENDS

Up to Assessment Year 2020-21, if a shareholder gets dividend from a domestic company then he shall not be liable to pay any tax on such dividend as it is exempt from tax under section 10(34) of the Act. However, in such cases, the domestic company is liable to pay a Dividend Distribution Tax (DDT) under section 115-O. The Finance Act, 2020 has abolished the DDT and move to the classical system of taxation wherein dividends are taxed in the hands of the investors.

Therefore, the provisions of Section 115-O shall not be applicable if the dividend is distributed on or after 01-04-2020. Thus, if the dividend is distributed on or after 01-04- 2020 the domestic companies shall not liable to pay DDT and, consequently, shareholders shall be liable to pay tax on such dividend income. As dividend would now be taxable in the hands of the shareholder, various provisions of the Act have been revived such as allowability of expenses from dividend income, deductibility of tax from dividend income, treatment of inter-corporate dividend, etc.

Meaning of the term "Dividend" [Section 2(22)]: The term "dividend" is ordinarily used to refer to any distribution made by a company to its shareholders out of its profits in proportion to the number of shares held by the shareholder concerned in the company.

Apart from that dividend paid by a company to its shareholders, the definition of dividend includes deemed dividend as laid down under section 2(22) of the Act, which is inclusive but not exhaustive. Accordingly, the following payments or distribution made by a company to its shareholders are deemed as dividends to the extent of accumulated profits of the company whether capitalised or not (i.e. bonus shares issued is the capitalisation of profit). It may be noted that these payments may not be covered as dividend under Companies Act, 2013.

(a) Any distribution if such distribution entails the release of all or any part of the assets of the company. Such accumulated profits are distributed in cash or in kind. For in kind distribution, the market value of assets shall be the deemed dividend in the hands of share-holders.

(b) Any distribution of debentures, debenture-stock, or deposit certificates in any form, whether with o r without interest to Equity or Preference shareholders. Any distribution of bonus shares to its preference shareholders. However, bonus shares allotted to equity shareholders does not amount to deemed dividend.

(c) Any distribution made on liquidation of a company.

(d) Any distribution on the reduction of capital of a company.

Deemed dividend under clause (c) and clause (d) does not include:

i. Any distribution by the company to shareholders on liquidation or reduction of capital of the company in respect of full cash consideration, where the shareholder is not entitled to participate in the surplus asset in the event of liquidation.

ii. Any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act.

iii. Any distribution of shares made in accordance with the scheme of demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

(e) Any payments in the form of loans or advances to the extent of accumulated profits (excluding capitalised profit) made by a closely-held company (i.e. a company in which public are not substantially interested) to:

i. its shareholder who is the beneficial owner of shares holding not less than 10% of voting power in such company;

ii. to any concern (HUF, Firm, AOP, BOI or Company) in which such shareholder is a member or a;

iii. partner and in which he has a substantial interest (20% of voting power or share of profit) any person on behalf of such shareholder for his/her individual benefit.

Deemed dividend under clause (e) does not include:

- Any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;
- Vide CBDT circular No. 19/2017, any trade advance in the nature of commercial transactions would not fall within the ambit of advance;
- In case of an amalgamated company, accumulated profit or loss shall be increased by the accumulated profit of amalgamating company (whether capitalized or not) on the date of amalgamation.

Obligation of the Domestic Companies

The domestic companies shall not be liable to pay DDT on dividend distributed to shareholders on or after 01-04-2020. However, domestic companies shall be liable to deduct tax under Section 194. As per the Section 194, which shall be applicable to dividend distributed, declared or paid on or after 01-04-2020, an Indian company shall deduct tax at the rate of 10% from dividend distributed to the resident shareholders if the aggregate amount of dividend distributed or paid during the financial year to a shareholder exceeds Rs. 5,000. However, no tax shall be required to be deducted from the dividend paid or payable to Life Insurance Corporation of India (LIC), General Insurance Corporation of India (GIC) or any other insurer in respect of any shares owned by it or in which it has full beneficial interest. However, where the dividend is payable to a non-resident or a foreign company, the tax shall be deducted under Section 195 in accordance with relevant DTAA.

Taxability in hands of Shareholders

Section 10(34), which provides an exemption to the shareholders in respect of dividend income, is withdrawn from Assessment Year 2021-20. Thus, dividend received during the financial year 2020-21 and onwards shall now be taxable in the hands of the shareholders. Consequently, Section 115BBDA which provides for taxability of dividend in excess of Rs. 10 lakh has no relevance as the entire amount of dividend shall be taxable in the hands of the shareholder. The taxability of dividend and tax rate thereon shall depend upon many factors like residential status of the shareholders, relevant head of income. In case of a non-resident shareholder, the provisions of Double Taxation Avoidance Agreements (DTAAs) and Multilateral Instrument (MLI) shall also come into play.

Taxable in the hands of Resident Shareholder

A person can deal in securities either as a trader or as an investor. The income earned by him from the trading activities is taxable under the head business income. Thus, if shares are held for trading purposes then the dividend income shall be taxable under the head business or profession. Whereas, if shares are held as an investment then income arising in nature of dividend shall be taxable under the head other sources. The income, taxable under the head PGBP, is computed in accordance with the method of accounting regularly followed by the assessee. For the purpose of computation of business income, a taxpayer can follow either mercantile system of accounting or cash basis of accounting. However, the method of accounting employed by the assessee does not affect the basis of charge of dividend income as Section 8 of the Act provides that final dividend including deemed dividend shall be taxable in the year in which it is declared, distributed or paid by the company, whichever is earlier. Whereas, interim dividend is taxable in the previous year in which the amount

of such dividend is unconditionally made available by the company to the shareholder. In other words, interim dividend is chargeable to tax on receipt basis.

Deductions from Dividend Income

Where dividend is assessable to tax as business income, the assessee can claim the deductions of all those expenditures which have been incurred to earn that dividend income such as collection charges, interest on loan etc. Whereas if dividend is taxable under the head other sources, the assessee can claim deduction of only interest expenditure which has been incurred to earn that dividend income to the extent of 20% of total dividend income.

No deduction shall be allowed for any other expenses including commission or remuneration paid to a banker or any other person for the purpose of realising such dividend.

Tax rate on Dividend Income

The dividend income shall be chargeable to tax at normal tax rates as applicable in case of an assessee except where a resident individual, being an employee of an Indian company or its subsidiary engaged in Information technology, entertainment, pharmaceutical or bio-technology industry, receives dividend in respect of GDRs issued by such company under an Employees' Stock Option Scheme. In such a case, dividend shall be taxable at concessional tax rate of 10% without providing for any deduction under the Income-tax Act. However, the GDRs should be purchased by the employee in foreign currency.

Taxability in case of non-resident shareholders including FPIs

A non-resident generally invests in India either directly as private equity investors or as Foreign Portfolio Investors (FPIs). A non-resident person can also be a promoter of an Indian Company. A non-resident person generally hold shares of an Indian company as an Investment and, therefore, any income derived by way of dividend is taxable under the head other sources except where such income is attributable to Permanent Establishment of such non-resident in India.

As regards FPIs, securities held by them are always treated as a capital asset and not as stock-in-trade. Thus, in case of FPIs also, the dividend income shall always be taxable under the head other sources.

Tax rate on dividend income

The dividend income, in the hands of a non-resident person (including FPIs and nonresident Indian citizens (NRIs), is taxable at the rate of 20% without providing for deduction under any provisions of the Income-tax Act. However, dividend income of an investment division of an offshore banking unit shall be taxable at the rate of 10%. Further, where the dividend is received in respect of GDRs of an Indian Company or Public Sector Company (PSU) purchased in foreign currency, the tax shall be charged at the rate of 10% without providing for any deductions.

Inter-corporate dividend

As the taxability of dividend is proposed to be shifted from companies to shareholders, the Government has introduced a new section 80M under the Act to remove the cascading effect where a domestic company receives a dividend from another domestic company. However, nothing has been prescribed where a domestic company receives dividend from a foreign company and further distribute the same to its shareholders. The taxability in such cases shall be as under:

(i) Domestic Company receives dividend from another Domestic Company

The provisions of section 80M removes the cascading effect by providing that inter-corporate dividend

shall be reduced from total income of company receiving the dividend if same is further distributed to shareholders one month prior to the due date of filing of return.

(ii) Domestic Company receives dividend from a Foreign Company

Dividend received by a domestic company from a foreign company, in which such domestic company has 26% or more equity shareholding, is taxable at a rate of 15% plus Surcharge and Health and Education Cess under Section 115BBD. Such tax shall be computed on a gross basis without allowing deduction for any expenditure. Dividend received by a domestic company from a foreign company, in which equity shareholding of such domestic company is less than 26%, is taxable at normal tax rate. The domestic company can claim deduction for any expense incurred by it for the purposes of earning such dividend income.

Note: The Finance Act, 2022 has amended the Section 115BBD to provide that the provisions of this section shall not apply to any assessment year beginning on or after 01- 04-2023.

Illustration 1:

ABC Ltd. declared a dividend of INR 200,00,000 for the FY 2021-22 and distributed the same on 15th Jul'22. Mr. A holds 10% shares and therefore receives INR 20,00,000 as dividend. Mr. B hold 4% shares and therefore receives INR 8,00,000 as dividend.

Solution:

The tax treatment would be as under:

- Mr. A would include full amount of Rs. 20,00, 000 as Income from other sources He will be liable to pay tax at applicable slab rates.
- Mr. B would include full amount of Rs. 8,00,000 as Income from other sources. He will be liable to pay tax at applicable slab rates.
- The company would not be liable to pay Dividend Distribution Tax on the dividend distributed u/s 115-O as the same would be taxable in the hands of shareholders.

Illustration 2:

X is holding 29% shares in a company and he took a loan of INR 20,00,000 from the Company on 15.07.2021 and on the date, the loan was granted, the accumulated profits stood at INR 12,00,000. Determine the tax treatment.

Solution :

In this case, the company is one, where the public is substantially interested, the loan would not be treated as deemed dividend. However, in case the company is a closely held company, X holds > 10% stake, this loan upto 12,00,000 would be as deemed dividend and company will not be liable to pay DDT u/s 115O.

X would pay tax on such deemed dividend at applicable slab rates and entire amount of 12 lakhs would be included as Income under the head Other sources.

Illustration 3:

ABC Ltd. a closely-held company has bonus share capital of Rs. 10 lakhs, General Reserves of Rs. 6 lakhs and current profits of Rs. 2 lakhs. The company has given a loan of Rs. 9 lakhs to one of the shareholders, who is beneficial owner of equity shares holding 10% of the voting power.

Compute amount of dividend in the hands of shareholder.

Solution:

In this case dividend under section 2(22)(e) shall be Rs. 8 lakhs, i.e., to the extent of the accumulated profits of the company excluding capitalized profits. It shall be taxable in hands of shareholder under Other Sources.

Illustration 4:

Mr. Rohit Aggarwal is beneficial owner of equity shares holding 10% of the voting power in ABC Ltd, a closely held company. He is partner in a partnership firm XY and has 20% share in the firm. The company has given a loan of Rs. 5 lakhs to the firm and company's accumulated profits are Rs. 6 lakhs.

Compute amount of dividend in the hands of shareholder and the firm.

Solution:

In this case deemed dividend is Rs. 5 lakhs as per section 2(22)(e). It shall be taxable in the hands of the receiver under Other Sources.

DEDUCTIONS ALLOWABLE IN COMPUTING INCOME FROM OTHER SOURCES [SECTION 57]

The following expenditures are allowed as deductions from income chargeable to tax under the head 'Income from Other Sources':

S. No.	*Sections*	*Nature of Income*	*Deductions allowed*
1.	57(i)	Dividend or Interest on securities	Any reasonable sum paid by way of commission or remuneration to banker or any other person for purpose of realizing dividend or interest on securities
2.	57(ia)	Employee's contribution towards Provident Fund, Superannuation Fund, ESI Fund or any other fund setup for the welfare of such employees	If employees' contribution is credited to their account in relevant fund on or before the due date
3.	57(ii)	Rental income letting of plant, machinery, furniture or building	Rent, rates, taxes, repairs, insurance and depreciation etc.
4.	57(iia)	Family Pension	1/3rd of family pension subject to maximum of Rs. 15,000. Deduction u/s 57(iia) is not allowed to Assessee opting for Section 115BAC
5.	57(iii)	Any other income	Any other expenditure (not being capital expenditure) expended wholly and exclusively for earning such income

6.	57 (iv)	Interest on compensation or enhanced compensation	50% of such interest (subject to certain conditions)
7.	58(4) Proviso	Income from activity of owning and maintaining race horses	All expenditure relating to such activity

Illustration 5:

Mr. Goyal has one factory building along with machines and furniture in Mumbai which has been let out @ Rs. 50,000 p.m. Repair charges of the building is Rs. 7,000 and that of furniture fixtures are Rs. 4,000, insurance premium paid Rs. 3,000 and depreciation is Rs. 27,000.

Compute his income under the head other sources.

Solution:

Particulars	***Rs.***
Gross Rent (50,000 x 12)	6,00,000
Less: Repair of building	7,000
Less: Repair of Furniture and fixtures	4,000
Less: Insurance premium	3,000
Less: Depreciation	27,000
Income under the head Other Sources	5,59,000

AMOUNTS NOT DEDUCTIBLE [SECTION 58]

The following amounts shall not be deducted in computing income chargeable under the head "Income from other Sources".

Section	Details
58(1)(a)(i)	Personal Expenses
58(1)(a)(ii)	Interest chargeable to tax which is payable outside India on which tax has not been paid or deducted at source
58(1)(a)(iii)	'Salaries' payable outside India on which no tax is paid or deducted at source
58(1A)	Wealth-tax
58(2)	Expenditure of the nature specified in section 40A
58(4)	Expenditure in connection with winnings from lotteries, crossword puzzles, races, games, gambling or betting. The prohibition however will not apply in respect of income of an assessee who is owner of horses maintained for running in horse races [Section 58(4)]. Further, the amount spent in buying of infructuous tickets is not deductible as the gross amount will be taxed.

DEEMED INCOME [SECTION 59]

Where any allowance or deduction has been provided in the assessment of Income under the head "Income From Other Sources" in any Assessment Year in respect of loss or expenditure or trading liability incurred by the assessee and later on during any previous year any amount or any remission or any benefit is obtained by assessee (whether in cash or otherwise) then such amount or remission or benefit shall be taxable under the head " Income From Other Sources" in the previous year in which it is so obtained.

IMPACT OF SECTION 115BAC UNDER THE HEAD INCOME FROM OTHER SOURCES

Finance Act, 2020 has introduced a New Optional Tax System for Individuals and HUFs u/s 115BAC of the Income Tax Act, 1961 w.e.f. AY 21-22 to provide for concessional rate of Slab Rates to be applied on Total Income calculated without claiming specified deductions and exemptions.

Hence, from AY 2021-22 or FY 2020-21, there are two operative tax systems:

1. One is the Existing tax system where all the applicable deductions and exemptions are allowed and the tax rates are as per the Slab rates of tax specified in the Finance Act, 2020.
2. The second one is section 115BAC which is a Optional Tax System and under which many deductions and exemptions have not been allowed but lower slab tax rates are provided in section 115BAC itself.

Individual and HUF opting for concessional tax regime under section 115BAC: The deduction under Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA; not available to the Individual and HUF opting to pay tax under concessional tax regime under section 115BAC of the Income Tax Act, 1961.

Many exemptions & deductions are not allowed under the new tax system. The below chart contains the exemptions and deductions not available under the new system related to Income under the head Other Sources. Similarly, deductions & exemptions not available under the new tax system and which are related to other heads are provided in other chapters.

Nature of Exemption/Deduction Relating to Head Other Sources	New system of Tax u/s 115BAC	Existing system of Tax
Deduction u/s 57	Allowed except Section 57(iia) i.e. Standard Deduction from Family Pension	Allowed

COMPUTATION OF INCOME UNDER THE HEAD "INCOME FROM OTHER SOURCES"

As per section 145 income taxable under this head is to be computed in accordance with the method of accounting regularly followed by assessee. In other words; if books of accounts are regularly maintained on "Cash system" then income shall be computed on "receipt basis" and if books are regularly maintained on "Mercantile system" then Income shall be computed on "accrual basis".

COMPUTATION OF INCOME FROM OTHER SOURCES

Income taxable under Section 56 & 59	XXXX
Less: Expenditure allowed as deduction under Section 57	(XXXX)
Income taxable under the head "Income From Other Sources"	XXXX

Illustration 6:

Nikhil, a dealer in shares received from his friend Anshul, the following without any consideration:

(a) Cash Gift INR 100,000 on his birthday (14th April).

(b) Bullion, FMV INR 75,000 on his anniversary (22nd April).

(c) Plot of land at Gurgaon on 1st Jun'21, stamp duty value INR 750,000 on that date.

Advise on tax treatment.

Solution:

a) Cash Gift is > INR 50000, therefore, the entire amount of INR 100,000 is chargeable to tax as Income from Other Sources.

b) Bullion received without consideration is taxable too in full as it is received without consideration, therefore, the entire amount of INR 75000 is chargeable to tax as Income from Other Sources.

c) Plot of land received without consideration is taxable too in full as it is received without consideration, therefore, the entire amount of INR 750,000 is chargeable to tax as Income from Other Sources.

Illustration 7:

Nisha, on 1st Dec'21 took possession of a flat booked by her 2 years back, at INR 25,00,000. The Stamp Duty of the flat on the date of possession was INR 40,00,000 and on the date of booking was INR 32,00,000. She had paid INR 200,000 by account payee cheque, on date of booking.

Advise tax treatment.

Solution:

It is to be noted that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement (in this case booking) may be taken. However, this exception shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property.

Therefore, the difference between the Stamp Duty Value on date of booking (INR 32,00,000) and the actual consideration (INR 25,00,000); i.e., INR 700,000 would be taxable under the head "Income from Other Sources".

Illustration 8:

Discuss the taxability of the following transactions in the hands of the recipient:

1. An HUF received from the Karta's niece, INR 80,000 in cash.
2. Shruti, a member of her father's HUF, transferred to the HUF a property without any consideration. The Stamp Duty valuation was INR 12,00,000.
3. Robin received from his friend 100 shares of INR 200 each and jewellery worth INR 55,000 (FMV) from his nephew on the same day.
4. An HUF gifted a Car to the Karta's son, for brilliant performance in the board exams. The FMV of Car was 10,00,000.

Solution:

1. **Taxable:** Sum of money received exceeding INR 50,000 without consideration from a non-relative is taxable. Therefore INR 80000 is taxable as his niece, not being a member of the HUF is not a relative of the HUF.
2. **Non-Taxable:** Immovable property received without consideration from a relative is non-taxable. Since Shruti is a member of the HUF, she is a relative of the HUF and hence the same is not taxable.
3. **Taxable:** In this case, the aggregate FMV of the property other than immovable property, received without consideration exceeds INR 50000 (INR 75,000 actually for the shares & jewellery together). Hence, the entire amount would be taxable.
4. **Non-taxable:** Car is not a property for the purposes of Section 56 and hence the transaction is non-taxable.

Illustration 9:

Mr. X is getting family pension of Rs. 7,000 p.m. He also has dividend income from domestic company of Rs. 7,00,000. He has long term capital gain of Rs. 3,89,000. He is entitled to deduction of Rs.1,00,000 u/s 80C Compute his tax liability for Assessment Year 2023-24

Option 1: Assessee has not opted for Section 115BAC

Option 2: Assessee has opted for Section 115BAC

Solution:

Option 1 : Assessee has not opted for Section 115BAC

Particulars	Amount (Rs.)	Amount (Rs.)
Family Pension (7,000 x 12)	84,000	
Less: Deduction u/s 57(iia) [1/3 of Rs.84,000 or Rs.15,000 whichever is less]	(15,000)	69,000
Dividend income		7,00,000
Income under the head Other Sources		7,69,000
Income under the head Capital Gains		
Long term capital gain		3,89,000
Gross Total Income		11,58,000
Less: Deduction u/s 80C to 80U		(1,00,000)
Total Income		10,58,000
Computation of Tax Liability		
Tax on 3,89,000 @ 20% u/s 112		77,800
Tax on 6,69,000 at slab rate		46,300
Tax before health & education cess		1,24,100

Add: HEC @ 4%		4,964
Tax Liability		1,29,064
Rounded off u/s 288B		1,29,070

Option 2 : Assessee has opted for Section 115BAC

Particulars	***Amount (Rs.)***	***Amount (Rs.)***
Family Pension (7,000 x 12)	84,000	
Less: Deduction u/s 57(iia)	N/A	84,000
Dividend income		7,00,000
Income under the head Other Sources		7,84,000
Income under the head Capital Gains		
Long term capital gain		3,89,000
Gross Total Income		11,73,000
Less: Deduction u/s 80C to 80U		N/A
Total Income		11,73,000
Computation of Tax Liability		
Tax on 3,89,000 @ 20% u/s 112		77,800
Tax on 7,84,000 at new slab rate 0 to 2,50,000 : Nil >2,50,000 to 5,00,000 : 12,500 i.e. 5% >5,00,000 to 7,50,000 : 25,000 i.e. 10% >7,50,000 to 7,84,000 : 5,100 i.e. 15%		42,600
Tax before health & education cess		120400
Add: HEC @ 4%		4816
Tax Liability		125216
Rounded off u/s 288B		125220

CASE LAWS

1.	*27.08.2013*	*Commissioner of Income Tax v. Smt. Swapna Roy*	*Allahabad High Court*

Disallowance of Deduction of interest under section 57(iii) of the Income tax Act, 1961

Facts of the Case: The assessee is a partner of M/s. Sahara India (Firm); and Director in various companies of M/s. Sahara Group. For the assessment year 1997-98, the assessee has filed loss return for Rs.36,48,09,550/-. While completing regular assessment, the Assessing Officer disallowed the interest of Rs.36,57,27,195/- claimed by the assessee as interest paid on loan for purchase of shares under the head "income from other sources". The Assessing Officer noticed that the assessee had obtained loan from M/s. Sahara India Mutual Benefit Co. Ltd., and the loan amount was invested in purchase of shares of closely held companies of Sahara Group which were incurring heavy losses and there was no possibility to get dividend on share capital of these companies. Further, the assessee was having a substantial interest in the companies of Sahara Group. So, the AO opined that by making investment of "borrowed interest bearing funds" for non productive purpose, the assessee had diverted his income and had adopted a colorable device to reduce tax liability. So, he has disallowed the claim made by the Assessee pertaining to the interest and made the addition in each case, which was deleted by the first appellate authority as well as the Tribunal. Not being satisfied, the Department filed an appeal before High Court.

Judgement: On a question whether the amount invested by the assessee in sister concerns running in loss since several years may be treated as investment or expenditure made exclusively for the purpose of making or earning such income, the Allahabad High Court held that the expenditure towards interest on loan cannot be said to have been laid out wholly and exclusively for the purpose of making earning income but was a colourable device, to utilize the funds of one company in the other sister concern and therefore, the interest on loan is not allowable deduction under section 57(iii).

Further on the principle of consistency, the High Court held that in case an assessee changes his or her stand repeatedly and does not come with a clean hand, then it shall be sufficient to depart from earlier practice and the principle of consistency shall not come in the way to assess the income on the basis of the material on record.

2.	*04.01.2017*	*Gopal & Sons (HUF) v.CIT*	*Supreme Court*

Is loan to HUF who is a shareholder in a closely held company chargeable to tax as deemed dividend?

Facts of the Case: The assessee is a Hindu Undivided Family (HUF). During the previous year to the Assessment Year, the assessee had received certain advances from one M/s. G.S. Fertilizers (P) Ltd. (hereinafter referred to as the 'Company'). The Company is the manufacturer and distributor of various grades of NPK Fertilizers and other agricultural inputs. In the audit report and annual return for the relevant period, which was filed by it before the Registrar of Companies (ROC), it was found that the subscribed share capital of the said Company was Rs. 1,05,75,000/- (i.e., 10,57,500 shares of Rs. 10/- each). Out of this, 3,92,500 number of shares were subscribed by the assessee which represented 37.12% of the total shareholding of the Company. From this fact, the AO concluded that the assessee was both the registered shareholder of the Company and also the beneficial owner of shares, as it was holding more than 10% of voting power. On this basis, after noticing that the audited accounts of the Company was showing a balance of Rs. 1,20,10,988/- as "Reserve & Surplus" as on 31st March, 2006, this amount was included in the income of the assessee as deemed dividend.

In the appeal filed by the assessee, the aforesaid addition was affirmed by the CIT(A). The Tribunal reversed the CIT(A). The High Court reversed the Tribunal. Before the Supreme Court, the assessee argued that being a HUF, it was neither the beneficial shareholder nor the registered shareholder. It was further argued that the Company had issued shares in the name of Shri Gopal Kumar Sanei, Karta of the HUF, and not in the name of the assessee/HUF as shares could not be directly allotted to a HUF. On that basis, it was submitted that provisions of Section 2(22)(e) of the Act cannot be attracted.

Judgement: The Supreme Court held as the shares are issued in the name of the Karta, the HUF is not the "registered shareholder" and so section 2(22)(e) will not apply to loans paid to the HUF is not correct because in the annual returns filed with the ROC, the HUF is shown as the registered and beneficial shareholder. In any case, the HUF is the beneficial shareholder. Even if it is assumed that the Karta is the registered shareholder and not the HUF, as per Explanation 3 to section 2(22), any payment to a concern (i.e. the HUF) in which the shareholder (i.e. the Karta) has a substantial interest is also covered.

3.	***08.09.2010***	***CIT v. Manjoo and Co***	***Kerala High Court***

Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section115BB of the Income tax Act, 1961?

Facts of the Case: The respondent assessee is a wholesale distributor of lotteries organized by the State of Kerala and under the distribution agreement respondent is entitled to certain discount on the purchase of lottery tickets. If the tickets purchased are not fully sold out by the respondent before the draw date then loss will be to the account of the respondent. For the previous years relevant to the assessment years 2000-01 and 2001- 02 certain unsold tickets held by the respondent assessee were the prize winning tickets and on production of those tickets the Lottery Directorate paid the prize money to the respondent after recovery of tax at source treating the payments as "winning from lottery".

Even though respondent assessee accounted the receipt of income in the profit and loss account as prize won from lottery, in the income tax returns filed, the respondent claimed that the prize money received from the Lottery Department represents income not assessable under the special provisions contained in Section 115BB of the Income Tax Act but assessable as business income. The Income Tax Officer however rejected the claim holding that prize money received in lottery is assessable at the special rate provided under Section 115BB and so much so it cannot be treated as business income. The first appeal filed by the respondent was allowed and the Tribunal confirmed it on second appeal filed by the department against which these appeals are filed.

Judgement: In our view the decision should not influence interpretation on the scope of Section 115BB of the Act. In our view winnings from lotteries is assessable under this special provision irrespective as to under what head winnings from lottery falls. Therefore, assuming for argument sake the contention of the respondent that winnings from lotteries is received by him in the course of his business and is incidental to business and so it is his business income is right. Still, we feel in view of the specific provision contained in Section 115BB, the special rate of tax is applicable for all winnings from lottery. What is provided in the said Section is that where the total income includes any income by way of winnings from lottery or crossword puzzle etc, the income tax payable shall be calculated at the rate of 30%. Total income under Section 2(45) read with Section 5 of the Act includes income from all sources and necessarily all such incomes are computed under five heads referred to in A to F of Section 14 of the Act. In other words even after computation of income under various heads of income referred to in Section 14 in terms of specific provisions of the Act providing for computation of income under each head, Such of the incomes specifically covered by Chapter XII shall

be identified, separated and should be subject to tax at the special rate provided there. So, in our view the special rate of tax, i.e., 30% provided under Section 115BB of the Act is applicable even if winning from lottery is in the nature of business income as claimed by the respondent. We hold that the rate prescribed under Section 115BB is applicable for the winnings from lottery received by the respondent assessee irrespective of whether it is an income incidental to business or not.

LESSON ROUND-UP

- Income chargeable under Income-tax Act, which does not specifically fall for assessment under any of the heads discussed earlier, must be charged to tax as "income from other sources".
- Section 56(2) specifically provides for the certain items of incomes as being chargeable to tax under the head such as Dividend, Keyman Insurance policy, Winnings from lotteries, Contribution to Provident fund, Income by way of interest on securities, Income from hiring machinery etc, Hiring out of building with machinery, Money Gifts, Share premiums in excess of the fair market value to be treated as income, income by way of interest received on compensation.
- The entire income of winnings, without any expenditure or allowance or deductions under Sections 80C to 80U, will be taxable. However, expenses relating to the activity of owning and maintaining race horses are allowable. Further, such income is taxable at a special rate of income-tax i.e., 30% + surcharge + cess @ 4%.
- **Admissible Deductions**: The income chargeable under the head "Income from other sources" is the income after making the deductions such as :
  - (i) sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising interest / Dividend;
  - (ii) deduction shall be allowable in accordance with the provisions of Section 36(1)(va), i.e., if the employer has credited the employee's accounts in the respective funds;
  - (iii) a sum equal to 33-1/3% of the income or Rs. 15,000, whichever is less, is allowable as a deduction from family pension; (Not applicable is assessee opted u/s 115BAC);
  - (iv) a deduction of a sum equal to 50% of from Interest on compensation or enhanced compensation and;
  - (v) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.
- **Inadmissible deductions**: The following amounts shall not be deducted in computing income chargeable under the head 'Income from other sources':
  - (i) Any personal expenses of the assessee.
  - (ii) Any interest chargeable under the Income-tax Act which is payable outside India and from which income-tax has not been paid or deducted at source.
  - (iii) Any payment which is chargeable under the head "Salaries" if it is payable outside India unless tax has been paid thereon or deducted therefrom at source.
  - (iv) Any expenditure referred to in Section 40A of Income-tax Act.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions "MCQs"

1. Mr. Dev has earned interest of Rs. 12,000 under Post Office Savings Bank Account. The income taxable as other sources is ?
    a) Rs. 12000
    b) Fully Exempt
    c) Rs. 8,500
    d) Rs. 6,000

    Answer : c
2. Mr. Raj received Rs. 80,000 from his friends on the occassion of his Marriage anniversary. Taxable income from other sources is?
    a) Entire Rs. 80,000 is exempt
    b) Entire Rs. 80,000 is taxable
    c) only Rs. 30,000 is taxable
    d) Only 50% , i.e. Rs. 40,000

    Answer : b
3. Ram received INR 80,000 from his best friend on his birthday?
    a) INR 80000 is taxable
    b) INR 30000 is taxable
    c) Entire amount is exempt
    d) None of the above

    Answer : a
4. Mr. C aged 72 years, received INR 15,00,000 as dividend, in FY 2021-22. The Income chargeable to tax is:
    a) INR 15,00,000
    b) INR 5,00,000
    c) Nil
    d) INR 750000

    Answer : a
5. Dividend received from a foreign company is charged to tax under the head _____ _.
    (a) Profits and gains of business or profession
    (b) Capital gains
    (c) Income from other sources
    (d) Income from salaries

    Answer : c

6. Dividend received from domestic company will be included in the total income of the tax payer and will be charged to tax at _____ _ .

   (a) 15%

   (b) 20%

   (c) 30%

   (d) Normal rate of tax applicable to the assessee

   Answer : d

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann

- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Clubbing Provisions and Set-off and/ or Carry Forward of Losses

Lesson 9

KEY CONCEPTS

■ Clubbing ■ Revocable Transfer ■ Irrevocable Transfer ■ Substantial Interest ■ Set-Off of Losses ■ Carried Forward of Loss

Learning Objectives

To understand:

- What is Clubbing of Income?
- Applicability of Clubbing Provision
- What is Revocable Transfer of Assets?
- What is Irrevocable Transfer of Assets?
- Provisions of set off/carry forward and set off of losses
- Inter-head and Intra-head set-off of losses

Lesson Outline

REGULATORY FRAMEWORK

Sections	*Income Tax Act, 1961*
Section 60	Transfer of Income
Section 61	Revocable Transfer of Assets
Section 64(1)(ii)	Income to spouse from a concern in which such individual has substantial interest
Section 64(1)(iv)	Income to spouse from the assets transferred
Section 64(1)(vi)	Income from Assets transferred to Son's Wife
Section 64(1)(viii)	Income for immediate or deferred benefit of son's wife
Section 64(1)(vii)	Income of spouse through a third person
Section 64(1A)	Clubbing of Income of Minor Child
Section 64(2)	Income from the Converted Property
Section 70	Set-Off of Losses from One Source Against Income from Another Source under the same Head of Income
Section 71	Set-Off of Loss from One Head Against Income from Another Head
Section 72	Loss in Non-Speculation Business
Section 73	Loss in Speculation Business
Section 73A	Carry Forward and Set Off of Losses by Specified Business
Section 74	Set-Off and Carry Forward of Capital Losses
Section 74(A)	Loss on Maintenance of Race Horses
Section 78	Carry-forward and set-off of losses in case of change in constitution of firm
Section 79	Carry-forward and set-off of losses of change in shareholding of Companies

CLUBBING OF INCOME

Generally, a person is taxed in respect of income earned by them only. However, in certain situation, income of other person is included (i.e., clubbed) in the taxable income of the taxpayer and in such a case, he will be liable to pay tax in respect of his income as well as income of other person too. The situation in which income of other person is included in the income of the taxpayer is called as clubbing of income. E.g., Income of minor child is to be clubbed with the income of his/her parent.

Section 60 to 64 of the Income-tax Act, contains various provisions relating to clubbing of income. The special provisions contained in these sections are designed to counteract the various attempts which an individual may make for avoiding or reducing his liability to tax by transferring his assets or income to other person(s) while,

at the same time, retaining certain powers or interest over the property or it's income. The clubbing provisions are as under:

CLUBBING PROVISION'S			
Nature of Transaction	***Clubbed in the Hands of***	***Conditions/Exceptions***	***Relevant Reference***
Transfer of Income without transfer of Assets (Section 60)	Transferor who transfers the income	Irrespective of: 1. Whether such transfer is revocable or not. 2. The transferor owns the assets. 3. The income has been transferred without transfer of assets. 4. Whether the transfer is effected before or after the commencement of Income Tax Act.	1. Income for the purpose of Section 64 includes losses. [*P. Doriswamy Chetty* (SC)] [also see Expl. (2) to Section 64] 2. Section 60 does not apply if corpus itself is transferred. [*Grandhi Narayana Rao* 173 ITR 593 (AP)]
Revocable transfer of Assets (Section 61)	Transferor who transfers the Assets Assets includes both movable as well as immovable property whether situated in India or outside India	Clubbing not applicable if: 1. Trust/transfer irrevocable during the lifetime of beneficiaries/transferee; or 2. Transfer made prior to 1-4-1961 and not revocable for a period of 6 years. Provided the transferor derives no direct or indirect benefit from such income in either case. Examples of revocable transfers (i) If there is an express clause of revocation in the instrument of transfer; or (ii) If there is a sale with a condition of re-purchase; or (iii) If the transfer is to a trust and if the transfer can be revoked with the consent of two or more beneficiaries; or (iv) If the trustees are empowered in sole discretion to revoke the transfer; or If the transferor has power to change beneficiary or trustees.	Transfer held as revocable 1. If there is provision to re-transfer directly or indirectly whole/part of income/asset to transferor; 2. If there is a right to re-assume power, directly or indirectly, the transfer is held revocable and actual exercise is not necessary [S. *Raghbir Singh* 57 ITR 408 (SC)] 3. Where no absolute right is given to transferee and asset can revert to transferor in prescribed circumstances, transfer is held revocable. [*Jyotendrasinhji* vs. *S.I. Tripathi* 201 ITR 611 (SC)]

CLUBBING PROVISION'S			
Nature of Transaction	***Clubbed in the Hands of***	***Conditions/Exceptions***	***Relevant Reference***
Salary, Commission, Fees or remuneration paid to spouse from a concern in which an individual has a substantial interest [Section 64 (1) (ii)]	Individual who have substantial interest	Clubbing not applicable if: Spouse possesses technical or professional qualification and remuneration is solely attributable to application of that knowledge/ qualification. **Substantial Interest**: An individual shall be deemed to have a substantial interest in a concern - (i) In a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than 20% of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of his relatives; (ii) In any other case, if such person is entitled, or such person and one or more of his relatives are entitled in the aggregate, at any time during the previous year, to not less than 20% of the profits of such concern. **When both husband and wife have substantial interest** Where both husband and wife have a substantial interest in the concern and both are in receipt of the remuneration in such concern, the remuneration from such concern is to be included in the total income of the husband or, as the case may be, the wife whose total income excluding the income referred to in that clause, i.e., 64(1)(ii) is greater; and where any such income is once	1. The relationship of husband and wife must subsist at the time of accrual of the income. [Philip John Plasket Thomas 49 ITR 97 (SC)]. 2. Income other than salary, commission, fees or remuneration is not clubbed under this clause.

CLUBBING PROVISION'S			
Nature of Transaction	***Clubbed in the Hands of***	***Conditions/Exceptions***	***Relevant Reference***
		included in the total income of either spouse, any such income arising in any succeeding year shall not be included in the total income of the other spouse unless the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary so to do.	
Income from assets transferred directly or indirectly to the spouse without adequate consideration [Section 64(1)(iv)]	Individual transferring the Asset	Clubbing not applicable if: The assets are transferred; 1. With an agreement to live apart 2. Before marriage 3. Income earned when relation does not exist 4. By Karta of HUF gifting co-parcenary property to his wife. *L. Hirday Narain* vs *ITO* 78 ITR 26 (SC) 5. Property acquired out of pin money. *R.B.N.J. Naidu* vs. *CIT* 29 ITR 194 (Nag.)	1. Income earned out of Income arising from transferred assets not liable for clubbed. [*M.S.S. Rajan* 252 ITR 126 (Mad)] 2. Cash gifted to spouse and he/ she invests to earn interest. [*Mohini Thaper* vs. *CIT* 83 ITR 208 (SC)] 3. Capital gain on sale of property which was received without consideration from spouse [*Sevential M. Sheth* vs. *CIT* 68 ITR 503 (SC)] 4. Transaction must be real. [*O.N. Mohindroo* 99 ITR 583 (Delhi)]
Income from the assets transferred to son's wife [Section 64(1)(vi)]	Individual transferring the Asset	The transfer should be without adequate consideration.	Cross transfers are also covered [*C.M. Kothari* 49 ITR 107 (SC)]
Transfer of assets by an individual to a person or AOP for the immediate or deferred benefit of his Spouse or Son's wife [Section 64(1)(vii) & (viii)]	Individual transferring the Asset	The transfer should be without adequate consideration	1. Transferor need not necessarily have taxable income of his own. [P. Murugesan 245 ITR 301 (Mad)] 2. Wife means legally wedded wife. [Executors of the will of T.V. Krishna Iyer 38 ITR 144 (Ker)]

CLUBBING PROVISION'S			
Nature of Transaction	***Clubbed in the Hands of***	***Conditions/Exceptions***	***Relevant Reference***
Income of a minor child [Child includes step child, adopted child and minor married daughter] [Section 64 (1A)]	1. If the marriage subsists, in the hands of the parent whose total income is greater; or; 2. If the marriage does not subsist, in the hands of the person who maintains the minor child;	Clubbing not applicable for: – 1. Income of a minor child suffering any disability specified u/s. 80U 2. Income on account of manual work done by the minor child 3. Income on account of any activity involving application of skills, talent or specialized knowledge and experience	1. The parent in whose hands the minor's income is clubbed is entitled to an exemption up to Rs. 1,500 per child. [Section 10(32)] 2. Income once included in the total income of either of parents, it shall continue to be included in the hands of same parent in the subsequent year unless AO is satisfied that it is necessary to do so (after giving that parent opportunity of being heard)
Income of HUF from property converted by the individual into HUF property [Section 64(2)]	Income is included in the hands of individual & not in the hands of HUF	Clubbing applicable even if the converted property is subsequently partitioned; income derived by the spouse from such converted property will be taxable in the hands of individual.	Fiction under this section must be extended to computation of income also. [M.K. Kuppuraj 127 ITR 447 (Mad)]

Practice Questions:

Illustration 1:

A owns Debentures worth Rs 1,000,000 of ABC Ltd., (annual) interest being Rs. 100,000. On April 1, 2022, he transfers interest income to B, his friend without transferring the ownership of these debentures.

Solution: In this particular case during 2022-23, interest of Rs. 100,000 is received by B; it will be taxable in the hands of A as per Section 60.

Illustration 2:

Mr. X owns Debentures worth Rs 1,000,000 of ABC Ltd., (annual) interest being Rs. 100,000. On April 1, 2022, he transfers interest income to Mr. Y, his friend without transferring the ownership of these debentures.

Solution:

Although during 2022-23, interest of Rs. 100,000 is received by Mr. Y, it is taxable in the hands of Mr. X as per Section 60.

Illustration 3:

X has a substantial interest in A Ltd. and Mrs. X is employed by A Ltd. without any technical or professional qualification to justify the remuneration.

Solution:

In this case, salary income of Mrs. X shall be taxable in the hands of X.

Illustration 4:

Mr. P is employed as Public Relation Officer in a company where Mrs. P holds 21 per cent equity shares. She has been holding the share before marriage with Mr. P., Mr. P gets a salary of Rs. 1,500 per month.

Solution:

The whole salary of Rs. 18,000 will be included in the income of Mrs. P provided Mr. P has no technical or professional qualification. It is immaterial that the remuneration so paid is genuine and not excessive and that Mrs. P had substantial interest in the company even before her marriage.

Illustration 5:

X transfers 500 debentures of IFCI to his wife without adequate consideration.

Solution:

Interest income on these debentures will be included in the income of X.

Illustration 6 & Solution:

A transfers certain shares to his wife B. Dividends received on such shares are taxable in the hands of A. B sells the shares and makes some capital gains, such gains are also taxable in A's hands. Now from the dividend money, B purchases some more shares and receives dividends on these new shares, such dividends are not taxable to A. In the same way, if B receives certain bonus shares on the shares transferred by her husband and later on she receives dividend on such bonus shares, the dividend shall not be included in the income of the transferor because the bonus shares were never transferred by her husband.

Illustration 7:

Mr. Sharma invests Rs 10 lakh in a fixed deposit (FD) at a bank, in his wife's name. Interest of Rs. 1 lakh arises on this income. Mrs Sharma invests the interest on periodic basis and interest for an amount of Rs. 5,000 arises on the interest deposited by her in bank. Analyze the clubbing provisions and find out the taxability of interest accrued.

Solution:

Rs. 1 lakhs in the Now Interest income on FD will be clubbed with his (Mr. Sharma) income. Interest of Rs. 5,000 aroused out of Investment made by Mrs. Sharma will be taxed as her own income.

Illustration 8:

Red holds 40% of shares in a Company. Mrs. Red (a CS) is employed in the company as a Company Secretary and is getting salary of Rs. 15,000 per month. Compute total income and tax payable by Red and Mrs. Red assuming other income of Red is Rs. 2,00,000 from a business.

Solution:

In the present case, Mrs. Red's salary income will be taxable in her hands only as she is earning the same through her professional qualification.

Computation of Total Income and Tax Liability

Particulars	Mr. Red (Rs.)	Mrs. Red (Rs.)
Income from Salary	Nil	1,80,000
Income from Business	2,00,000	Nil
Gross Total Income (or Total Income)	2,00,000	1,80,000
Tax Liability (as total income does not exceed Rs.2,50,000)	Nil	Nil

Illustration 9:

Mr. Amit is beneficially holding 21% equity shares of Essem Minerals Pvt. Ltd. Mrs. Amit is employed as Manager (in accounts department) in Essem Minerals Pvt. Ltd. at a monthly salary of Rs. 84,000. Mrs. Amit is not having any knowledge, experience or qualification in the field of accountancy. Will the remuneration (i.e., salary) received by Mrs. Amit be clubbed with the income of Mr. Amit?

Solution:

In this situation, Mr. Amit is having substantial interest in Essem Minerals Pvt. Ltd. and remuneration of Mrs. Amit is not justifiable (i.e., she is employed without any technical or professional knowledge or experience) and, hence, salary received by Mrs. Amit from Essem Minerals Pvt. Ltd. will be clubbed with the income of Mr. Amit and will be taxed in the hands of Mr. Amit.

Illustration 10:

Mr. Kapoor gifted Rs. 8,40,000 to his wife. The said amount is invested by his wife in debentures of a company. Will the income from the debenture purchased by Mrs. Kapoor from gifted money be clubbed with the income of Mr. Kapoor?

Solution:

Rs. 8,40,000 is transferred to spouse. Fund is transferred via gift (i.e., without adequate consideration) and, hence, the provisions of section 64(1)(iv) will be attracted. The provisions of clubbing will apply even if the form of asset is changed by the transferee-spouse.

In this case asset transferred is money and, subsequently, the form of asset is changed to debentures, hence, income from debentures acquired from money gifted by her husband will be clubbed with the income of her husband. Thus, interest on debenture received by Mrs. Kapoor will be clubbed with the income of Mr. Kapoor.

Illustration 11:

Mr. Raj has given a bungalow owned by him on rent. Annual rent of the bungalow is Rs. 84,000. He transferred entire rental income to his friend Mr. Kumar. However, he did not transfer the bungalow.

Solution:

In this situation, rent of Rs. 84,000 will be taxed in the hands of Mr. Raj.

Illustration 12:

Mr. Soham holds 8,400 debentures of Shyamal Minerals Ltd. He gifted these debentures to his wife. Will the income from debentures be clubbed with the income of Mr. Soham?

Solution:

In this situation, the debentures are transferred to spouse. Transfer is via gift (i.e., without any consideration) and, hence, income generated from the transferred asset, i.e., interest on such debentures will be clubbed with the income of Mr. Soham.

Illustration 13:

Mr. Raja has two minor children, viz., Master A and Master B. Master A is a child artist and Master B is suffering from diseases specified under section 80U. Income of A and B are as follows:

Income of A from stage shows: Rs. 1,00,000

Income of A from bank interest: Rs. 6,000

Income of B from bank interest: Rs. 1,20,000.

Will the income of minor children be clubbed with the income of their parent (Mrs. Raja is not having any income)?

Solution:

As per section 64(1A) , income of minor children is clubbed with the income of that parent whose income (excluding minor's income) is higher. In this case, Mrs. Raja is not having any income and, hence, if any income is to be clubbed then it will be clubbed with the income of Mr. Raja.

Income of minor child earned on account of manual work or income from the skill, knowledge, talent, experience, etc., of minor child will not be clubbed with the income of his/her parent. Thus, income of A from stage show will not be clubbed with the income of Mr. Raja but income of A from bank interest of Rs. 6,000 will be clubbed with the income of Mr. Raja.

Income of a minor suffering from disability specified under section 80U will not be clubbed with the income of his/her parent. Hence, any income of B will not be clubbed with the income of Mr. Raja.

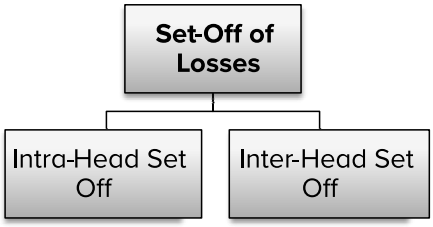
The taxpayer can claim an exemption under section 10(32)). Thus, in respect of interest income of Rs. 6,000 clubbed in the income of Mr. Raja, he will be entitled to claim exemption of Rs. 1,500 under section 10(32)), hence, net income to be clubbed will be Rs. 4,500 (i.e., Rs. 6,000 – Rs. 1,500).

SET-OFF AND CARRY-FORWARD OF LOSSES

While one endeavors to derive income, the possibility of incurring losses cannot be ruled out. Based on the principles of natural justice, a set-off should be available for loss incurred. The income tax laws in India recognize this and provide for adjustment and utilization of the losses. For this purpose, the Income-tax Act, 1961 contains specific provisions (Sections 70 to 80) for the set-off and carry- forward of losses.

SET-OFF OF LOSSES

Set off of losses means making adjust in losses which shall be against the profit of the same financial year. If it is not possible to set off the losses against profit in the same year then it will be carry forward to next year. A set off can be of two types which is intra-head set off and an inter-head set off.



1. **Intra-Head Set Off:** If in any year the taxpayer has incurred loss from any source under a particular head of income, then he is allowed to adjust such loss against income from any other source falling under the same head. The process of adjustment of loss from a source under a particular head of income against income from other source under the same head of income is called intra-head adjustment, e.g. Adjustment of loss from business A against profit from business B.

Restrictions to be kept in mind while making intra-head adjustment of loss

1.	Loss from speculative business cannot be set off against any income other than income from speculative business. However, non-speculative business loss can be set off against income from speculative business.
2.	Long-term capital loss cannot be set off against any income other than income from long-term capital gain. However, short-term capital loss can be set off against long-term or short-term capital gain.
3.	No loss can be set off against income from winnings from lotteries, crossword puzzles, race including horse race, card game, and any other game of any sort or from gambling or betting of any form or nature.
4.	Loss from the business of owning and maintaining race horses cannot be set off against any income other than income from the business of owning and maintaining race horses.
5.	Loss from business specified under section 35AD cannot be set off against any other income except income from specified business (section 35AD is applicable in respect of certain specified businesses like setting up a cold chain facility, setting up and operating warehousing facility for storage of agricultural produce, developing and building a housing projects, etc.).

2. **Inter-Head Set Off:** After making intra-head adjustment (if any) the next step is to make inter-head adjustment. If in any year, the taxpayer has incurred loss under one head of income and is having income under other head of income, then he can adjust the loss from one head against income from other head, E.g., Loss under the head of house property to be adjusted against salary income.

Restrictions to be kept in mind while making inter-head adjustment of loss

1.	Loss from speculative business cannot be set off against any other income. However, non-speculative business loss can be set off against income from speculative business.
2.	Loss under head “Capital gains” cannot be set off against income under other heads of income.
3.	No loss can be set off against income from winnings from lotteries, crossword puzzles, race including horse race, card game, and any other game of any sort or from gambling or betting of any form or nature.

4.	Loss from the business of owning and maintaining race horses cannot be set off against any other income.
5.	Loss from business specified under section 35AD cannot be set off against any other income (section 35AD is applicable in respect of certain specified businesses like setting up a cold chain facility, setting up and operating warehousing facility for storage of agricultural produce, developing and building housing projects, etc.)
6.	Loss from business and profession cannot be set off against income chargeable to tax under the head "Salaries".
7.	Loss under the head "house property" shall be allowed to be set-off against any other head of income only to the extent of Rs. 2,00,000 for any assessment year.
8.	Unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years as per the existing provisions of section 71B.

CARRY-FORWARD OF LOSSES

Many times it may happen that after making intra-head and inter-head adjustments, still the loss remains unadjusted. Such unadjusted loss can be carried forward to next year for adjustment against subsequent year(s) income. Separate provisions have been framed under the Income-tax Law for carry forward of loss under different heads of income. Losses can be set-off against the income of following years provided that they have been suffered by assessee and determined in pursuance of a return filed by the asessee. Further, carry forward of losses (other than loss from house property and unabsorbed depreciation) is permissible if the return of income for the year, in which loss is incurred, is filed in time. The late filing of return should not impact the status of carry forward of loss of previous years.

Loss under the Head	**Loss carried forward and Set-Off**	**Less can be carried forward only if the return of income/loss of the year in which loss is incurred is furnished on or before the due date of furnishing the return, as prescribed under section 139(1).**	**Loss can be carried forward upto**
Loss from Non-Speculation Business	If loss of any business/profession (other than speculative business) cannot be fully adjusted in the year in which it is incurred, then the unadjusted loss can be carried forward for making adjustment in the next year. In the subsequent year(s) such loss can be adjusted only against income charged to tax under the head "Profits and gains of business or profession"	Applicable	Eight Years

Loss from Speculation Business	If loss of any speculative business cannot be fully adjusted in the year in which it is incurred, then the unadjusted loss can be carried forward for making adjustment in the next year. In the subsequent year(s) such loss can be adjusted only against income from speculative business (may be same or any other speculative business).	Applicable	Four Years
Loss from business specified under section 35AD	Loss from business specified under section 35AD cannot be set off against any other income except income from specified business (section 35AD is applicable in respect of certain specified businesses like setting up a cold chain facility, setting up and operating warehousing facility for storage of agricultural produce, developing and building a housing projects, etc.). Such loss can be carried forward for adjustment against income from specified business for any number of years.	Applicable	Infinite Period
Loss from the business of owning and maintaining race horses	Loss from the business of owning and maintaining race horses cannot be set off against any income other than income from the business of owning and maintaining race horses.	Applicable	Four Years
Loss under the head 'Income from House Property'.	If loss under the head "Income from house property" cannot be fully adjusted in the year in which such loss is incurred, then unadjusted loss can be carried forward to next year. In the subsequent years(s) such loss can be adjusted only against income chargeable to tax under the head "Income from house property".	Not Applicable	Eight Years
Loss under the head Capital Loss	If loss under the head "Capital gains" incurred during a year cannot be adjusted in the same year, then unadjusted capital loss can be carried forward to next year. In the subsequent year(s), such loss can be adjusted only against income chargeable to tax under the head "Capital gains", however, long-term capital loss can be adjusted only against long-term capital gains. Short-term capital loss can be adjusted against long-term capital gains as well as short-term capital gains.	Applicable	Eight Years
Unabsorbed depreciation, unabsorbed capital expenditure on scientific research and unabsorbed	Depreciation is first deducted from the income chargeable to tax under the head "Profits and gains of business or profession". If such depreciation could not be fully adjusted against such income chargeable to tax in that previous year, the unabsorbed portion shall be added to the amount of depreciation for the following year and shall be deemed to be the part of depreciation for that year(similar treatment would be given to other allowances as mentioned above). However, in the case of set off, following order of priority is to be followed:	Not Applicable	Infinite Period

capital expenditure on promoting family planning amongst the employees	1) First adjustments are to be made for current scientific research expenditure, family planning expenditure and current depreciation. 2) Second adjustment is to be made for brought forward business loss. 3) Third adjustments are to be made for unabsorbed depreciation, unabsorbed capital expenditure on scientific research or on family planning.		

TREATMENT OF CARRY-FORWARD OF LOSSES OF CERTAIN ASSESSEES

(1) Carry forward of loss in case of change in the constitution of business

Generally, the person incurring the loss is only entitled to carry forward the loss to be adjusted in subsequent year(s). However, in certain cases of reconstitution of the business like amalgamation, demerger, conversion of proprietary firm into company or conversion of partnership firm into company, etc., the reconstituted entity is entitled to carry forward the unadjusted loss of predecessor entity (provided that conditions specified in this regard are satisfied).

(2) Carry-forward and set-off of losses in case of succession of business or profession

When a business or profession is succeeded by another person, the brought forward losses by the predecessor can be set-off against the income earned by the predecessor before the succession. The successor is not entitled to carry forward the losses sustained by the predecessor and set them off against the income earned by him. However, there is exception. If the succession is by inheritance, the heir-at-law is entitled to carry- forward and set-off the losses sustained by the predecessor provided the business in question continues to be carried on by the successor.

(3) Carry-forward and set-off of losses in case of change in constitution of firm or on succession [Section 78]

Section 78 contains provisions relating to carry forward and set off of loss in case of change in constitution of a partnership firm due to death or retirement of a partner (i.e. when a partner goes out of firm by retirement or death). In such a case, the share of loss attributable to the outgoing partner cannot be carried forward by the firm. Restriction of section 78 is applicable only in case of loss and is not applicable in case of adjustment of unabsorbed depreciation, unabsorbed capital expenditure on scientific research or family planning expenditure.

(4) Special provisions relating to carry forward and set-off of losses in case of change in shareholding of certain companies [Section 79]

Section 79 of the Income-tax Act, 1961 provides for carry forward and set-off of losses where a change in shareholding has taken place in a previous year in case of following companies

(i) In case of a company, being a company in which the public are not substantially interested but not being an eligible start-up as referred to in section 80-IAC, no loss incurred in any year prior to the previous year in which change in shareholding has taken place shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred.

(ii) In case of a company, being a company in which the public are not substantially interested and an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year in which change in shareholding has taken place, shall be allowed to be carried forward and set off only if all the shareholders of the company who held shares carrying voting power on the last day of the previous year in which the loss was incurred, continue to hold shares on the last of the current year. Further, the loss should have been incurred during the period of 7 years beginning from the year in which the company is incorporated.

However, to facilitate ease of doing business in case of an eligible start-up, the Finance (No.2) Act, 2019 has amended section 79 to provide that loss incurred, by the closely held eligible start-up, shall be allowed to be carried forward and set off against the income of the previous year on satisfaction of either of the two conditions specified above, i.e., continuity of 51% shareholding or continuity of 100% of original shareholders. [w.e.f. Assessment Year 2020-21]

However, the provisions of section 79 shall not apply in following cases. In other words, there shall be no restriction on carry forward and set-off of losses if :

a) the change in shareholding takes place consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift.

b) the assessee is a subsidiary of a foreign company and the foreign holding company is amalgamated or merged with another foreign company subject to condition that 51% shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.

c) the change in shareholding take place in the previous year pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016 after affording a reasonable opportunity of being heard to the jurisdictional Principal CIT or CIT.

d) A company, and its subsidiary and the subsidiary of such subsidiary, where:

i. National Company Law Tribunal (NCLT), on a petition moved by the Central Govt., has suspended the board of directors of such company and has appointed new directors.

ii. Change in shareholding has taken place in a previous year pursuant to a resolution plan approved by the NCLT.

e) Change in the shareholding has taken place during the previous year on account of relocation referred to in the Explanation to clauses (viiac) and (viiad) of section 47.

f) the ultimate holding company of such erstwhile PSU, immediately after completion of the strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least 51% of the voting power of such PSU in aggregate.

(5) No set-off of loss against undisclosed income discovered during search

The Finance Act, 2022 has inserted a new section 79A to the Income-tax Act to restrict set off of losses consequent to search, requisition and survey. It has been provided that in case the total income of any previous year of an assessee includes any undisclosed income detected as a result of: (a) Search initiated under section 132; or (b) A requisition made under section 132A; or (c) A survey conducted under section 133A other than under section 133A(2A). Then, no set-off of any loss, whether brought forward or otherwise, or unabsorbed depreciation, shall be allowed against such undisclosed income while computing the total income of the assessee for such previous year.

PRACTICE QUESTIONS

1. If income from a particular source is exempt from tax, then loss from such source cannot be set off against any other income which is chargeable to tax.

   (a) True

   (b) False

   Answer: (a) True

2. The process of adjustment of loss from a source under a particular head of income against income from other source under the same head of income is called _____ _ .

   (a) Inter-head adjustment

   (b) Intra-head adjustment

   (c) Carry forward of loss

   (d) Clubbing of income

   Answer: (b) Intra-head adjustment

3. While making intra-head adjustment of loss, short-term capital loss cannot be set off against long-term capital gain.

   (a) True

   (b) False

   Answer: (b) False

4. While making intra-head adjustment, loss from the business of owning and maintaining race horses can be set off against

   (a) Income from winnings from lotteries

   (b) Income from crossword puzzles _____ only.

   (c) Income from business of owning and maintaining race horses

   (d) Income from card game

   Answer: (c) Income from business of owning and maintaining race horses

5. While making inter-head adjustment of loss, loss from business and profession cannot be set off against income chargeable to tax under the head “Salaries”.

   (a) True

   (b) False

   Answer: (a) True

6. Loss under the head “Profits and gains of business or profession” can be carried forward even if the return of income/loss of the year in which loss is incurred is not furnished on or before the due date of furnishing the return, as prescribed under section 139(1).

   (a) True

   (b) False

   Answer: (b) False

7. if loss under the head "Income from house property" cannot be fully adjusted in the year in which such loss is incurred, then unadjusted loss can be carried forward for incurred. _____ years immediately succeeding the year in which the loss is

   (a) 2

   (b) 5

   (c) 8

   (d) 10

   Answer: (c) 8

8. In case of a Company, being a company in which public are not substantially interested but not being an eligible start-up as referred to in section 80-IAC, if the person beneficially holding _____ of the voting power as on the last day (i.e. 31st March) of the year in which the loss was incurred and on the last day (i.e. 31st March) of the year in which the company wants to set off the brought forward loss are different, then the company cannot set off such brought forward loss.

   (a) 20%

   (b) 25%

   (c) 50%

   (d) 51%

   Answer: (d) 51%

LESSON ROUND-UP

- Sections 60 to 64 of the Income-tax Act provide that in computing the total income of an individual for the purposes of assessment, there shall be included all the items of income specified in these sections.
- **Transfer of Income (Section 60):** Where a person transfers to any other person income (whether revocable or not) from an asset without transferring that asset, the income shall be included in the total income of the transferor. "Transfer" includes any settlement, trust, covenant, agreement or arrangement.
- **Revocable Transfer:** Where a person transfers any asset to any other person with a right to revoke the transfer, all income accruing to the transferee from the asset shall be included in the total income of the transferor. The income under revocable transfer of asset shall be included in the income of transferor even when only a part of income from transferred asset has been applied for the transferor.
- **Irrevocable Transfer:** In case of an irrevocable transfer of assets for a specified period, the income from such assets shall not be included in the income of transferor.
- **Income to spouse from a concern in which such individual has substantial interest [Section 64(1)(ii)]:** All such income as arises directly or indirectly, to the spouse of an individual by way of salary, commission, fees or any other remuneration, whether in cash or kind from a concern in which such individual has a substantial interest, shall be included in the income of the individual.
- **Income to spouse from the assets transferred [Section 64(1)(iv)]:** Where any individual transfers directly or indirectly any asset (other than a house property) to the spouse, the income from such asset shall be included in the income of the transferor.

- **Income to Son's Wife [Section 64(1)(vi)]:** Where any individual transfers, directly or indirectly, any asset to his/her son's wife without adequate consideration, the income from such asset shall be included in the income of the transferor.
- **Transfer for Immediate or Deferred Benefit of Son's Wife [Section 64(1)(viii)]**: Any income arising, directly or indirectly, to any person or association of persons from assets transferred directly or indirectly after June 1, 1973, otherwise than for adequate consideration to the person or association of persons by such individual shall, to the extent to which the income from such assets is for the immediate or deferred benefit of his son's wife be included in computing the total income of such individual.
- **Income to spouse through a third person [Section 64(1)(vii)]:** Where a person transfers some assets directly or indirectly to a person or association of persons (trustee or body of trustees or juristic person) without adequate consideration for the immediate or deferred benefit of his or her spouse, all such income as arises directly or indirectly from assets transferred shall be included in the income of the transferor.
- **Clubbing of Income of Minor Child [Section 64(1A)]:** All income which arises or accrues to the minor child (not being a minor child suffering from any disability of the nature specified in Section 80U) shall be clubbed in the income of his parent. However, any income which is derived by the minor from manual work or from any activity involving application of his skill, talent or specialised knowledge and experience will not be included in the income of his parent.
- In case the income of an individual includes any income of his minor child in terms of this section [i.e. section 64(1A)], such individual shall be entitled to exemption of the amount of such income or Rs. 1,500 whichever is less.
- **Income from the Converted Property [Section 64(2)]:** Where an individual, being a member of Hindu Undivided Family, transfers his self-acquired property after 31st December, 1969 to the family for the common benefit of the family, or throwing it into the common stock of the family, or transfers it directly or indirectly to the family otherwise than for adequate consideration, such property is known as converted property.
- **Set Off & Carry Forward of losses:** Sometimes the assessee incurs a loss from a source of income and unless such loss is set-off against any income, the net result of the assessee's activities during the particular accounting year cannot be ascertained and consequently the tax payable would also be incapable of determination. For this purpose, the Income-tax Act contains specific provisions for the set-off and carry-forward of losses.
- **Carry-Forward and Set-Off of Losses:** If it is not possible to set-off the losses during the same assessment year in which these occurred, so much of the loss as has not been so set-off out of the following losses, can be carried forward to the following assessment year and so on to be set-off against the income of those years provided the losses have been determined in pursuance of a return filed by the asessee and it is the same assessee who sustained the loss.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions "MCQs"

1. Income of a minor child from a Fixed Deposit with a bank, made out of income earned from scholarship, is to be?
   a) Assessed in the hands of the minor child
   b) Clubbed with the income of the parent whose total income before such clubbing is higher
   c) Exempted from tax
   d) Clubbed with father's income

   Answer: (b)
2. Carried forward losses of normal business can be set-off against other income in subsequent assessment year except:
   a) Income from speculation business
   b) Income under the head house property
   c) Income under the head other sources
   d) Income under the head salaries

   Answer: (d)
3. Transfer of income without transfer of asset would be taxable in the hands of:
   a) Transferor only
   b) Transferee only
   c) Either transferor or transferee
   d) Both transferor and transferee

   Answer: (a)
4. The maximum period for which losses from speculative business can be carried forward is:
   a) 4 years
   b) 8 years
   c) Indefinitely
   d) None of the above

   Answer: (a)
5. Income of Minor Child, includible in the income of his/her parents income, deductible to the extent of such income does not exceeds for each minor child:
   a) Rs. 500
   b) Rs. 1000
   c) Rs. 1500
   d) Rs. 2000

   Answer: (c)

6. Unabsorbed depreciation which could not be set off in the assessment year in which it arose, can be carried forward for:

   a) 8 Years

   b) Indefinite Period

   c) 4 Years

   d) 12 Years

   Answer: (b)

7. Loss from the activity of owning and maintaining race horses can be set off against _____of the same assessment year.

   a) Speculation profits

   b) Specified business profits

   c) Any business profits

   d) Income from owning and maintaining race horses

   Answer: (d)

8. Loss from specified business under Section 35 AD can be carried forward for :

   a) 8 Years

   b) Infinite Period

   c) 4 Years

   d) 12 Years

   Answer: (b)

9. If the loss from business is Rs. 20,000 and income under the head salary is Rs. 2,40,000 then total income of assessee is:

   a) Rs. 2,40,000

   b) Rs. 2,20,000

   c) Rs. 2,40,000 and carry forward loss of Rs. 20,000

   d) Rs. 2,40,000 and no carry forward loss

   Answer: (c)

Practical Questions:

1. Mr. Sharma gifted his wife Rs 5,00,000. The wife invests this amount in a FD and starts earning an interest on the same. Will this interest income be taxable in the hands of Mr. Sharma? Give reasoning to support the answer.

2. Mr Chandra Babu holds 25% equity shares of Heritage Minerals Pvt. Ltd. His wife – Smt Bhuvaneshwari is employed as Manager *(in Sales department)* in the same company, at a monthly salary of Rs. 90,000. Bhuvaneshwari is not having any knowledge, experience or qualification in the field of Sales. Will the remuneration (*i.e.,* salary) received by Bhuvaneshwari be clubbed with the income of Mr. Babu? If yes, give reasoning to support the answer.

3. Mr. Suresh (transferor) gifts Rs. 1 crore to his wife Swapna (transferee). The said amount is invested by his wife in a house property. Will the rental income (if any) from the house property purchased by Swapna Suresh from gifted money be clubbed with the income of Mr. Suresh. Give reasoning to support the answer.
4. Mr. Pawan Kalyan has given a bungalow owned by him on rent. Annual rent of the bungalow is Rs. 10,00,000. He transferred entire rental income to his friend Mr. Trivikram. However, he did not transfer the bungalow. In whose hand the rental income of Rs. 10,00,000 will be taxed. Give reasoning to support the answer.

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann
- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962. aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Deductions

Lesson 10

KEY CONCEPTS

■ Deduction ■ Rebate ■ Relief

Learning Objectives

To understand:

- Various deductions allowable from Gross Total Income
- The conditions attached to claim deduction under respective sections
- The maximum Limit / Amount than can be claimed as deductions under respective section
- Provision related to Rebate & Relief

Lesson Outline

- Introduction
- Impact of Section 115BAC/115BAD on deductions
- Deductions [Sections 80C to 80U]
- Rebate and Relief
- Lesson Round-Up
- Test Yourself
- Lists of Further Readings
- Other References

The aggregate of income computed under each head after giving effect to the provisions of clubbing of income and Set-off of losses, is known as "gross Total Income". Section 80C to 80U of the Income tax Act, 1961 lays down the provision relating to the deductions allowable to assessees from their gross Total Income.

INTRODUCTION

The Income-tax Act provides various tax exemptions and deductions. The incomes which are exempt from tax, i.e., which are not included in total income are provided in Sections 10 to 13A of the Income tax Act, 1961. Chapter VI-A contains deductions from gross total income under section 80C to 80U in respect of certain payments, investments, incomes and other deductions. Deduction helps in reducing the taxable income. It decreases the overall tax liabilities and helps to save tax. However, depending on the type of tax deduction claim, the amount of deduction varies.

The deductions are available only to the assessees where the gross total income is positive. If however, the gross total income is nil or negative, the question of any deduction from the gross total income does not arise. for this purpose, the expression 'gross total income' means the total income of the assessee computed in accordance with the provisions of the Income-Tax Act, before making any deduction under Chapter VIA, i.e., the aggregate income computed under each head, after giving effect to the provisions for clubbing of income and set off of losses, is known as "gross Total Income". Sections 80C to 80U of the Income- tax Act lay down the provisions relating to the deductions allowable to assessees from their gross Total Income. The income arising after deduction under section 80C to 80U is called Total Income.

IMPACT OF SECTION 115BAC/115BAD ON DEDUCTIONS

Finance Act, 2020 has introduced a new optional Tax System for Individuals and HUFs u/s 115BAC of the Income Tax Act, 1961 and for Resident Co-operative Societies u/s 115BAD w.e.f. AY 2021-22 to provide for concessional rate of Slab Rates to be applied on Total Income calculated without claiming specified deductions and exemptions.

Hence, from AY 2021-22 or FY 2020-21, there are two operative tax systems –

1. One is the existing tax system where all the applicable deductions and exemptions are allowed and the tax rates are as per the Slab rates of tax specified in the finance Act, 2020.
2. The second one is section 115BAC / 115BAD which is a optional Tax System and under which many deductions and exemptions have not been allowed but lower slab tax rates are provided in the section 115BAC / 115BAD itself.

Individual and HUF opting for concessional tax regime under section 115BaC: The deduction under Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA; not available to the Individual and HUF opting to pay tax under concessional tax regime under section 115BAC of the Income Tax Act, 1961.

Resident Co-operative Societies opting for concessional tax regime under section 115BaD: The deduction under Chapter VI-A other than the provisions of section 80JJAA; not available to the Resident Co-operative Society opting to pay tax under concessional tax regime under section 115BAD of the Income-tax Act, 1961.

Summary of Deductions under Chapter VI-A

Sections	*Nature of deduction*	*Who can claim*
(1)	**(2)**	**(3)**
80C	• Life insurance premium • Sum paid towards notified annuity plan of LIC or other insurer, a contract for a deferred annuity • Contributions towards employees' provident fund Scheme, public provident fund Account, a recognised provident fund, an approved superannuation fund, notified unit-linked insurance plan of LIC Mutual fund,	Individual/HUF (Not Available on opting for concessional tax regime u/s 115BAC)

Sections	*Nature of deduction*	*Who can claim*
(1)	**(2)**	**(3)**
	participation in unit-linked Insurance plan of UTI, any pension fund set up by any mutual fund which is referred to in section 10(23D) or by the UTI ● Subscription to any notified security, notified deposit scheme of the Central government, notified savings certificates, notified pension fund set up by national housing Bank ● Tuition fees paid by an individual to any university, college, school or other educational institution situated in India, for full time education of any 2 of his/her children ● Certain payments for purchase/construction of residential house property ● Subscription to notified schemes of (a) public sector companies engaged in providing long-term finance for purchase/construction of houses in India for residential purposes/(b) authority constituted under any law for satisfying need for housing accommodation or for planning, development or improvement of cities, towns and villages, or for both ● Subscription to equity shares or debentures forming part of any approved eligible issue of capital made by a public company or public financial institutions, any units of any approved mutual fund referred to in section 10(23D), notified bonds issued by the NABARD. ● Term deposits for a fixed period of not less than 5 years with a scheduled bank or post office ● A contribution by central govt. employee to a specified account of the pension scheme referred to in section 80CCD for a fixed period of not less than three years; ● Deposit in an account under the Senior Citizen Savings Scheme Rules, 2004.	
80CCC	Contributions to certain pension funds of LIC or any other insurer (up to Rs. 1,50,000).	Individual (Not Available on opting for concessional tax regime u/s 115BAC)

Sections	*Nature of deduction*	*Who can claim*
(1)	**(2)**	**(3)**
80CCD	• Contribution to pension scheme notified by Central government up to 10% of salary. • Contribution made by employer shall also be allowed as deduction under section 80CCD(2) while computing total income of the employee. however, amount of deduction could not exceed 10% of salary of the employee (14% in case of Central Government Employer).	
	Note: The maximum limit of Rs. 1,50,000 is the aggregate of the deduction that may be claimed under sections 80C, 80CCC and 80CCD. However, additional deduction of maximum Rs. 50,000 be allowed under section 80CCD(1b) over and above the limit of Rs. 1,50,000.	
80D	Amount paid (in any mode other than cash) by an individual or HUF to LIC or other insurer to effect or keep in force an insurance on the health of specified person. Payment towards health scheme and/or on account of preventive health check-up.	Individual/HUF (Not Available on opting for concessional tax regime u/s 115BAC)
80DD	Deduction of Rs. 75,000 (Rs. 1,25,000 in case of severe disability) to a resident individual/HUF where (a) any expenditure has been incurred for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability, or (b any amount is paid or deposited under an approved scheme framed in this behalf by the LIC or any other insurer or the Administrator or the specified company for the maintenance of a dependent, being a person with disability.	Resident Individual/HUF (Not Available on opting for concessional tax regime u/s 115BAC)
80DDB	Expenses actually paid for medical treatment of specified diseases and ailments subject to certain conditions.	Resident Individual/HUF (Not Available on opting for concessional tax regime u/s 115BAC)
80E	Interest on loan taken from financial institution/approved charitable institution for pursuing higher education.	Individual (Not Available on opting for concessional tax regime u/s 115BAC)
80EE	Interest payable on loan taken from any financial institution for the purpose of acquisition of a residential house property.	Individual (Not Available on opting for concessional tax regime u/s 115BAC)

Sections	*Nature of deduction*	*Who can claim*
(1)	**(2)**	**(3)**
80EEA	Tax incentives for affordable housing.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80EEB	Tax incentives for electric vehicles.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80G	Donations to certain approved funds, trusts, charitable institutions/ donations for renovation or repairs of notified temples, etc.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80GG	Rent paid in excess of 10% of total income for furnished/ unfurnished residential accommodation (subject to maximum of Rs. 5,000 p.m. or 25% of total income, whichever is less).	Individuals not receiving any house rent allowance (Not Available on opting for concessional tax regime u/s 115BAC)
80GGA	Certain donations for scientific, social or statistical research or rural development programme or for carrying out an eligible project or scheme or National Urban Poverty Eradication Fund.	All assessees not having any income chargeable under the head 'profits and gains of business or profession' (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80GGB	Sum contributed to any political party/electoral trust.	Indian company
80GGC	Sum contributed to any political party/electoral trust.	All assessees, other than local authority and artificial juridical person wholly or partly funded by Government (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
	For certain incomes	
80-IA	Profits and gains from industrial undertakings engaged in infrastructure facility, telecommunication services, industrial park, development of Special economic Zone, power undertakings, etc.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)

Sections	*Nature of deduction*	*Who can claim*
(1)	**(2)**	**(3)**
80-IAB	Profits and gains derived by undertaking/enterprise from business of developing a Special economic Zone notified on or after 1-4-2005.	Assessee being Developer of SEZ (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80-IB	Profits and gains from industrial undertakings, cold storage plant, hotel, scientific research & development, mineral oil concern, housing projects, cold chain facility, multiplex theatres, convention centres, ships, etc.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80-IC	Profits and gains derived by an undertaking or an enterprise in special category States (Himachal Pradesh, Uttaranchal, Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura).	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80IAC	Deduction in respect of eligible Start-Up.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80IBA	Deductions in respect of profits and gains from housing projects.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80IC	Special provisions in respect of certain undertakings or enterprises in certain special category States.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80-ID	Profits and gains from business of hotels and convention centers in specified areas.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80-IE	Deduction in respect of certain undertakings in North Eastern States.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)

Sections	*Nature of deduction*	*Who can claim*
(1)	**(2)**	**(3)**
80JJA	Entire income from business of collecting and processing or treating of bio-degradable waste for generating power, or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas, making pellets or briquettes for fuel or organic manure.	All assesses (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80JJAA	Additional wages paid to new regular workmen employed in the previous year for 3 assessment years.	Assessee having profits and gains derived from manufacture of goods in a factory
80LA	Certain incomes of Scheduled banks/banks incorporated outside India.	Scheduled banks/banks incorporated outside India having offshore
		Banking Units in a Special economic Zone/ Units of International financial Services Centre (Not Available on opting for concessional tax regime u/s 115BAC/115BAD)
80M	Deduction in respect of certain inter-corporate dividends. **[Inserted vide Finance Act, 2020]**	Domestic Company
80P	Specified incomes.	Co-operative societies (Not Available on opting for concessional tax regime u/s 115BAD)
80PA	Specified incomes.	Producer Company
80QQB	Royalty income of author of certain specified category of books (up to Rs. 3,00,000).	Resident Individual - Author (Not Available on opting for concessional tax regime u/s 115BAC)
80RRB	Royalty on patents up to Rs. 3,00,000.	Resident individuals who is a patentee and is in receipt of income by way of royalty in respect of a patent registered on or after 1-4-2003 (Not Available on opting for concessional tax regime u/s 115BAC)

Sections	*Nature of deduction*	*Who can claim*
(1)	**(2)**	**(3)**
80TTA	Interest on deposits in savings bank accounts (up to Rs. 10,000 per year).	Individuals/HUFs (Not Available on opting for concessional tax regime u/s 115BAC)
80TTB	Interest on deposits in case of senior citizens upto Rs. 50,000.	Senior Citizen Individuals (Not Available on opting for concessional tax regime u/s 115BAC)
80U	Deduction of Rs. 75,000, in the case of a person with severe disability, allowable deduction is Rs. 1,25,000.	Resident individuals who, at any time during the previous year, is certified by the medical authority to be a person with disability (Not Available on opting for concessional tax regime u/s 115BAC)
Rebates		
87A	Rebate of Rs. 12,500 or the income tax whichever is less.	Resident individual whose total income does not exceed five lakh rupees

DEDUCTIONS

Deduction in respect of investments [Section 80C]

Section 80C provides deduction to (a) an individual; (b) a Hindu undivided family for investments made in specified assets subject to a maximum amount of Rs. 1,50,000.

The specified Investments include:

a) Premium paid on life Insurance policy taken on the life of an individual assessee or spouse and any child of such individual, and any member of the Hindu Undivided family subject to a maximum of 10% of the actual sum assured, if insurance policy is taken on or after 1.04.2012. But if, insurance policy is taken on or before 31.03.2012, then maximum limit is 20% of actual sum assured. further, if insurance policy is taken on or after 01.04.2013 and the policy is on the life of a person with disability or severe disability mentioned in Section 80U or a person suffering from a disease or aliment mentioned in Section 80DDB, then 15% of actual sum assured.

"actual sum assured" in relation to a life insurance policy shall mean the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account –

1. the value of any premium agreed to be returned; or
2. any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

b) Amounts paid to effect or to keep in force a contract for a non-cumulative deferred annuity not being an annuity plan referred to in clause (j) below on the life of: (i) in the case of an individual, the individual, spouse or any child of such individual; and

However, such contract should not contain a provision for exercise of an option by the insured to receive cash payment in lieu of the payment of the annuity.

c) Deduction from the salary payable by or on behalf of the government to any individual, in accordance with the conditions of his service, for securing to him a deferred annuity or making provision for his wife or children, to the extent of one-fifth of salary.

d) Contribution made by an individual to a Recognised provident fund; an approved superannuation fund; public provident fund; a ten-year account or a fifteen- year account under the post office Savings Bank (Cumulative Time Deposits) Rules, 1959.

e) Purchase of notified securities or deposit scheme of the Central government. Sukanya Samriddhi Account Scheme has been notified.

f) Subscription to other notified savings certificates defined in Section 2(c) of the government Savings Certificates Act, 1959 [for this clause, national Savings Certificates (VIII & IX) issue has been notified] and interest accured deemed to be reinvested also qualifies.

g) Contributions made by an individual or HUF, for participation in the Unit-Linked Insurance plan, 1971, deemed to have been made under Section 19(8)(a) of the Unit Trust of India Act, 1963. [for this clause, Dhanaraksha-1989 plan of LIC Mutual fund has been notified].

h) Contributions made in the name of an individual or HUF for participation in any notified Unit-Linked Insurance plan of the LIC Mutual fund.

i) Any contribution to effect or keep in force any notified annuity plan of the LIC or any other insurer.

j) Any subscription, to any units of any Mutual fund or the Unit Trust of India under any notified plan formulated by the Central government.

k) Any contribution to any pension fund set up by any Mutual fund as notified by the Central government.

l) Subscription to the notified deposit scheme of or contribution to any such pension fund set up by the national housing Bank established under Section 3 of the national housing Bank Act, 1987. [for this clause, home Loan Account Scheme of national housing Bank has been notified].

m) Subscription paid towards scheme of :-

1) Public sector company engaged in providing long term finance for purchase or construction of houses in India (public deposit scheme of HUDCO).

2) Housing board constituted in India for planning, development or improvement of cities or towns.

n) Only tuition fees (excluding any payment towards any development fees or donation or payment of similar nature), whether at the time of admission or thereafter, - (for full time education of any 2 children) to any university, college, school or other educational institution situated within India.

o) For purchase or construction of a residential house property, the income of which is chargeable to tax under the head “Income from house property”, where such payments are made towards or by way of:

i. Any installment or part payment of the amount due towards the cost of the house property allotted or construction and sale of house property on ownership basis; or

ii. E-payment of any loan taken for the purpose of purchase or construction of residential house property subject to some conditions.

p) Subscription to equity shares or debentures or units forming part of any eligible issue of capital, i.e., issue made by a company registered in India or a public financial institution or an approved mutual fund for the purpose of developing, maintaining and operating an infrastructure facility as defined in the explanation to Sub-section (4) of Section 80-IA or for generation, or for generation and distribution of power or for providing telecommunication services whether basic or cellular.

q) Fixed deposits for a minimum period of 5 years in any Scheduled Banks.

r) As subscription to such bonds issued by the national Bank for Agriculture and Rural Development, as the Central government may, by notification in the official gazette specify in this behalf.

s) Amount deposited in an account under the Senior Citizens Savings Scheme Rules, 2004.

t) As five year time deposit in an account under the post office Time Deposit Rules, 1981.

u) A contribution by central govt. employee to a specified account of the pension scheme referred to in section 80CCD for a fixed period of not less than three years; and the scheme notified by Central government.

v) Contribution made by a Central govt. employee to his Tier-II NPS account for a fixed period not less than 3 years. (w.e.f. Assessment Year 20-21).

Deduction for Contribution to Pension Fund [Section 80CCC]

Section 80CCC provides deduction with respect to amount deposited by an individual out of his taxable income to any annuity plan of the Life Insurance Corporation of India or any insurer approved by the IRDAI for receiving pension subject to a maximum of Rs. 1,50,000. No deduction for this contribution will be available u/s 80C. The pension received by the assessee or his nominee is taxable in the year of receipt. If the asseesee or his nominee surrenders the annuity before its maturity, then surrender value including bonus/ interest is taxable in the year of receipt.

Deduction in respect of Contribution to Pension Scheme of Central Government [Section 80CCD]

Section 80CCD provides deduction with respect to employers and employees contribution to pension scheme which is applicable to new employees of the Central government employed on or after 01.01.2004 or being an individual employed by any other employer. It is mandatory for such employee to contribute 10% of salary every month towards the pension scheme. 10% contribution is required to be made by the employer also. [14% in case where employer is Central govt. as approved by Union cabinet meeting on 6/12/2018].

As per section 80CCD (1), employees contribution towards the notified pension scheme is deductible, but upto maximum of 10% of the salary of employee. As per section 80CCD (1B), an additional deduction of maximum Rs. 50,000 can also be availed. This deduction is out of the focus of section 80CCe. As per section 80CCD(2) if the employer contributes towards the notified pension scheme, then deduction can be claimed but upto maximum of 10 % of the salary of employee (14% in case where employer is Central govt. w.e.f. Assessment Year 20-21). This deduction is out of the focus of section 80CCE.

Salary here means basic salary plus dearness allowance (forming part) plus commission at a fixed percentage of turnovers achieved by the employee. Self-employed individuals can also contribute to NPS and in such a case, maximum limit of deduction is 20% of his gross total income. Any amount received from pension fund, shall be taxable as income of the recipient (assessee or his nominee) in the year in which such amount is received.

Limit on Deductions under sections 80C, 80CCC and 80CCD [Section 80CCE]

The aggregate amount of deductions under Sections 80C, 80CCC and 80CCD (1) shall not in any case, exceed Rs. 1,50,000. As per section 80CCD (1B), an additional deduction of maximum Rs. 50,000 can also be availed. This deduction is out of the focus of section 80CCE.

Deduction in respect of Medical Insurance Premium [Section 80D]

Section 80D provides deduction to an individual or a Hindu undivided family towards medical insurance premium and preventive health check up or contribution to Central government health Scheme (CGHS) or any scheme notified by the Central government on the health of the assessee, his family, parents or members of the HUF.

Where the assessee is an individual, the deduction under this section shall be the aggregate of the following:

(a) The whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or "any contribution made to the Central government health Scheme" or such other scheme as may be notified by the Central government in this behalf or any payment made on account of preventive health check-up of the assessee or his family and the sum does not exceed in the aggregate Rs. 25,000; and

(b) The whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee or any payment made on account of preventive health check-up of the assessee or his family as does not exceed in the aggregate Rs. 25,000;

(c) The whole of the amount paid on account of medical expenditure incurred on the health of the assessee or any member of his family as does not exceed in the aggregate Rs. 50,000;

(d) The whole of the amount paid on account of medical expenditure incurred on the health of any parent of the assesse, as does not exceed in the aggregate Rs. 50,000;

Provided that amount referred in (c) and (d) is paid in respect of a senior citizen and no amount has been paid to effect or to keep in force an Insurance on the health of such person;

Provided further that aggregate of amount specified under (a) and (c) or aggregate of sum specified under (b) and (d) shall not exceed Rs. 50,000.

Explanation*: family means the spouse and dependent children of the assessee.*

Payment shall be made by any mode, including cash, in respect of any sum paid on account of preventive health check-up and by any mode other than cash in all cases other than preventive health check up.

Where the assessee is a Hindu undivided family, the deduction under this section, shall be aggregate of the following namely:

(a) Whole of the amount paid to effect or to keep in force an insurance on the health of any member of that hindu undivided family as does not exceed in the aggregate Rs. 25,000;

(b) Whole of the amount paid on account of medical expenditure incurred on the health of any senior citizen member of the hindu undivided family as does not exceed in the aggregate Rs. 50,000 and no amount has been paid to effect or to keep in force and insurance on the heath of such a person;

Provided that the aggregate of the sum specified under the clause (a) and clause (b) shall not exceed Rs. 50,000

Explanation*:*

1. Senior citizen means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.

2. Where the amount of health insurance premium in above cases has been paid in lump sum for more than one previous year then deduction shall be allowed for each relevant previous year. Amount of deduction for each previous year shall be calculated by dividing lump sum premium amount by number of relevant previous years.

Illustration 1:

Section 80D provides deduction to an individual in respect of premium paid towards medical insurance of his family. For the purpose of Section 80 D family means:

a) The spouse

b) The spouse and dependent children of the assessee.

c) The spouse and any children of the assessee.

d) The spouse, children and parents of the assessee.

Solution: (b) The spouse and dependent children of the assessee.

Illustration 2:

Assessment year 2021-22, an individual taxpayer can claim deduction of up to under Section 80D of the Income Tax Act, 1961, if he or his family members and his parents are 60 years or above:

a) Rs. 50,000

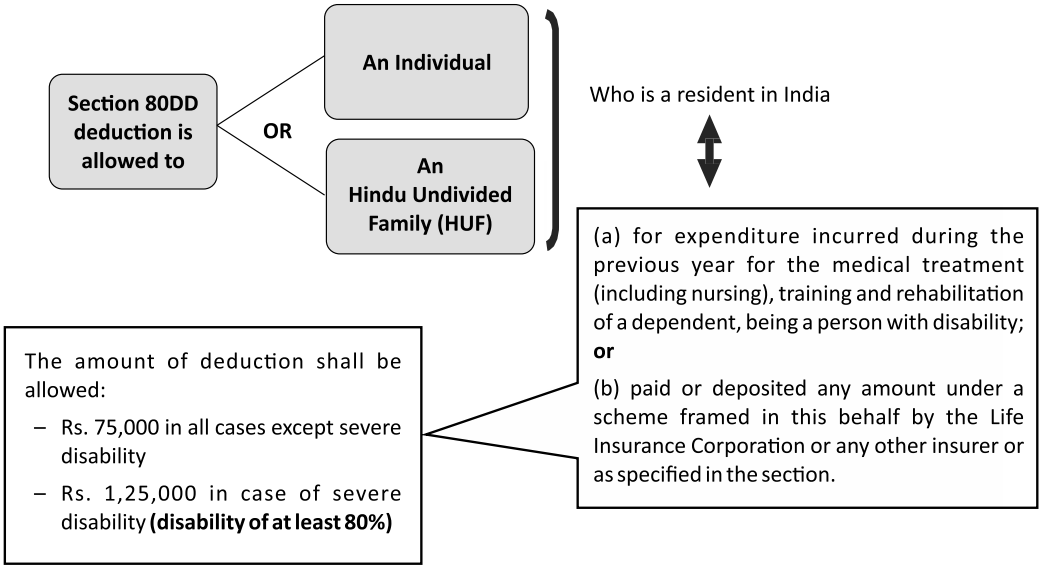
b) Rs. 60,000

c) Rs. 1,00,000

d) none of the above

Solution: (c) Rs. 1,00,000

Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability [Section 80DD]



For the purpose of this section

(a) "dependent" means -

(i) in the case of an individual, the spouse, children, parents, brothers and sisters of the individual or any of them;

(ii) in the case of a Hindu undivided family, a member of the Hindu undivided family, dependent wholly or mainly on such individual or Hindu undivided family for his support and maintenance, and who has not claimed any deduction under Section 80U in computing his total income for the assessment year relating to the previous year.

(b) "disability" shall have the meaning assigned to it in clause (i) of Section 2 of the persons with Disabilities (equal opportunities, protection of Rights and full participation) Act, 1995.

Deduction in respect of medical treatment of certain specified disease or ailment [Section 80DDB]

Section 80DDB provides deduction to an individual or a Hindu undivided family, who is a resident in India for amount actually paid during the previous year, for the medical treatment of such disease or ailment as may be specified in the rules made in this behalf by the Board -

(a) for himself or a dependent, in case the assessee is an individual; or

(b) for any member of a Hindu undivided family, in case the assessee is a Hindu undivided family, subject to a maximum of Rs. 40,000 (in case of senior citizen Rs. 1,00,000).

Deduction is allowed only when a certificate in Form No. 10-I (issued by neurologist, oncologist, urologist, hematologist, immunologist or any such specialist as may be specified working in a Government Hospital) is furnished. Concept of very super senior citizen abolished by Finance Act, 2018.

Provided further that the deduction under this section shall be reduced by the amount received, if any, under an insurance from an insurer, or reimbursed by an employer, for the medical treatment of the person referred to in Clause (a) or Clause (b).

"Dependent" means –

(a) in the case of an individual, the spouse, children, parents, brothers and sisters of the individual, Dependant wholly or mainly on such individual for support and maintenance;

(b) in the case of a Hindu undivided family, any member of the Hindu undivided family, Dependant wholly or mainly on Hindu undivided family for support and maintenance.

Illustration 3:

X a resident individual incurs Rs. 30,000 expenditure on his own treatment of a specified disease and Rs. 15,000 on medical treatment of his wife in a government hospital. Rs. 2,000 is reimbursed by insurance company for his wife and Rs. 5,000 are reimbursed by his employer for him. Compute the amount of deduction under section 80DDB?

Solution:

The amount of deduction under section 80DDB shall be lower of 1 and 2 below less amount recovered from insurance company and employer.

1. 30,000 + 15,000 = 45,000
2. 40,000

Rs. 40,000 less (2,000+5,000) = 33,000

Hence, Rs. 33, 000 is the amount of deduction under section 80 DDB.

Illustration 4:

If X, an individual incurs Rs. 1,80,000 expenditure on medical treatment of a specified disease for his mother (65 years) in a hospital recognised by Chief Commissioner and Rs. 8,000 are reimbursed by insurance company, what will be the amount of deduction available to him under section 80DDB?

(a) Rs. 92,000

(b) Rs. 72,000

(c) Rs. 1,80,000

(d) Any amount

Solution: (a) Rs. 92,000

Illustration 5:

If X, an individual incurs Rs. 1,80,000 expenditure on medical treatment of a specified disease for his grand mother (85 years) in a hospital recognised by Chief Commissioner and Rs. 8,000 are reimbursed by insurance company, what will be the amount of deduction available to him under section 80DDB?

(a) Rs. 60,000

(b) Rs. 1,80,000

(c) Rs. 92,000

(d) nIL

Solution: (c) Rs. 92,000

Illustration 6:

Maximum amount of deduction is allowed upto u/s 80DDB of the Income Tax Act, 1961, to an individual or HUF (Age below 60 years) towards the payment of medical treatment for critical illness for himself or family members:

a) Rs. 1,00,000

b) Rs. 60,000

c) Rs. 40,000

d) nil

Solution: (c) Rs. 40,000

Deduction in respect of repayment of loan taken for Higher Education [Section 80E]

Section 80E provides deduction to an individual for amount actually paid during the previous year out of his income chargeable to tax by way of an interest on loan, taken by him from any financial institution or any approved charitable institution for the purpose of pursuing higher education of self or any of the relative (i.e. spouse, children of the assessee or student for whom the individual is the legal guardian).The deduction will be

available in computing the total income in respect of initial assessment year and the seven assessment years immediately succeeding the initial assessment year or until the interest thereon is paid by such individual in full, whichever is earlier. The expression "initial assessment year" means the assessment year relevant to the previous year, in which the assessee starts paying the interest on the loan.

"Higher Education" mean any course of study pursued after passing the Senior Secondary examination or its equivalent from any school, board or university recognised by the Central government or State government or local authority or by any other authority authorised by the Central government or State government or local authority to do so. Higher Education should be in India only.

"Financial Institution" mean a banking company to which the "Banking Regulation Act, 1949 applies or any other financial institution which the Central government may, by notification in the official gazette, specify in this behalf.

"Approved Charitable Institution" mean an institution specified in, or as the case may be, an institution established for charitable purposes and notified by the Central government under Section 10(23C) or an institution referred to in Section 80G(2)(a).

Illustration 7:

What is the upper limit of deduction (including interest) on loan, taken by an individual from any financial institution or any approved charitable institution for the purpose of pursuing his/her higher education?

(a) Rs. 30,000

(b) Rs. 40,000

(c) Rs. 50,000

(b) Any amount

Solution: (d) Any amount

Tax incentives for Affordable Housing [Section 80EEA]

New Section 80EEA of the Income Tax Act, 1961 has been introduced vide finance Act, 2019 as per which an additional tax deduction up to 1.5 Lakh is available for interest paid on loans taken up to 31st March 2022 [**Amendment vide finance act, 2021**]. It is an additional benefit on the top of Rs. 2 Lakh benefit extended by section 24. The maximum tax deduction on interest amount paid for home loan will be 3.5 Lakhs, i.e., 2 Lakh under section 24 and 1.5 Lakh under section 80EEA. The deduction will be available on loans taken up to 31st March 2022. The benefit will be given only on the interest component of the home loan.

Eligibility Conditions for Claiming Deduction

This benefit will be extended only to the first time home owner, i.e., the assessee should not be owner of any other house at the time of sanction to avail this benefit.

- The stamp duty value of a home should be 45 Lakhs or less.
- The deduction under this scheme is available only to the individuals. HUF, company or any other kind of taxpayer cannot claim benefit under this section.
- In order to claim this benefit, the property should be self-occupied and affordable.
- To claim this benefit, the individual must have taken the loan from the financial institution or bank. The loan sanction should be between 1st April, 2019 to 31st March, 2022 [**Amendment vide Finance Act, 2021**].

- This tax deduction can be claimed for by individual as well as joint home loan borrower. The joint home loan borrower can individually claim this benefit.
- The above benefit is not applicable for the commercial properties.

Maximum Tax Deduction benefit on home Loan Interest = 2 Lakh (Section 24) + 1.5 Lakh (Section 80EEA)

Example: Rakesh works in pune in IT Company. he lives in pune in a rented house. he purchased property in Surat. His father and family members live in a newly purchased house. he is buying a home for the first time, so he can take benefit of section 80EEA. The cost of a home is 45 Lakh and. he purchased this home by taking a home loan of 40 Lakh in May 2021.

The monthly EMI of this property is Rs.37000. The total of EMI for FY 2021-22 will be 4.07 Lakh. This includes principal payment of 0.3 Lakh and 3.77 Lakh of interest component.

As it is self occupied house and fulfilling condition of section 80EEA, Rakesh can claim 3.5 Lakh as tax deduction while filing Income tax return.

Tax incentives for Electric Vehicles [Section 80EEB]

In computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of purchase of an electric vehicle.

The deduction under sub-section (1) shall not exceed Rs. 1,50,000 and shall be allowed in computing the total income of the individual for the assessment year beginning on the 1st day of April, 2020 and subsequent assessment years.

The deduction under sub-section (1) shall be subject to the condition that the loan has been sanctioned by the financial institution during the period beginning on the **1st day of April, 2019 and ending on the 31st day of March, 2023.**

Where a deduction under this section is allowed for any interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provision of this Act for the same or any other assessment year.

(a) "electric vehicle" means a vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle and has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy;

(b) "financial institution" means a banking company to which the Banking Regulation Act, 1949 applies, or any bank or banking institution referred to in section 51 of that Act and includes any deposit taking non- banking financial company or a systemically important non-deposit taking non-banking financial company as defined in clauses (e) and (g) of explanation 4 to section 43B.

Deduction in respect of donations to certain funds, charitable institutions, etc. [Section 80G]

Section 80G provides deduction to all assessee's for donations to specified organizations or institutions or funds. However, any donation of any sum exceeding Rs. 2,000 shall not be allowed as deduction under the section unless such sum is paid by any mode other than cash. further, where an assessee has claimed and has been allowed any deduction under this section in respect of any amount of donation, the same amount will not again qualify for deduction under any other provision of the Act for the same or any other assessment year. Donations in kind is not eligible as per the Supreme Court Ruling (*Vijaipat Singhania* v. *CIT*).

The quantum of deduction under this section is the aggregate of deduction permissible under clauses (A), (B), (C) & (D) mentioned below. Together for (C) and (D) below, there is a qualifying limit which is 10% of adjusted gross Total Income.

Adjusted gross total income means the "gross Total Income" as reduced by:

i. Long-term Capital gains, if any which have been included in the "gross Total Income".

ii. All deductions permissible under Sections 80C to 80U excepting deduction under Section 80G.

iii. Exempted Income.

iv. Income of nRIs and foreign Companies under Sections 115A, 115AB, 115AC, 115ACA or 115AD.

(A) 100% Deduction without any qualifying limit:

(i) National Defense fund.

(ii) prime Minister's national relief fund or the prime Minister's Citizen Assistance and Relief in emergency Situations fund (PM CARES FUND) [Amendment vide finance Act, 2020].

(iii) Prime Minister's earthquake relief fund.

(iv) Africa fund.

(v) National Trust for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities.

(vi) National cultural fund set up by the Central Government.

(vii) The Chief Minister's relief fund or the lieutenant governor's relief fund.

(viii) National Illness Assistance fund.

(ix) The Andhra Pradesh Chief Minister's Cyclone Relief fund, 1996.

(x) The Army/Air force Central welfare fund or the Indian naval Benevolent fund.

(xi) Any fund set up by a State government to provide medical relief to poors.

(xii) The national/State Blood transfusion Council.

(xiii) Zila Saksharta Samiti constituted in any district.

(xiv) Any fund set up by the State government of Gujarat, exclusively for providing relief to the victims of earthquake in Gujarat.

(xv) Maharashtra Chief Minister's earthquake Relief fund.

(xvi) University/educational Institute of national eminence approved by the prescribed authority.

(xvii) National foundation for communal harmony.

(xviii) Fund for technology development and application, set up by the Central government.

(xix) National sports fund set up by the Central government.

(xx) National Children's fund.

(xxi) the Swachh Bharat Kosh, set up by the Central government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013.

(xxii) The Clean Ganga fund, set up by the Central government, whereas such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013.

(xxiii) The national fund for Control of Drug Abuse constituted under section 7A of the narcotic Drugs and psychotropic Substances Act, 1985.

(B) 50% Deduction without any qualifying limit:

(i) Jawaharlal Nehru Memorial fund.

(ii) Indira Gandhi Memorial Trust.

(iii) Rajiv Gandhi foundation.

(iv) Prime Minister's Drought Relief fund.

(C) 100% Deduction subject to qualifying limit:

(i) Any sum to government or any approved local authority, institution or association to be utilized for promoting family planning.

(ii) Any sum paid by the assessee, being a company, in the previous year as donation to Indian Olympic Association or to any other association established in India and notified by the Central government for:

I. Development of infrastructure for sports and games; or

II. Sponsorship of sports and games in India.

(D) 50% Deduction subject to qualifying limit:

(i) Donation to government or any approved Local Authority, Institution or Association to be utilized for any Charitable purpose other than promoting family planning.

(ii) Any other fund or Institution, which satisfies the conditions of Section 80G(5).

(iii) Notified Temple, Mosque, Gurudwara, Church or any other place notified by the Central government to be of historic, as chorological or artistic importance, for renovation or repair of such place.

(iv) Any corporation established by the Central or State Government specified under Section 10(26BB) for promoting interests of the members of a minority community.

(v) Any authority constituted in India by or under any law for satisfying the need for housing accommodation or for the purpose of planning development or improvement of cities, towns and villages or for both.

Illustration 8:

Mr. 'A' had income against the following heads	***Amount (Rs.)***
Taxable salary income	40,000
Income from house property	75,000
Income from other sources	20,000
Interest on securities of DCM Ltd. (gross)	8,000
Total	**1,43,000**

He made following payments:	***Amount (Rs.)***
Contribution to P.F. (recognised)	2,000
Donation to the prime Minister's national Relief fund	2,500
Donation to the Indira Gandhi Memorial Trust	4,000
Donation to an approved association for promoting family planning	4,000
Donation to approved charitable trust	10,000

Compute Mr. A's taxable income for assessment year 2023-24.

Solution:

His taxable income for assessment year 2023-24 will be computed as follows:

Particulars	***Amount (Rs.)***
Net income from salary	40,000
Income from house property	75,000
Income from other sources	28,000
Gross Total Income	1,43,000
Less : Deduction under Section 80C	2,000
Less : Deduction permissible: Donation under Section 80G	13,500
(as worked out below)	
Taxable income	1,27,500
Income-tax on Rs.1,27,500	NIL
Net tax payable (including health & education cess @ 4%)	NIL

Note: Under Section 80G the various items of donations will be dealt with as under:

1. Prime Minister's national Relief fund deductible in full without any restrictions.
2. Donation to Indira Gandhi Memorial Trust is deductible to the extent of 50% of donation without any restrictions.
3. Donation to approved family planning association is deductible in full so long as it is within the 10% limit imposed by Section 80G(4).
4. Donation to an approved charitable trust is deductible to the tune of 50% so long as it is also within the limit imposed by Section 80G(4).

Calculation of deduction under Section 80G:

	Gross Total Income	1,43,000
Less :	Deduction under Sections 80C to 80U	2,000
	Adjusted gross total income	1,41,000

(i) Donation on which qualifying limit is not applicable:

(A) Allowed @ 100%

Prime Minister's national Relief fund 2,500

(B) Allowed @ 50%

Indira Gandhi Memorial Trust (4000) 2,000

(ii) Donation to which qualifying limit is applicable:

(1) for promotion of family planning	4,000
(2) Charitable trust	10,000
Limited to 10% of Adjusted Gross Total Income:	14,000
i.e., Rs.14,100/- Since donation to family planning are lowest than maximum allowable. Therefore, allowable amount is (4,000 + 5,000) Rs. 9,000/-	9,000
Total Deduction for Section 80G	13,500

CASE LAW

03.01.2017	***CIT vs. Dr. Virendra Swaroop Educational Foundation***	***Allahabad High Court***

Commissioner of Income Tax cannot refuse to renew the approval u/s 80G (5) on account of the fact that for the previous three years, the Assessee has shown surpluses.

Fact of the Case: The assessee-trust is engaged in educational activities. The Commissioner of Income Tax refused to renew the approval of the assessee under Section 80G (5) of the Income Tax Act on account of the fact that for the previous three years, the assessee has shown surpluses and, therefore, the CIT drew the conclusion that the activities of the assessee were in the nature of commercial enterprises and no charitable activity whatsoever was being pursued by the assessee. Being aggrieved by the order of the CIT Appeals dated 27.10.2009, the assessee filed an appeal before the Income Tax Appellate Tribunal 'ITAT' and by the order dated 26.2.2010, the ITAT came to the conclusion that the assessee was entitled to be granted a renewal under Section 80G (5) of the Income Tax Act, 1961. The department preferred an appeal before high Court.

The questions of law sought to be answered are hereunder:

"(i) if the CIT comes to know that activities of the assessee's were not genuinely charitable one, he can cancel the registration in exercise of his powers vested u/s 12AA(3) of the Act and;

(ii) question of genuineness of the charitable trust cannot be examined in assessment proceedings rather can be examined by the CIT and in case it is found, at any stage, that the activities of the trust are not genuine or that there is no element of charity in the activities of the assessee, the CIT can withdraw the registration in exercise of his powers vested u/s 12AA(3) of the Act."

Decision: It has been held that it is necessary for being granted a certificate under Section 80G(5) of the Act that purposes should be charitable. however, from the material available on record, he is unable to show any act of the assessee or any activity of the assessee, which would not amount to a charitable purpose within the meaning of Section 2 (15) of the Income Tax Act, which reads as under :-

"Charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watershed, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility."

From reading of the above definition, it is abundantly clear that the word education utilised in the section stands independently on its own and to suggest that the word may be confined either to the rich or poor or any other strata of the society is not acceptable. The word education has been used in its widest term. It cannot be confined to any section, indeed education is something which is the birth right of every individual. To confine it to a certain group would not be fair in view of the definition as given in Section 2 (15) of the Income Tax Act and in view of the provisions of Section 10 (23C) of the Income Tax Act.

It is abundantly clear that the assessee was clearly entitled to be granted exemption under Section 80G (5) of the Income Tax Act for the current year as it has been done in the previous year in view of the law and in view of the findings recorded.

Therefore, the questions of law are answered in favour of the assessee.

Deduction in respect of Rent Paid [Section 80GG]

Section 80GG provides deduction to an individual for rent paid if in case the individual does not receive HRA exempt u/s 10(13A) or rent free accommodation from his employer. The accommodation should be occupied by the assessee for the purpose of his own residence. Further, the individual/spouse/minor child/HUF of which he or she is member does not own a residential accommodation at a place where the individual resides, performs the duties of his office or employment or carries on his or her business or profession. For the purpose of this section, the individual will give declaration in form 10BA. The amount of deduction admissible under this Section is lower of:

- Actual rent paid less 10% of 'Adjusted Total Income'.
- 25% of such 'Adjusted Total Income'.
- Amount calculated at Rs. 5,000 p.m.

Where Adjusted Total Income means the gross total income as reduced by long term capital gain if included in the gross total income and income referred to in section 115A to 115D and the amount of deduction under section 80C other than deduction under this section.

Illustration 9:

Mr. 'A' had income against the following heads,

Particulars	*Amount (Rs.)*
Professional income	6,40,000
Income from STCG (covered under section 111A)	5,000
Income from LTCG	12,000
Income from other sources	10,000
Contribution to P.P.F.	70,000
Payment of Rent	84,000

Compute Mr. A's taxable income for assessment year 2023-24.

Solution:

His taxable income for assessment year 2023-24 will be computed as follows:

Particulars	*Amount (Rs.)*
Professional income	**6,40,000**
Income from capital gains	17,000
Income from other sources	10,000
Gross Total Income	6,67,000
Less : Deduction under Section 80C	(70,000)
Less : Deduction under Section 80GG (as worked out below)	(26,000)
Taxable income	**571,000**

Working Note:

Least of the following is deductible under section 80GG

- 84,000 – (10% of 5,80,000) = 26,000
- 25% of 5,80,000 = 1,45,000.
- Rs. 5,000 * 12 = 60,000

Deduction under Section 80GG is lower of three above Rs. 26,000. Adjusted Total Income = 6,67,000- 17,000- 70,000= 5,80,000.

Note: If the Assessee opted to pay tax under section 115BAC, deduction under section 80C / 80GG is not available.

Deduction in Respect of Certain Donations for Scientific Research or Rural Development [Section 80GGA]

Section 80GGA provides 100% deduction to any assessee (other than an assessee whose gross total income includes income chargeable under the head "profits and gains of business or profession") in respect of the following payments/donations:

a) Sums paid to a research association which has, as its object the undertaking of scientific research, or to a university, college or other institution to be used for scientific research where such association, university, college or institution has been approved by the prescribed authority for the purpose of Section 35(1)(ii).

b) Any sum paid by the assessee in the previous year to a research association which has as its object the undertaking of research in social science or statistical research or to a University or college or other institution to be used for social science or statistical research where such association or university college or institution is for the time being approved by the prescribed authority for the purpose of Section 35(1)(iii).

c) Sums paid to an approved association or institution which has as its object the undertaking of any programme of rural development, to be used for the purposes of carrying out any programme of rural development approved for the purposes of Section 35CCA provided the assessee furnishes the certificate referred to in Section 35CCA(2).

d) Sums paid to an approved association or institution which has as its object the undertaking of any programme of rural development provided the assessee furnishes a certificate referred to in Section 35CCA(2A).

e) Any sum paid by the assessee in the previous year to a public sector company or a local authority or an association or institution approved by the national Committee for carrying out any eligible project or scheme, provided the assessee furnishes a certificate referred to in Section 35AC(2)(a).

f) for the purposes of this clause, 'national Committee' means the committee constituted by the Central government from amongst persons of eminence in public life, in accordance with the rules made under Income-tax Act, 1961 and "eligible project or scheme" means such project or scheme for promoting the social and economic welfare of, or the uplift of, the public as may be notified by Central government on the recommendations of the national Committee.

g) Sums paid before April 1, 2002 to an approved association or institution which has as its object the undertaking of any programme of conservation of natural resources or afforestation to be used for carrying out any programme of conservation of natural resources or of afforestation approved under Section 35CCB(2).

h) Sums paid to the national fund for Rural Development set up and notified by the Central government for the purpose of carrying out rural development. This section also provides that where deduction under this section is claimed and allowed, deduction will not be allowed in respect of the same payment under any other provision of the Act for the same or any other assessment year.

i) Any sum paid by the assessee in the previous year to the national Urban poverty eradication fund set up and notified by the Central government.

No deduction shall be allowed under this section in respect of any sum exceeding two thousand rupees unless such sum is paid by any mode other than cash.[Amendment vide Finance Act, 2020]

Deduction in respect of contributions given by Companies to political parties or an electoral Trust [Section 80GGB]

Section 80GGB provides 100% deduction for any sum contributed by an Indian Company in the previous year to any political party or to an electoral trust while computing its total income by a mode other than cash.

Deduction in respect of contributions given by any person to political parties or an electoral Trust [Section 80GGC]

Section 80GGC provides 100% deduction for any sum contributed by an assessee being any person to a political party or an electoral trust except local authority and every artificial juridical person wholly or partly funded by the government while computing its total income by a mode other than cash.

Deduction in respect of eligible Start-Up [Section 80IAC]

Section 80IAC provides a deduction to an assessee, being an eligible start-up, whose gross total income includes any profits and gains derived from eligible Business equal to 100% of the profit and gains derived from such business for 3 consecutive assessment years, at the option of the assessee out of ten years beginning from the year in which the eligible start-up is incorporated. The eligible Start-up should not be formed by splitting up, or the reconstruction, of a business already in existence and should not formed by the transfer to a new business of machinery or plant previously used for any purpose. However any machinery or plant being previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the new business.

(i) "eligible business" means a business carried out by an eligible start-up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.

(ii) "eligible start-up" means a company or a limited liability partnership (LLP) engaged in eligible business which fulfils the following conditions: –

  (a) it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2023.

  (b) the total turnover of its business does not exceed hundred crore rupees in any of the previous years beginning from the year in which it is incorporated.

  (c) it holds a certificate of eligible business from the Inter-Ministerial Board of Certification.

Deductions in respect of profits and gains from Housing Projects [Section 80IBA]

Section 80IBA provides deduction to an assessee whose gross total income includes any profits and gains derived from the business of developing and building housing projects, subject to the provisions of this section, of an amount equal to 100% of the profits and gains derived from such business.

A housing project shall be a project which fulfils the following conditions:

a) The project is approved by the competent authority after the 1st day of June, 2016, but on or before the 31st day of March, 2022.

b) The project is completed within a period of 5 years from the date of approval by the competent authority;

c) The carpet area of the shops and other commercial establishments included in the housing project does not exceed 3% of the aggregate carpet area;

d) The project is on a plot of land measuring not less than 1000 square metres, where the project is

located within the cities of Chennai, Delhi, Kolkata or Mumbai or within the distance, measured aerially, of 25 kilometres from the municipal limits of these cities or 2000 metres, where the project is located in any other place;

e) the stamp duty value of a residential unit does not exceed Rs. 45 lakhs if project is approved after 30/09/2019;

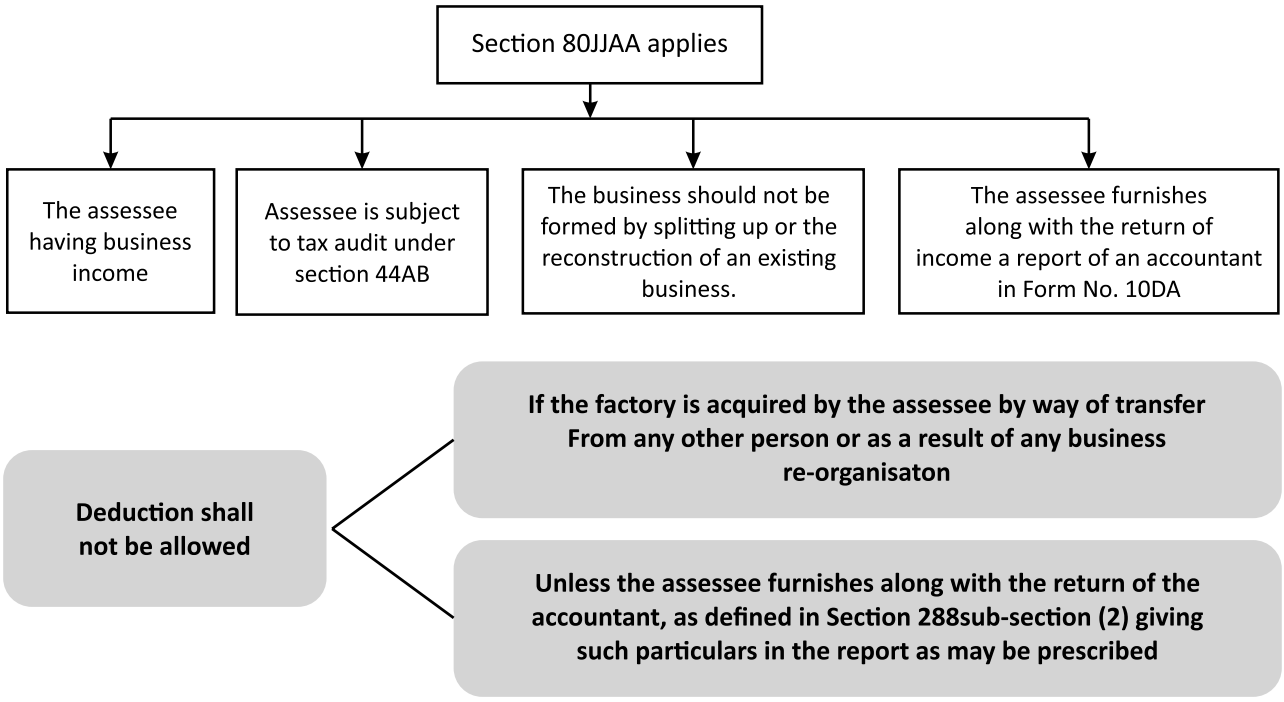
f) The carpet area of the residential unit comprised in the housing project does not exceed 30 square meters (60 square meters if project approved after 30/09/2019), where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai or within the distance, measured aerially, of 25 kilometres from the municipal limits of these cities or 60 square metres (90 square meters if project approved after 30/09/2019), where the project is located in any other place;

"Carpet area" means the net usable floor area of an apartment [excluding (i) the area covered by the external walls (ii) areas under the service shafts/exclusive balcony or verandah area/exclusive open terrace area, but including the area covered by the internal partion wall of the apartment].

Deduction in respect of profits and gains from the Business of collecting and processing Bio-Degradable Waste [Section 80-JJA]

Section 80 JJA provides deduction to an assessee whose gross total income includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste for generating power, or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas, making pellets or briquette for fuel or organic manure, of an amount equal to the whole of such profit and gains for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences.

Deduction in respect of employment of New Workmen [Section 80-JJAA]



The deduction under this section is not available unless the assessee furnishes report of the accountant, as defined in the explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB giving such particulars in the report as may be prescribed **[Amendment vide Finance Act, 2020].**

Amount of Deduction:

If the aforementioned conditions are satisfied the assessee shall be allowed a deduction of an amount equal to 30% of additional wages paid to the new regular workmen employed by the assessee in the previous year for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

1. Additional wages means the wages paid or payable to new regular workman employed during the previous year. In case of an existing business additional employee cost shall NIL, if-

   (a) There is no increase in number employees from the total number of employees employed as on the last day of the preceding previous year.

   (b) Wages are paid otherwise than account payee cheque/account payee bank draft/eCS by a bank account or through prescribed electronic mode.

   In case of a new business wages/ emoluments paid/ payable to employees shall be treated as additional wages. Hence, in the first year of a new business, thirty percent of all emoluments paid or payable to the employees employed during the previous year shall be allowed as deduction.

   Note: The word 'factory' shall have the same meaning assigned to it in clause (m) of section 2 of the factories Act, 1948. Regular workmen does not include:

   (a) a casual workman

   (b) a workman employed through contract labour

   (c) any other workman employed for a period less than 240 days during the previous year or less than 150 days for apparel, footwear and leather industry.

2. With a view to extend this employment generation incentive to all sectors, an amendment has been made to provide that the deduction under the said provisions shall be available in respect of cost incurred on any employee whose total emoluments are less than or equal to twenty five thousand rupees per month. No deduction, however, shall be allowed in respect of cost incurred on those employees, for whom the entire contribution under employees' pension Scheme notified in accordance with employees' provident fund and Miscellaneous provisions Act, 1952, is paid by the government.

   a) For whom the entire contribution under employees' pension Scheme notified in accordance with employees' provident fund and Miscellaneous provisions Act, 1952, is paid by the government.

   b) An employee who does not participate in Recognised provident fund.

   c) An employee who is employed for a period less than 240 days (150 days in case of apparel, footwear and leather Industry) during the previous year.

3. Employer's contribution to provident fund or pension fund or any other fund for the benefit of employee is not eligible for deduction. Also amount paid by employer at time of termination of service or superannuation or voluntary retirement etc. not eligible for deduction.

4. Where a new employee is employed for a period less than 240 (or 150 days in case of apparel/footwear/ leather industry) during a previous year but in next year he is employed for a period of 240 or 150 days as the case may be, then he shall deemed to have been employed in such next year for the purpose of deduction under this section.

Deduction in respect of certain incomes of Offshore Banking Units [Section 80LA]

Section 80LA provides deduction to an assessee being a scheduled bank, or any bank incorporated by or under the laws of a country outside India, from income

(i) of an offshore banking unit in a special economic zone;

(ii) from the business, referred to in Sub-section (1) of Section 6 of the Banking Regulation Act, 1949, with an undertaking located in a special economic zone or any other undertaking which develops, develops and operates or operates and maintains a special economic zone;

(a) received in convertible foreign exchange, in accordance with the regulations made under the foreign exchange Management Act, 1999.

Deduction from Assessment Year 2021-22

100% of such income for any 10 consecutive years out of 15 years beginning with the year in which necessary permission is obtained, at the option of the assessee.

Conditions to be satisfied : no deduction under this section shall be allowed unless the assessee furnishes along with the return of income, –

(i) in the prescribed form (form no. 10CCF), i.e., the report of a accountant as defined in the explanation below Sub-section (2) of Section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section; and

(ii) a copy of the permission obtained under Clause (a) of Sub-section (1) of Section 23 of the Banking Regulation Act, 1949, in case of a offshore Banking Unit.

Deduction in respect of certain inter-corporate dividends [Section 80M]

Where the gross total income of a domestic company in any previous year includes any income by way of dividends from any other domestic company or a foreign company or a business trust, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends received from such other domestic company or foreign company or business trust as does not exceed the amount of dividend distributed by it on or before the due date.

Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

"Due date" means the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139. **[Inserted vide Finance Act, 2020]**

Deduction in respect of Income of Co-Operative Societies [Section 80P]

Section 80P provides deduction to co-operative societies in respect of following incomes, which are included in gross total income:

A. 100% of the profits of a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to

- The government or a local authority; or
- A government company or a statutory corporation; or

- A federal co-operative society, engaged in the business of supplying the above-said products.

B. 100% of the profits of co-operative society engaged in any one of the following activities:

- Carrying on the business of banking or providing credit facilities to its member, or
- A cottage industry, or
- The marketing of agricultural produce grown by its members, or
- The purchase of agricultural implements for the purpose of supplying them to its members, or
- The processing, without the aid of power, of agricultural produce of its members, or
- The collective disposal of the labour of its member, or
- fishing or allied activities for the purpose of supplying them to its members.

Provided, in the case of last two types of co-operative societies, the deduction, is available subject to the condition that the rules and bye-laws of the society restrict the voting rights to the members like, State government, Co-operative Credit Society which provide financial assistance to the society and individual, who contributes their labours.

W.e.f. Assessment Year 2007-08 this exemption is not be available to co-operative banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

C. Profits and gains of co-operative society other than those specified in A and B above is exempt up to the specified limits:

- is case of a consumer co-operative society - Rs. 1,00,000
- is any other case - Rs. 50,000

D. All profits by way of interest or dividend from its investment with any other co-operative society.

E. 100% of income or profit of a Co-operative Society from the letting of godowns or warehouse for storage, processing or facilitating the marketing of commodities.

F. A co-operative society, not being a housing society or an urban consumers society or a society carrying on transport business or a society engaged in the performance of any manufacturing operation with the aid of power, where the gross total income does not exceeds Rs. 20,000. The amount of any income by way of interest on securities or any income from house property chargeable under Section 22 will also be allowed as deduction.

CASE LAW

2017	***Citizen Co-operative Society Ltd. v. Asstt. CIT***	***Supreme Court***

Where assesse society was engaged in activity of finance business and was also engaged in activity of granting loans to general public as well, it could not be termed as co-operative society meant only for providing credit facilities to its members, hence not entitled to deduction under section 80P [Assessment year 2009-10] [In favour of revenue]

Fact of the Case: The assesse/appellant was a co-operative society, for relevant assessment year 2009-10, it was denied the benefit of section 80P on the ground that it was carrying on the banking business for public at large and for all practical purposes it was acting like a co-operative bank governed by the Banking Regulation Act, 1949, and its operations were not confined to its members but to outsiders as well,

hence, the Assessing officer applied section 80P(4) to deny deduction and was of the view that benefit of deduction, as contemplated under the said provision is, inter alia, admissible to those co-operative societies which carry on business of banking or providing credit facilities to its member. It was found that the assessee was catering to two distinct categories of people. The first category is that of resident members or ordinary members. Further, the assessee had carved out another category of 'nominal members'. There are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in fixed deposits with a motive to earn maximum returns. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the societies. With indulgence is such kind of activity by the appellant, it is remarked by the Assessing officer that the activity of the appellant is in violation of the co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under section 80P (2)(a)(i) of the Income Tax Act, 1961.

Decision: The Supreme Court by impugned order held that the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members such a society cannot claim the benefit of section 80P of the Income-tax Act, 1961.

Deduction in respect of certain income of producer Companies [Section 80PA]

100% Deduction of the profits derived from eligible business to a producer Company having a total turnover of less than one hundred crore rupees. Benefit shall be available for the previous year relevant to an assessment year commencing on or after the 1st day of April, 2019, but before the 1st day of April, 2025.

In a case where the assessee is entitled also to deduction under any other provision of this Chapter, the deduction under this section shall be allowed with reference to the income, if any, as referred to in this section included in the gross total income as reduced by the deductions under such other provision of this Chapter.

"Eligible business" means –

(a) the marketing of agricultural produce grown by the members

(b) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members

(c) the processing of the agricultural produce of the members.

"Member" and "producer Company" shall have the meaning assigned to it in the Companies Act.

Deduction in respect of Royalty Income, etc., of authors of certain books other than text books [Section 80QQB]

Section 80 QQB provides deduction to a resident individual who is an author or a joint author of a book whose income includes income derived from such profession, received either as a lump sum consideration for the assignment or grant of any of his interests in the copyright of any book or royalty of books other than text books. The amount of deduction is the lower of eligible income or Rs. 3,00,000, eligible income (before deducting expenditure incurred) is lower of

1. Lump sum consideration for the assignment or grant
2. Royalty not exceeding 15%
3. If such income is earned outside India, the part of the income brought to India in convertible foreign exchange within 6 months from the end of the previous year or the extended period by the RBI will be considered.

Books exclude brochures, diaries, guides, journals, magazines, newspapers, pamphlets, text books for schools, tracts, commentaries or any such publication whatever name may be, no deduction under this section shall be allowed unless an assessee furnishes a certificate in the prescribed form 10CCD/10H.

Illustration 10:

Mr. X receives royalty on books Rs. 1,00,000 at a rate of 18 percent and incurs Rs. 10, 000 as expenditure for earning royalty. The books are covered under section 80QQB and royalty is received from abroad and Rs. 50,000 are remitted to India till September 30, 2020. Determine deduction under section 80 QQB for the assessment year 2022-23.

Solution:

Eligible income (before deducting expenditure incurred) is lower of

1.	Lump sum consideration	NIL
2.	Royalty not exceeding 15% (1,00,000/18) *15	83,334
3.	Income brought to India in convertible foreign exchange	50,000

Eligible income Rs. 50,000

Expenditure incurred Rs. 10,000

Deduction under section 80 QQB Rs. 40,000 (subject to a maximum of Rs. 3, 00,000).

Deduction in respect of Royalty on patents [Section 80RRB]

Section 80RRB provides deduction to resident individual, a patentee who is in receipt of income by way of royalty in respect of a patent registered on or after the 1st day of April, 2003 under the patents Act, 1970, and his gross total income of the previous year includes royalty, subject to the provisions of this section. This deduction shall be available only to a resident individual who is registered as the true and first inventor in respect of an invention under the patents Act, 1970, including the co-owner of the patent. The amount of deduction is lower of 100% of such income or Rs. 300,000. In case, any such income is earned from any sources outside India, so much of the income, shall be taken into account for the purpose of this section as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year in which such income is earned or within such further period as the competent authority may allow in this behalf.

Provided that where a compulsory licence is granted in respect of any patent under the patent Act, 1970, the income by way of royalty for the purpose of allowing deduction under this section shall not exceed the amount of royalty under the terms and conditions of a licence settled by the Controller under that Act:

No deduction under this section shall be allowed unless the assessee furnishes a certificate in the prescribed form (form no. 10CCD), duly signed by the prescribed authority, along with the return of income setting forth such particulars as may be prescribed.

No deduction under this section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate in the prescribed form (form no. 10h), from the authority or authorities, as may be prescribed, along with the return of income.

Explanation.

(a) "Controller" shall have the meaning assigned to it in clause (b) of Sub-section (1) of Section 2 of the patents Act, 1970;

(b) "lump sum" includes an advance payment on account of such royalties which is not returnable;

(c) "patent" means a patent (including a patent of addition) granted under the Patents Act, 1970;

(d) "patentee" means the person, being the true and first inventor of the invention, whose name is entered on the patent register as the patentee, in accordance with the patents Act, 1970, and includes every such person, being the true and first inventor of the invention, where more than one person is registered as patentee under that Act in respect of that patent;

(e) "patent of addition" shall have the meaning assigned to it in clause (q) of Sub-section (1) of Section 2 of the patents Act, 1970;

(f) "patented article" and "patented process" shall have the meanings respectively assigned to them in clause (o) of Sub-section (1) of Section 2 of the patents Act, 1970;

(g) "royalty", in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains" or consideration for sale of product manufactured with the use of patented process or of the patented article for commercial use) for-

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent; or

(ii) the imparting of any information concerning the working of, or the use of, a patent; or

(iii) the use of any patent; or

(iv) the rendering of any services in connection with the activities referred to in Sub-clauses (i) to (iii).

(h) "true and first inventor" shall have the meaning assigned to it in Clause (y) of Sub-section (1) of Section 2 of the patents Act, 1970.

Deduction in respect of interest on deposits in Savings Account [Section 80TTA]

Section 80TTA provides deduction to an assessee (other than referred to section 80TTB) individual or a Hindu undivided family whose gross total income includes any income by way of interest on deposits (Not being time deposits) in a savings account with -

(a) a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act);

(b) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or

(c) a post office as defined in clause (k) of section 2 of the Indian post office Act, 1898.

The maximum amount of deduction is Rs. 10,000.

Further, where the income referred to in this section is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed under this section in respect of such income in computing the total income of any partner of the firm or any member of the association or any individual of the body.

For the purposes of this section - "Time deposits" means the deposits repayable on expiry of fixed periods.

Note : Under Section 10(15) (i), post office savings bank interest is exempt up to Rs. 3,500.

Deduction in respect of interest on deposits in case of senior citizens [Section 80TTB]

Where the gross total income of a senior citizen (assessee) includes any income by way of interest on deposits with a banking company, a co-operative bank or post office, there shall be allowed a deduction:

(a) in a case where the amount of such income does not exceed in the aggregate Rs. 50,000, the whole of such amount; and

(b) in any other case, Rs. 50,000.

No deduction shall be allowed if deposit held by or on behalf of a Firm, an AOP or BOI.

"Senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.

Illustration 11:

The maximum amount of deduction allowed u/s 80TTB of the Income Tax Act, 1961, with respect to interest income from deposits with banks or post office or co-operative banks is:

a) Rs. 10,000

b) Rs. 20,000

c) Rs. 50,000

d) Nil

Solution: (c) Rs. 50,000

Deduction in case of a person with Disability [Section 80U]

Section 80U provides deduction to a resident individual who suffers from 40% or more of any of the disabilities, namely, blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness.

The amount of deduction is Rs. 75,000 (flat in case of disability) and Rs. 1, 25,000 (flat in case of severe disability, being disability of at least 80%). To claim deduction under this section, a certificate issued by the medical authority authority in the form and manner, as may be prescribed, to be a person with disability is required to be furnished along with the return of income under Section 139, in respect of the assessment year for which the deduction is claimed.

provided that where the condition of disability requires reassessment of its extent after a period stipulated in the aforesaid certificate no deduction under this section shall be allowed for any assessment year relating to any previous year beginning after the expiry of the previous year during which the aforesaid certificate of disability had expired, unless a new certificate is obtained from the medical authority in the form and manner, as may be prescribed, and a copy thereof is furnished along with the return of income under Section 139.

Explanation - for the purposes of this section, –

(a) "disability" shall have the meaning assigned to it in clause (i) of Section 2 of the persons with Disabilities (equal opportunities, protection of Rights and full participation) Act, 1995 and includes "autism", "cerebral palsy" and "multiple disabilities" referred to in clauses (a), (c) and (h) of Section 2 of the national Trust for Welfare of persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disabilities Act, 1999;

(b) "medical authority" means the medical authority as referred to in clause (p) of Section 2 of the persons with Disabilities (equal opportunities, protection of Rights and full participation) Act, 1995, or such other medical authority as may, by notification, be specified by the Central government for certifying

"autism", "cerebral palsy", "multiple disabilities", "person with disability" and "severe disability" referred to in clauses (a), (c), (h), (q) and (o) of Section 2 of the national Trust for Welfare of persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disabilities Act, 1999;

(c) "person with disability" means a person referred to in clause (t) of Section 2 of the persons with Disabilities (equal opportunities, protection of Rights and full participation) Act, 1995, or clause (j) of Section 2 of the national Trust for Welfare of persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disabilities Act, 1999;

(d) "person with severe disability" means:

(i) a person with eighty per cent or more of one or more disabilities, as referred to in Sub-section (4) of Section 56 of the persons with Disabilities (equal opportunities, protection of Rights and full participation) Act, 1995; or

(ii) a person with severe disability referred to in clause (o) of Section 2 of the national Trust for Welfare of persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disabilities Act, 1999.

REBATE AND RELIEF

Rebate of Income Tax in case of certain Individuals [Section 87A]

Section 87A provides rebate of income tax to resident individual, whose total income does not exceed Rs. 5,00,000. The amount of rebate is Rs 12,500 or 100% of income tax whichever is less. It is deductible from income tax before calculating health & education cess.

Relief when Salary is paid in arrears or in Advance [Section 89]

Section 89 provides relief to an individual who receives any portion of his salary in arrears or in advance or receives profit in lieu of salary during the previous year. The assessee may apply to the Assessing officer who is been empowered to grant relief in appropriate cases in accordance with Rule 21AA of the Income-tax Rules, 1962. However, no such relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub clause (i) of clause (10C) of section 10, a scheme of voluntary separation, if an exemption in respect of any amount received or receivable on such voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee under clause (10C) of section 10 in respect of such, or any other, assessment year.

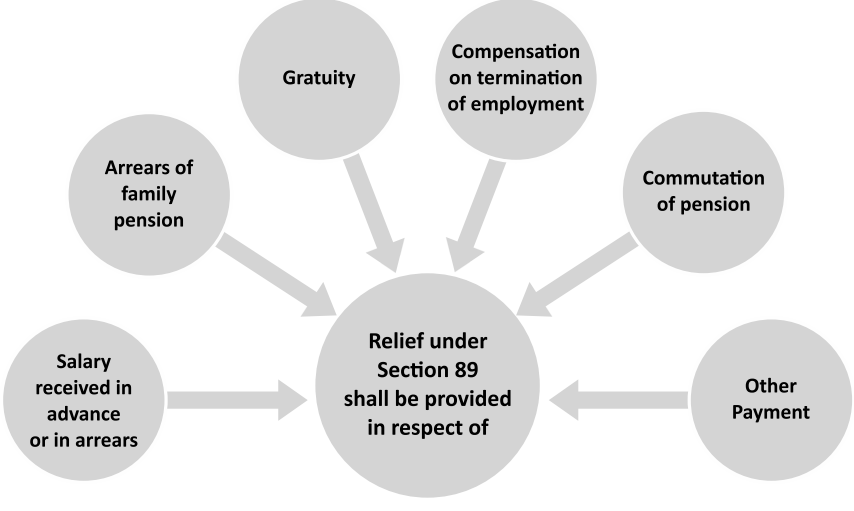


Illustration 12:

Mr. Ram who is a person with disability submit the following information. Compute (a) the Taxable Income (b) the Tax payable for the assessment year 2023-24.

	Particulars	***Amounts (Rs.)***
(i)	Salary (per annum)	3,00,000
(ii)	Rent received	48,000
(iii)	Dividend from Co-operative Society	1,000
(iv)	Interest on Savings Bank Deposits	18,000
(v)	Interest on government securities	1,000
(vi)	Winning from Lotteries (gross)	5,000
(vii)	NSC (VIII Issue) purchased during the year	10,000
(viii)	Deposit under PPF Scheme	30,000

He earned a long-term capital gain of Rs. 15,000 on sale of gold during the year.

Solution:

A. Computation of Total Income	**Rs.**	**Rs.**
Income from Basic Salary		3,00,000
Less : Deduction under section 16(ia) – Standard Deduction		(50,000)
		2,50,000
Income from house property		
Rent Received	48,000	
Less : Statutory Deduction @ 30%	(14,400)	33,600
Capital Gains		
Long-term capital gains		15,000
Income from other sources		
Dividend from co-operative society	1,000	
Interest on saving bank deposits	18,000	
Interest on government Securities	1,000	
Winning from Lotteries	5,000	25,000
Gross Total Income		**3,23,600**

Less : Deduction under section 80C to 80U		
(i) Under section 80C Rs. (10,000 + 30,000)	(40000)	
(ii) Under section 80TTA	(10,000)	
(iii) Under section 80U	(50,000)	(1,00,000)
Total Income		**2,23,600**
B. Computation of Tax on Total Income		
Tax on winning from lotteries (30% of Rs.5,000)		1,500
Tax on long-term capital gains (20% of Rs.15,000)		3,000
Balance of Total Income Rs.2,03,600		Nil
Tax payable, bring total income below Rs. 2,50,000		Nil

Note: The solution has been made assuming the assessee has not opted to pay tax under section 115BAC of the Income tax Act, 1961.

Illustration 13:

Rahul who is a resident in India, is a person with disability, he provides the following particulars of his income for the year ended 31.3.2023.

(a)	Salary for working as a cable operator (per month)	18,000
(b)	Interest on government securities (gross)	45,000
(c)	Dividend from Indian Company	5,000
(d)	Honorarium from school of orphanage for giving his service	49,000

He has donated Rs. 20,000 to the school for orphanage which is approved as a charitable institution and contributed Rs. 2,000 to prime Minister national Relief Fund, he has also paid Rs.3,000 by credit card as premium of mediclaim policy, his father is also a person with disability and is dependent on him for medical treatment and rehabilitation. Rahul spends Rs. 8,000 during the year on him.

Compute the Total Income for the Assessment Year 2023-24, assuming he has deposited Rs. 20,000 in public provident fund Account.

Solution:

Computation of Total Income for the Assessment Year 2023-24

Income from salary	***Rs.***	***Rs.***	***Rs.***
Gross Salary		2,16,000	
Less : Deduction (Standard)		(50,000)	1,66,000
Income from other sources			

Interest on Government Securities		45,000	
Dividend from Indian Company		Exempt	
Honorarium		49,000	94,000
Gross Total Income			**2,60,000**
Less : Deductions:			
Under section 80C		20,000	
(ii) Under section 80D		3,000	
(iii) Under section 80DD		75,000	
(iv) Under section 80U		75,000	
(v) Under section 80G			
Prime Minister Relief fund (100% of Rs. 2,000)	2,000		
Orphanage School (50% of Rs. 8,700) 10% of 87,000 Rs. (2,60,000 - 1,73,000)	4,350	6,350	(1,79,350)
Total Income			**80,650**

Note: The solution has been made assuming the assessee has not opted to pay tax under section 115BAC of the Income tax Act, 1961.

Illustration 14:

Following are the particulars of income of Mr. Ram, who is 70 years old resident in India, for the Assessment year 2023-24:

Gross Total Income Rs. 8,10,040 which includes long-term capital gain of Rs. 2,55,000, Short-term capital gain of Rs. 88,000, interest income of Rs. 12,000 from savings bank deposits with banks. Mr. Ram invested in PPF Rs. 1,40,000 and also paid a medical insurance premium Rs. 31,000. Compute the total income of Mr. Ram.

Solution:

Computation of Total Income for the Assessment Year 2023-24

Particulars	***Rs.***
Gross total income	8,10,040
Less : Deductions:	
Under section 80C	1,40,000
Undersection80D	31,000
Undersection80TTA	10,000
Total income	6,29,040

Note: The solution has been made assuming the assessee has not opted to pay tax under section 115BAC of the Income-tax Act, 1961.

LESSON ROUND-UP

- **Section 80C:** Deduction on life insurance premia, contribution to provident fund, etc. available to individual/HUF for a maximum amount of Rs.1,50,000.
- **Section 80CCC:** Deduction for contribution to pension fund - Available to individual for maximum amount of Rs.150,000.
- **Section 80CCD:** Deduction in respect of contribution to pension scheme of Central government-available to individual.
- **Section 80CCE:** Limit on deductions under Sections 80C, 80CCC and 80CCD - cannot exceed Rs.1,50,000. Additional deduction allowed under section 80CCD(1B) of maximum Rs. 50,000.
- **Section 80CCG:** Deduction in respect of investment made under any equity saving scheme : Available to resident individual subject to maximum of Rs. 25,000.
- **Section 80D:** Deduction in respect of medical insurance premia - Available to individual/HUF.
- **Section 80DD:** Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability or severe disability.
- **Section 80DDB read with Rule 11DD:** Deduction in respect of medical treatment, etc.: Available to Resident individual/resident HUF.
- **Section 80E:** Deduction in respect of repayment of loan taken for higher education: Available to individual.
- **Section 80G:** Deduction in respect of donations to certain funds, charitable institutions, etc. Available to all assessees subject to maximum of 50% of qualifying amount, 100% as the case may be.
- **Section 80GG:** Deduction in respect of rent paid Available to individual for a maximum of Rs. 60,000.
- **Section 80GGA:** Deduction in respect of certain donations for scientific research or rural development.
- **Section 80GGB:** Deduction in respect of contributions given by companies to political parties.
- **Section 80GGC:** Deduction in respect of contributions given by any person to political parties.
- **Section 80-JJA:** Deduction in respect of profits and gains from the business of collecting and processing bio-degradable waste - Available to all assessees carrying on the business of collecting and processing bio-degradable waste.
- **Section 80-JJAA:** Deduction in respect of employment of new workmen - Available to Indian company of 30% of additional wages paid to new regular workmen.
- **Section 80LA:** Deduction in respect of certain incomes of offshore Banking Units - 100% of certain income for 5 years, 50% of such income for 5 years.
- **Section 80M:** Deduction in respect of certain inter-corporate dividends.
- **Section 80P:** Deduction in respect of income of co-operative societies - Specified incomes subject to amount specified in sub section (2).
- **Section 80PA:** Deduction of specified income of producer company.
- **Section 80QQB:** Deduction in respect of royalty income, etc., of authors of certain books other than text books - Available to resident individual, for a maximum deduction of Rs. 3,00,000.

- **Section 80RRB:** Deduction in respect of royalty on patents - Available to Resident Individual, maximum of Rs. 3,00,000.
- **Section 80TTA:** Deduction in respect of interest on deposits in savings account - Available to Individual/ HUF upto Rs. 10,000.
- **Section 80TTB:** Deduction on time deposit - To senior citizen upto Rs. 50,000.
- **Section 80U:** Deduction in case of a person with disability - Available to Resident individual subject to maximum of Rs. 125,000

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions "MCQs"

1. Deduction u/s 80C, in respect of Life Insurance premium, Contribution to provident fund etc., is allowed to?
    a) Any assessee
    b) An individual
    c) An individual / HUF
    d) An individual / HUF who is resident in India

    Answer: (d)
2. The flat amount of deduction under section 80U is -
    a) Rs.50,000 and Rs.75,000
    b) Rs.75,000 and Rs. 1,00,000
    c) Rs.75,000 and Rs. 1,10,000
    d) Rs.75,000 and Rs. 1,25,000

    Answer: (d)
3. Which of the following is covered under section 80D of the Income-tax Act, 1961 –
    a) Repayment of loan taken for higher education
    b) Medical treatment of handicapped dependent
    c) Medical Insurance premium
    d) Reimbursement of medical expenses

    Answer: (c)
4. Deduction under section 80E can be claimed for interest on loan for
    a) Any course of higher education
    b) only post graduate courses

c) only graduate courses

d) Any course of study after passing the Senior Secondary examination or its equivalent from any recognised school, board or university

Answer: (d)

5. Maximum qualifying limit for deduction under section 80C is -

a) Rs. 50,000

b) Rs. 1,10,000

c) Rs. 1,00,000

d) Rs. 1,50,000

Answer: (d)

6. Deduction u/s 80D of the Income tax Act, 1961 can be claimed by __

a) An Individual and HUF opted for Section 115BAC of the Income tax Act, 1961.

b) An Individual and HUF not opted for Section 115BAC of the Income tax Act, 1961.

c) All assessee

d) none of the above

Answer: b

7. In Income Tax Act, 1961, deduction under sections 80C to 80U cannot exceed_____

a) gross total income

b) Total income

c) Income from business or profession

d) Income from house property

Answer: a

8. Deduction can be claimed for amount deposited under Sukanya Samridhi Account under section .... of the Income-tax Act, 1961

a) 80CC

b) 80 C

c) 80 D

d) 80DD

Answer: b

9. Chapter VI-A of the Income-tax Act, 1961 deals with:

a) Deduction

b) exemption

c) Carry forward and set-off of losses

d) none of the above

Answer: a

10. Donation on PM's national Relief fund is deductible 100% out of the gross total income of the assessee, under section_____of the Income-tax Act, 1961.

    a) 80 C

    b) 80 D

    c) 80 G

    d) 80 GG

    Answer: c

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann

- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Computation of Total Income and Tax Liability of various Entities

Lesson 11

KEY CONCEPTS

■ Hindu Undivided Families 'HUF' ■ Firm ■ Partner ■ Partnership ■ Alternate Minimum Tax 'AMT' ■ Book Profit ■ Association of Person 'AOP' ■ Body of Individual 'BOI' ■ Political Parties ■ Electoral Trusts

Learning Objectives

To understand:

- The Computation of Taxation of Individuals
- Concept of Hindu Undivided Family 'HUF' and how HUF comes into existence?
- When and How HUF can be partitioned?
- What are the Tax implications before and after partition of HUF?
- What is Partnership Firm?
- What are the Tax implications in the hands of Partners and Firm?
- What are Admissible Expenses/ Inadmissible Expenses while calculating the Book Profit of the Firm?
- What is Book Profit?
- What are the provisions of Alternate Minimum Tax 'AMT'?
- What is Association of Persons and how it is formed?
- What is the method of computation of share of a member of AOP?
- What are Co-operative Societies and how the tax liability of Cooperative societies is determined?
- Provisions related to Political Parties
- Provisions related to Electoral Trusts
- Registration of trust u/s 12A/ 12AA / 12AB

Lesson Outline

INTRODUCTION

Income Tax is a charge on the Assessee's Income. Income Tax law lays down the provisions for computing the taxable income on which tax is to be charged. Taxable income of an assessee shall be calculated in the following manner:

1. Determine the residential status of the person as per section 6 of the Income Tax Act, 1961 ('the Act').
2. Calculate the Income as per the provisions of respective Heads of Income. Section 14 classifies the income under five heads.
   (i) Income from Salaries
   (ii) Income from House Property
   (iii) Profits and Gains from Business or Profession
   (iv) Capital Gains
   (v) Income from Other Sources.
3. Consider all the Deductions and Allowances given under the respective heads before arriving at the net under each head.
4. Exclude the Incomes exempt under section 10 of the Act.
5. Aggregate of Incomes computed under the 5 heads of income after applying Clubbing provisions and making adjustments of set off and carry forward of losses is known as Gross Total Income.
6. Deduct therefrom the deductions admissible under Sections 80C to 80U. The balance is called Total Income.
7. The total income is rounded off to the nearest multiple of Rupees ten. (Section 288A)
8. Add Agriculture Income (if any) in the total income calculated in (6) above. Then calculate tax on the aggregate as if such aggregate income is the Total Income.
9. Calculate income tax on the net agricultural income as increased by Rs. 2,50,000 / 3,00,000 / 5,00,000 as the case may be, as if such increased net agricultural income were the total income.
10. The amount of income tax determined under (9) above will be deducted from the amount of income tax determined under (8) above.
11. Calculate income tax on capital gains under Section 112, 112A, 111A and on other income at specified rates.
12. The balance of amount of income tax left as per (10) above plus the amount of income tax at (11) above will be the income tax in respect of the total income.
13. Deduct the following from the amount of tax calculated under (12) above.
    (i) Rebate under section 87A (if applicable).
    (ii) Tax deducted and collected at source.
    (iii) Advance tax paid.
    (iv) Double taxation relief (Section 90 or 91).
14. The balance of amount left after deduction of items given in (13) above, shall be the net tax payable or net tax refundable for the assessee. Net tax payable/refundable shall be rounded off to the nearest multiple of Ten rupees (Section 288B).

15. Along with the amount of net tax payable, the assessee shall have to pay penalties or fines, if any, imposed on him under the Income-tax Act.

For calculation of income, amount received is classified under 5 heads of income; it is then to be adjusted with reference to the provisions of the Income Tax laws in the following manner.

Computation of Tax Liability	***Sections***	***Amount***
1. Income from Salary ***Less :*** Deductions u/s 16 i. Standard Deduction of Rs. 50,000 or Gross Salary, whichever is lower. ii. Entertainment Allowance iii. Professional Tax Paid	15 to 17	XXX
2. Income from House Property ***Less :*** Deduction u/s 24 Standard Deduction Interest on House Property Loan	22 to 27	XXX
3. Income from Profits and Gains from Business and Profession Turnover / Receipts / Fees / Sales ***Less :*** Deductions u/s 30 to 37(1)	28 to 44	XXX
4. Income from Capital Gains Full value of consideration ***Less :*** Cost of acquisition/Cost of Improvement/Transfer expenses ***Less :*** Exemption u/s 54/54B/54EE etc	45 to 55A	XXX
5. Income from Other Sources **Income u/s 56** ***Less :*** Deductions u/s 57	56 to 59	XXX
Add : Clubbing of Income ***Less :*** Set Off & Carry Forward Provisions' under respective heads		XXX (XXX)
Gross Total Income [GTI]		**XXX**
Less : Deductions under Chapter VIA	80C to 80U	(XXX)
Total Income (Rounded off to nearest Rs.10 u/s 288A)		XXX
Tax on Total Income		XXX
Add : Surcharge on Total Tax (if applicable)		XXX
Less : Rebate u/s 87A		(XXX)

Computation of Tax Liability	*Sections*	*Amount*
Add : 4% Health & Education Cess on [Total tax + Surcharge – Rebate]		XXX
Net Tax Liability		**XXX**
Less : (i). TDS (ii). Advance Tax (iii). Relief u/s 89		(XXX)
Balance Tax Payable on Self Assessment [Section 140A]		**XXX**
Less : Self Assessment Tax paid		XXX
Balance Tax		**NIL**

Provision for Computation of Taxable Income		
Tax Rates	• It is given **by Finance Act** (Passed by Parliament every year along with Union Budget. • It is **not given by Income tax Act**.	
Computation of Taxable Income	• Provision for computation of taxable income **is given as per Income Tax Act**.	
Structure of Finance Bill	• Chapter: I Preliminary • Chapter: II Rates of Income Tax. • Chapter: III Direct taxes [Income Tax] • Chapter: IV Indirect Taxes [Custom/Excise/CGST/IGST/UTGST] • Chapter: V Misc.	
Schedule-I of Finance Act	Part- I	• Income-tax rates for different assessee
	Part-II	• TDS Rates applicable
	Part-III	• Advance Tax Rates
	Note	• Part-III of First schedule of Finance Act would become the Part-I of the First Schedule of next Finance Act.

TAX RATES FOR FY 2022-23 I.E. AY 2023-24

Calculation of Tax on Income

- Tax rate depends upon the category of person
- Amount of income
- Residential status of person
- Age of individual
- Type of Income

Components of Tax are

Tax Rates for Different types of person depending upon various parameters:

1. For :

- Resident Individual of the age below 60 years
- Non Resident Individual
- Hindu undivided family
- Association of Persons
- Body of Individuals (other than Co-operative society)
- Artificial Juridical Person

Total Income (Rs.)	*Tax Rate*	*Tax liability (Rs.)*
Upto 2,50,000	Nil	Nil
2,50,001 – 5,00,000	5%	5% of (Total Income – 2,50,000)
5,00,001 – 10,00,000	20%	20% of (Total Income – 5,00,000) + 12,500
Above 10,00,000	30%	30% of (Total Income – 10,00,000) + 1,12,500

2. Applicable for:

Resident individual of the age of 60 years or more but less than eighty years at any time during the previous year

Total Income (Rs.)	*Tax Rate*	*Tax liability (Rs.)*
Upto 3,00,000	Nil	Nil
3,00,001 – 5,00,000	5%	5% of (Total Income – 3,00,000)
5,00,001 – 10,00,000	20%	20% of (Total Income – 5,00,000) + 10,000
Above 10,00,000	30%	30% of (Total Income – 10,00,000) + 1,10,000

3. Applicable for :

Resident Individual of the age of 80 years or more at anytime during the previous year

Total Income (Rs.)	*Tax Rate*	*Tax liability (Rs.)*
Upto 5,00,000	Nil	Nil
5,00,001 – 10,00,000	20%	20% of (Total Income – 5,00,000)
Above 10,00,000	30%	30% of (Total Income – 10,00,000) + 1,00,000

CBDT has clarified vide Circular No. 28/2016 27.07.2016, that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday.

Therefore a resident individual, whose 60th / 80th birthday falls on 1st April, 2023 would be treated as having attained the age of 60 years/80 years in the P. Yr. 2022-23.

4. For Firm and Local Authorities:

Types of person	*Tax Rates*
Firms (including LLP)	30% of total Income
Local Authorities	30% of total Income

Good to Know: Entity or individual other than a company whose adjusted total income exceeds Rs. 20 lakhs is liable to pay Alternate Minimum tax @ 18.5%.

5. For Co-operative Society:

Income Slabs		*Tax Rates*
i.	Where the taxable income does not exceed Rs. 10,000	10% of the income
ii.	Where the taxable income exceeds Rs. 10,000 but does not exceed Rs. 20,000	Rs. 1,000 + 20% of income in excess of Rs. 10,000
iii	Where the taxable income exceeds Rs. 20,000	Rs. 3.000 + 30% of the amount by which the taxable income exceeds Rs. 20,000

Surcharge

Surcharge is an additional tax imposed on certain cases. It is imposed over the basic tax rate calculated on the income.

For example : Suppose total taxable income of an individual of 45 years is Rs. 1,30,00,000, then Base tax will be : Rs. 1,12,500 + 30% of (1,20,00,000)= Rs. 37,12,500.

Surcharge @12%* of Rs. 37,12,500 = Rs. 4,45,500. There are different rate of surcharge prescribed in the following manner :

S. No.	*Types of person*	*Income*	*Surcharge Rates*
i.	Individuals, HUF, AOP, BOI	If Income exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore	10% of income tax
		If income exceeds Rs. 1 crore but does not exceed Rs. 2 crore	15% of income tax
		If income exceeds Rs. 2 crore but does not exceed Rs. 5 crore	25% of income tax
		If total income exceeds Rs. 5 crore	37% of income tax

ii	Firm/Local Authority / Co-operative Society	If income exceeds Rs. 1 crore	12% of income tax

Marginal Relief in Surcharge : When an assessee's taxable income exceeds Rs. 1 crore, he is liable to pay Surcharge at prescribed rates mentioned above on Income Tax payable by him. However, the amount of Income Tax and surcharge on total income shall not exceed the amount of income that exceeds Rs. 1 crore.

Example : Suppose Mr. Ram an individual assessee of 42 years is having taxable income of Rs. 1,00,01,000/-

	Particulars	***Amount (Rs.)***
1.	Income Tax	Rs. 28,12,800
2.	Surcharge @15% of Income Tax	Rs. 4,21,920
3.	Income Tax on income of Rs. 1 crore	Rs. 28,12,500
4.	Maximum Surcharge payable (Income over Rs. 1 crore i.e. Rs. 1,000)	Rs. 1,000
5.	(Income Tax + Surcharge) payable	Rs. 28,13,500

Thus, in the above case, though the surcharge @15% is Rs. 421920. However, since the income of Mr. Ram exceeds Rs. 1 crore by just Rs. 1,000, Ram will be eligible for marginal relief and maximum surcharge will be restricted to Rs. 1,000 only.

Cess

- Governments resort to imposition of cess for meeting specific expenditure
- Education Cess and Senior and Higher Education Cess are additional levy on the basic tax liability + surcharge, if applicable.
- Rate of Education Cess is 2%
- Rate of SHEC is 1%.
- Rate of Health Cess is 1%.

SPECIAL TAX REGIME FOR INDIVIDUAL AND HUFs [SECTION 115BAC]

The Finance Act, 2020, has provided an option to Individuals and HUF for payment of taxes at the following reduced rates from Assessment Year 2021-22 and onwards:

Total Income (Rs)	***Rate***
Up to 2,50,000	Nil
From 2,50,001 to 5,00,000	5%
From 5,00,001 to 7,50,000	10%
From 7,50,001 to 10,00,000	15%
From 10,00,001 to 12,50,000	20%
From 12,50,001 to 15,00,000	25%
Above 15,00,000	30%

Surcharge: Surcharge is levied on the amount of income-tax at following rates if total income of an assessee exceeds specified limits:

Rs. 50 Lakhs to Rs. 1 Crore	*Rs. 1 Crore to Rs.2 Crores*	*Rs. 2 Crores to Rs. 5 Crores*	*Rs. 5 crores to Rs. 10 Crores*	*Exceeding Rs. 10 Crores*
10%	15%	25%	37%	37%

Note: Marginal relief is available from surcharge.

Health and Education Cess: Health and Education Cess is levied at the rate of 4% on the amount of income-tax plus surcharge.

Alternate Minimum Tax: The assessee's opting for this scheme have been kept out of the purview of Alternate Minimum Tax (AMT). Further the provision relating to the computation, carry forward and set off of AMT credit shall not apply to these assessees.

Conditions:

1. The option to pay tax at lower rates shall be available only if the total income of Individual or HUFs is computed without claiming following exemptions or deductions:
    a) Leave Travel concession [Section 10(5)]
    b) House Rent Allowance [Section 10(13A)]
    c) Official and personal allowances (other than those as may be prescribed) [Section 10(14)]
    d) Allowances to MPs/MLAs [Section 10(17)]
    e) Allowances for income of minor [Section 10(32)]
    f) Deduction for units established in Special Economic Zones (SEZ) [Section 10AA]
    g) Standard Deduction [Section 16(ia)]
    h) Entertainment Allowance [Section 16((ii)]
    i) Professional Tax [Section 16(iii)]
    j) Interest on housing loan [Section 24(b)]
    k) Additional depreciation in respect of new plant and machinery [Section 32(1)(iia)]
    l) Deduction for investment in new plant and machinery in notified backward areas [Section 32AD]
    m) Deduction in respect of tea, coffee or rubber business [Section 33AB]
    n) Deduction in respect of business consisting of prospecting or extraction or production of petroleum or natural gas in India [Section 33ABA]
    o) Deduction for donation made to approved scientific research association, university college or other institutes for doing scientific research which may or may not be related to business [Section 35(1) (ii)]
    p) Deduction for payment made to an Indian company for doing scientific research which may or may not be related to business [Section 35(1)(iia)]
    q) Deduction for donation made to university, college, or other institution for doing research in social science or statistical research [Section 35(1) (iii)]

r) Deduction for donation made for or expenditure on scientific research [Section 35(2AA)]

s) Deduction in respect of capital expenditure incurred in respect of certain specified businesses, i.e., cold chain facility, warehousing facility, etc. [Section 35AD]

t) Deduction for expenditure on agriculture extension project [Section 35CCC]

u) Deduction for family Pension [Section 57(iia)]

v) Deduction in respect of certain incomes other than specified under Section 80JJAA, 80CCD(2) and deduction under section 80LA for Unit located in IFSC [Part C of Chapter VI-A].

2. Total income of the assessee is calculated after claiming depreciation under section 32, other than additional depreciation, and without adjusting brought forward losses and depreciation from any earlier year (if such loss or depreciation pertains to any deduction under the aforesaid sections). Further, loss under the head house property can't be set off against other heads of Income. Moreover, such loss and depreciation will not be carried forward.

3. If the assessee has any unabsorbed depreciation, relating to additional depreciation, which has not been given full effect, the corresponding adjustment shall be made to WDV of the block of assets in the prescribed manner.

4. In case the assessee has business or professional income, this option shall be exercised on or before the due date for furnishing the returns of income.

5. Once the assessee has exercised the option for any previous year, it cannot be subsequently withdrawn for the same or any other previous year. The option once exercised for any previous year can be withdrawn only once in subsequent previous year (other than the year in which it was exercised) and thereafter, he shall never be eligible to exercise this option again except where such person ceases to have any business income.

6. If assessee does not have business or professional income, the option must be exercised along with the return of income for every previous year. If an assessee, after opting for Section 115BAC, claims any of the prescribed deductions or allowance in any previous year, then the option to pay tax at concessional rate shall become invalid for that year.

SPECIAL TAX REGIME APPLICABLE TO A CO-OPERATIVE SOCIETIES [SECTION 115BAD]

The Finance Act, 2020 has inserted a new section 115BAD in Income-tax Act to provide an option to the resident co-operative societies to get taxed at the rate of 22% plus 10% surcharge and 4% cess. The resident co- operative societies have an option to opt for taxation under newly introduced section 115BAD of the Act w.e.f. Assessment Year 2021-22. The option once exercised under this section cannot be subsequently withdrawn for the same or any other previous year.

If the new regime of Section 115BAD is opted by a co-operative society, its income shall be computed without providing for specified exemption, deduction or incentive available under the Act. The societies opting for this section have been kept out of the purview of Alternate Minimum Tax (AMT). Further, the provision relating to computation, carry forward and set-off of AMT credit shall not apply to these assessees.

The option to pay tax at lower rates shall be available only if the total income of cooperative society is computed without claiming following exemptions or deductions:

a) Deduction for units established in Special Economic Zones (SEZ) [Section 10AA];

b) Additional depreciation in respect of new plant and machinery [Section 32(1)(iia)];

c) Deduction for investment in new plant and machinery in notified backward areas [Section 32AD];

d) Deduction in respect of tea, coffee or rubber business [Section 33AB];

e) Deduction in respect of business consisting of prospecting or extraction or production of petroleum or natural gas in India [Section 33ABA];

f) Deduction for donation made to approved scientific research association, university college or other institutes for doing scientific research which may or may not be related to business [Section 35(1) (ii)];

g) Deduction for payment made to an Indian company for doing scientific research which may or may not be related to business [Section 35(1)(iia)];

h) Deduction for donation made to university, college, or other institution for doing research in social science or statistical research [Section 35(1) (iii)];

i) Deduction for donation made to National Laboratory or IITs, etc. for doing scientific research which may or may not be related to business [Section 35(2AA)];

j) Deduction in respect of capital expenditure incurred in respect of certain specified businesses, i.e., cold chain facility, warehousing facility, etc. [Section 35AD];

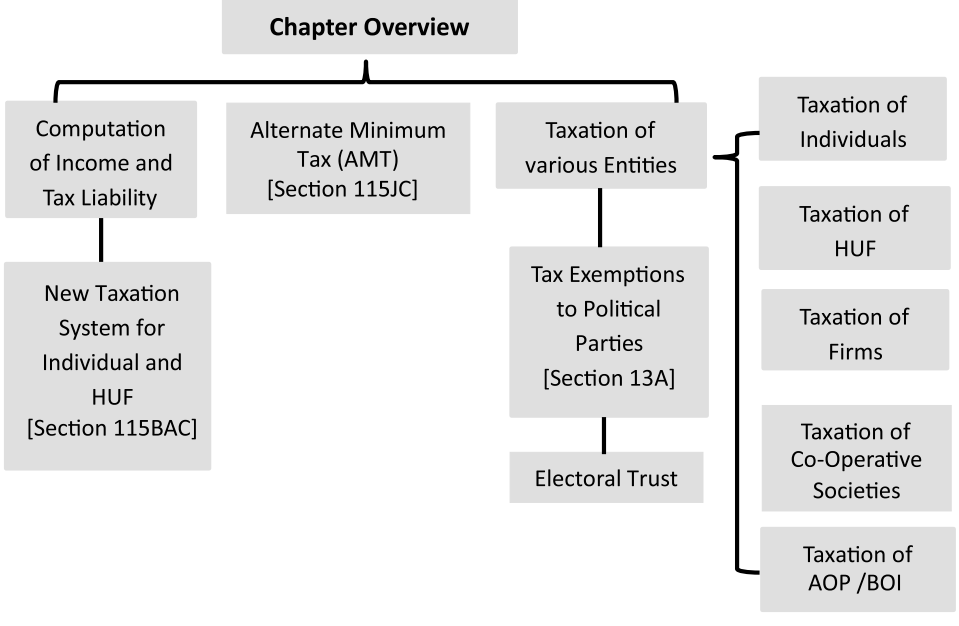
k) Deduction for expenditure on agriculture extension project [Section 35CCC];

l) Deduction in respect of certain incomes other than specified under Section 80JJAA [Part C of Chapter VI-A].

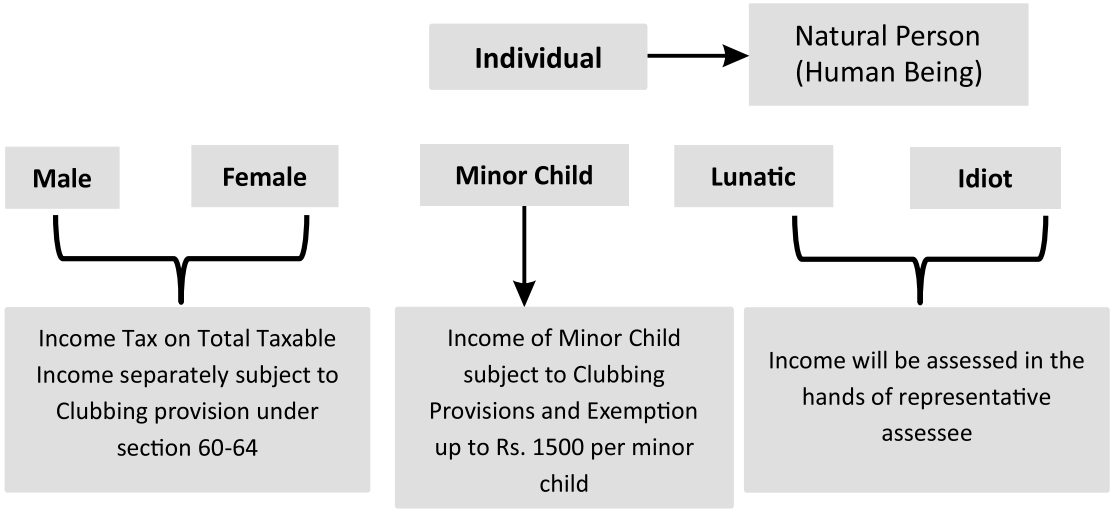
Where a co-operative society exercises option for availing benefit of lower tax rate under section 115BAD, it shall not be allowed to claim set-off of any brought forward losses or depreciation attributable to any restricted exemption or deduction in the Assessment Year for which the option has been exercised and for any subsequent Assessment Year.

REBATE [SECTION 87A]

An assessee, being an individual resident in India, whose total income does not exceed Rs. 5,00,000 shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to 100% of such income-tax or an amount of Rs. 12,500, whichever is less.



TAXATION OF INDIVIDUALS



Income of Individual and its tax treatment		
Taxable Income of Individual	**Income**	**Taxability/Exemption**
	Income earned by Individual	Based on Individual capacity
	Remuneration in terms of Salary, Bonus, Commission etc received by partner (As Individual)	Taxable as Business Income
	Interest on capital/Loans to Firm/LLP received by partner (As Individual)	Taxable as Business Income
	Income received as Member of AOP or BOI	Share of Income from AOP/BOI is taxable
	Income from impartible estate of HUF	Income is taxable in hands of Karta
Exempted in hands of Individuals	Share of Profit of Firm/LLP	Exempt in the hands of Partner [Section 10(2A)]
	Income of AOP/BOI is chargeable at Maximum Marginal Rate (MMR)	Share of income of member will not be included in taxable income
	Share of Income from HUF	Exempt in the hands of Individual [Section 10(2)]

List of deductions available to Individuals under Chapter VI-A (Except who have opted for section 115BAC)	
Section	***Particulars***
80C	Deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc
80CCC	Deduction in respect of contribution to certain pension funds

80CCD	Deduction in respect of contribution to pension scheme of Central Government
80CCE	Limit on deductions under sections 80C, 80CCC and 80CCD
80D	Deduction in respect of health insurance premia
80DD	Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability
80DDB	Deduction in respect of medical treatment, etc.
80E	Deduction in respect of interest on loan taken for higher education
80EE	Deduction in respect of interest on loan taken for residential house property
80EEA	Deduction in respect of interest on loan taken for certain house property
80EEB	Deduction in respect of purchase of electric vehicle
80G	Deduction in respect of donations to certain funds, charitable institutions, etc
80GG	Deductions in respect of rents paid
80GGA	Deduction in respect of certain donations for scientific research or rural development
80GGC	Deduction in respect of contributions given by any person to political parties
80-I	Deduction in respect of profits and gains from industrial undertakings after a certain date, etc
80-IB	Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings
80-IBA	Deductions in respect of profits and gains from housing projects
80-IE	Special provisions in respect of certain undertakings in North-Eastern States
80JJA	Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste
80JJAA	Deduction in respect of employment of new employees
80QQB	Deduction in respect of royalty income, etc., of authors of certain books other than text-books
80RRB	Deduction in respect of royalty on patents
80TTA	Deduction in respect of interest on deposits in savings account
80TTB	Deduction in respect of interest on deposits in case of senior citizens
80U	Deduction in case of a person with disability

CASE 1

Mr. DP, has earned gross salary of Rs. 655000 including HRA of Rs. 45000. He has paid Rs. 15000 p.m. as rent for his residential accommodation. Besides that, he earned Rs. 12000 from saving bank deposit during the year 2022-23 and at the same time he has deposited to Rs. 65000 to PPF. You are required to compute total income and tax payable by DP if

- He doesn't opt to be taxed under Section115BAC
- He opts to be taxed under Section 115BAC

Solution: Statement showing computation of Total income and tax liability

Particulars	***Doesn't opt to be taxed under Section 115BAC***		***Opts to be taxed under Section115BAC***	
	Amount	***Amount***	***Amount***	***Amount***
Salary received	655000		655000	
Less: HRA Exempted u/s 10(13A)	(45000)		Nil	
	610000		655000	
Less: Standard Deduction	(50000)		Nil	
Income under the head salary		560000		655000
Income from saving bank deposit		12000		12000
Gross Total Income		572000		667000
Less: Deduction u/s 80C Deduction u/s 80TTA (a) Actual 12000 (b) Limit 10000 **Whichever is less**	65000 10000	(75000)		Nil
Total Income		497000		667000
Tax on total Income		12350		29200
Less: Rebate u/s 87A (a) 100% of 12350 (b) Limit 12500 **Whichever is less**	12350	(12350)		Nil
Balance		Nil		29200
Add: HEC @4%		Nil		1168
Total Tax Payable (R/O)		**Nil**		**30370**

Illustration 1:

Gross total income of Mr. X, a tax consultant based at Mumbai, is Rs. 18,00,000 (income from profession Rs. 17,00,000 and interest on bank fixed deposit Rs. 1,00,000). He pays Rs. 3,00,000 as house rent. He deposits Rs. 50,000 in public provident fund. Compute his taxable income for the assessment year 2023-24.

Option 1 : Assessee has not opted for Section 115BAC

Option 2 : Assessee has opted for Section 115BAC

Solution:

Option 1: Assessee has not opted for Section 115BAC

Computation of Taxable Income of Mr. X for the A.Y. 2023-24

Particular	***Amount (Rs.)***	***Amount (Rs.)***
Professional Income – PGBP		17,00,000
Interest on Bank Deposit – Other sources		1,00,000
Gross Total Income		18,00,000
Less: Deductions under Chapter VI-A	(50,000)	
u/s 80C (PPF)	(60,000)	
u/s 80 GG (Note-1)		(1,10,000)
Total Income		**16,90,000**

Note 1: Deduction u/s 80GG is least of the following:

a) Rs. 60,000 (i.e., Rs. 5000 x 12 months)

b) Rs. 4,37,500 [25% of total income (Rs. 18,00,000- 50,000)]

c) Rs. 1,25,000 [Excess of rent paid over 10% of total income (Rs. 3,00,000- 1,75,000)]

Option 2: Assessee has opted for Section 115BAC

Computation of Taxable Income of Mr. X for the A.Y. 2023-24

Particular	***Amount (Rs.)***
Professional Income – PGBP	17,00,000
Interest on Bank Deposit – Other sources	1,00,000
Gross Total Income	18,00,000
Less: Deductions under Chapter VI-A	Nil
Total Income	**18,00,000**

Note 1: Deduction u/s 80C & 80GG not allowed.

Illustration 2:

From the following profit and loss account of Vinay for the year ended 31st March 2023, compute his total income and tax liability for the assessment year 2023-24:

Particulars	*Amount Rs.*	*Particulars*	*Amount Rs.*
Interest on capital	12,000	Gross profit	5,10,000
Insurance	2,000	Brokerage	30,000
Bad debts	30,000	Bad debts recovered (earlier allowed as deduction)	15,000
Depreciation	34,000	Sundry receipts	18,000
Advance tax	25,000	Interest on debentures (gross) [TDS Rs. 4,000]	40,000
General expenses	12,000		
Advertisement	5,000		
Salary (including salary to Vinay Rs.20,000)	85,000		
Interest on loan	8,000		
Net profit	4,00,000		
Total	**6,13,000**	**Total**	**6,13,000**

Additional information:

(i) The amount of depreciation allowable as per income-tax rules is Rs. 42,000.

(ii) General expenses include Rs.5,000 given as Health insurance Premium.

(iii) Vinay pays Rs. 5,200 as premium on his own life insurance policy of Rs. 50,000 issued in 2016-17.

(iv) Loan was obtained for payment of income-tax.

Option 1 : Assessee has not opted for Section 115BAC

Option 2 : Assessee has opted for Section 115BAC

Solution :

Option 1: Assessee has not opted for Section 115BAC

Particulars	*Amount (Rs.)*	*Amount (Rs.)*
(I) Income from business		
Net profit for the year		4,00,000

Add : Expenses not allowed under Income tax Act but debited to P & L A/c		
Interest on capital (Note 2)	12,000	
Depreciation as per books of a/c	34,000	
Advance tax	25,000	
General Expenses	5,000	
Salary to Vinay	20,000	
Interest on loan (Note 2)	8,000	1,04,000
Less : Income not related to business and profession but Credited to P& L a/c		
Interest on debentures	40,000	
Deductible expenses not debited to P&L Account		
Depreciation as per Income tax Act	42,000	(82,000)
Profits and Gains of Business & Profession		**4,22,000**
(II) Income from other sources Interest on debenture		40,000
Gross Total Income (I + II)		**4,62,000**
Less: Deduction U/S 80C – 80U		
(i) Premium on life insurance policy (u/s 80C)(Note 1)		(5,000)
(ii) Health insurance Premium (u/s 80 D)		(5,000)
Total Taxable Income		**4,52,000**

Note

1. Under section 80C deduction of life insurance premium cannot exceed 10% of the sum assured.
2. Under Section 36(1)(iii) Interest paid on borrowed capital is allowed as a deduction. Interest on own capital is not deductible. Similarly, interest on money borrowed to pay income tax in not allowed as a deduction.

Option 2: Assessee has opted for Section 115BAC

Particulars	***Amount (Rs.)***	***Amount (Rs.)***
(I) Income from Business		
Net profit for the year		4,00,000
Add : Expenses not allowed under Income tax act but debited to P & L A/c		

Interest on capital (Note 2)	12,000	
Depreciation as per books of A/c	34,000	
Advance tax	25,000	
General Expenses	5,000	
Salary to Vinay	20,000	
Interest on loan (Note 2)	8,000	1,04,000
Less : Income not related to business and profession but Credited to P& L A/c		
Interest on debentures	40,000	
Deductible expenses not debited to P&L Account		
Depreciation as per Income tax Act (Working Note)	42,000	(82,000)
Profits and Gains of Business & Profession		4,22,000
(II) Income from other sources Interest on debenture		40,000
Gross total income (I + II)		4,62,000
Less: Deduction U/S 80C – 80U		NIL
Total Taxable Income		**4,62,000**

Note:

1. Deduction u/s 80C is not allowed under section 115BAC.
2. Under Section 36(1)(iii) Interest paid on borrowed capital is allowed as a deduction. Interest on own capital is not deductible. Similarly, interest on money borrowed to pay income tax in not allowed as a deduction.
3. Depreciation u/s 115BAC is allowed except Additional depreciation as per prescribed manner.

Illustration 3:

For the Assessment Year 2023-24, Mr. Ram, who is 58 years old, resident in India, furnishes the following information:

Basic salary	Rs. 15000 pm
Dearness Allowance (20% forming part for retirement benefits)	40% of basic salary
City Compensatory Allowance	Rs. 300 pm
Children education allowance	Rs. 200 pm per child for 2 children
Transport allowance	Rs. 2000 pm

House Rent Allowance	Rs. 6000 pm
Actual rent paid for a house in Delhi	Rs. 7000 pm
He travels via Delhi metro from his residence to office and back in which he spends	Rs. 1500 pm
Medical allowance	Rs. 1000 pm
Lunch allowance	Rs. 200 pm

He owns a house property in Mumbai whose construction is completed in 2005 and which is let out for Rs. 40,000 pm. The standard rent as per Rent Control Act is Rs. 3,10,000. He pays Rs. 32,000 for municipal taxes and interest on capital borrowed for construction of house Rs. 75,000. Further, he incurs Rs. 10,000 on repairs of the house.

Long-term capital gains Rs. 225,000

Short term capital gains for the year Rs.1,01,000 (STT not applicable).

Dividend received from Indian Company X Ltd. Rs. 12,000.

Interest received @10% on listed debentures of face value 14,00,000

Diwali Gift of gold coins received from a friend. Market value Rs. 50,000

Share of profit from:

Firm	40,000
HUF	34,000
Income from Lotteries (gross)	50,000

Mr. Ram invested in PPF Rs.1,50,000 and also paid a life insurance premium of Rs. 21,000. Donation to National Defence Fund Rs.10,000.

Compute the total income and Tax liability of Mr. Ram for the Assessment year 2023-24.

Option 1 : Assessee has not opted for Section 115BAC

Option 2 : Assessee has opted for Section 115BAC

Solution:

Option 1: Assessee has not opted for Section 115BAC

(A) Computation of Total Income

Particulars	***Amount Rs.***	***Amount Rs.***
Income from Salary		
Basic salary (15000 *12)		180,000
Dearness Allowance (180,000*0.40)		72,000

CCA (fully taxable) (300*12)		3600
Children Education Allowance	4800	
Less: Exempt	(2400)	2400
Transport allowance	24000	
Less: Exempt (Exemption withdrawn by Finance Act, 2018)	NIL	24000
House Rent Allowance (Note)		7440
Lunch Allowance		2400
Medical Allowance		12000
Less: Deduction under section 16 (ia) Standard Deduction		(50,000)
Taxable Salary		**2,53,840**
Income from house property		
Gross annual Value (Rent Received 40,000*12)		4,80,000
Less: Municipal Taxes		(32,000)
Net annual Value		4,48,000
Less: Standard Deduction @ 30% of 4,48, 000		(1,34,400)
Less: Interest on capital borrowed		(75,000)
Income from House property		**2,38,600**
Income from Business/Profession		
Firm (Exempt)		NIL
HUF (Exempt)		NIL
Income under the head Capital Gains		
Long-term capital gains u/s 112		**2,25,000**
Short term Capital Gain u/s 111A		**1,01,000**
Income from other sources		
Dividend received from Indian Company X Ltd.	12,000	
Interest received on listed debentures	1,40,000	
Winning from Lotteries	50,000	
Gift in kind	50,000	252,000
Gross Total Income		**10,70,440**
Less: Deduction under section 80C to 80U		
(i) Under section 80C (maximum)		(150,000)

(ii) Under section 80G		(10,000)
Total Income		**9,10,440**

(B) Computation of Tax on Total Income

Tax on winning from lotteries (30% of Rs. 50,000)	15,000
Tax on long-term capital gains (20% of Rs. 2,25,000)	45000
Balance of Total Income Rs. 6,35,440	39,588
Total tax	99,588
Add: Health and Education cess at 4%	3,983.52
Total liability	1,03,571.52
Total liability (round off)	**1,03,570**

Notes:

1. House Rent Allowance: Least of three is exempt
   i. 50% of the salary* because the house is in Delhi = 0.50 * 194400 = Rs. 97,200
   ii. HRA received = Rs. 72,000
   iii. Rent paid – 10% of the salary = (7000 * 12) – 0.10 * 194400 = 84000 - 19440= Rs. 64,560

   Exempted HRA = Rs. 64,560

   Taxable HRA = 72,000 – 25,680 = Rs. 7,440

   *Salary here = Basic salary + Dearness allowance (forming part only) = 180,000 + 180000 *0.40* 0.20 = Rs. 1,94,400
2. The tax liability is subject to set-off of TDS for winning from lotteries and interest from listed debentures.

Option 2: Assessee has opted for Section 115BAC

(A) Computation of Total Income

Income from salary	***Rs.***	***Rs.***
Basic salary (15000 *12)		180,000
Dearness Allowance (180,000*0.40)		72,000
CCA (fully taxable) (300*12)		3600
Children Education Allowance	4800	
Less: Exempt	NA	4800
Transport allowance	24000	
Less: Exempt	NA	24000

House Rent Allowance (Note)		72,000
Lunch Allowance		2400
Medical Allowance		12000
Less: Deduction under section 16		NIL
Taxable Salary		**3,70,800**
Income from house property		
Gross annual Value (Rent Received 40,000*12)		4,80,000
Less: Municipal Taxes		(32,000)
Net annual Value		4,48,000
Less: Standard Deduction @ 30% of 4,48,000		(1,34,400)
Less: Interest on capital borrowed		(75,000)
Income from House property		**2,38,600**
Income from Business/Profession		
Firm (Exempt)	NIL	
HUF (Exempt)	NIL	NIL
Income under the head Capital Gains		
Long-term capital gains u/s 112		2,25,000
Short term Capital Gain u/s 111A		1,01,000
Income from other sources		
Dividend received from Indian Company X Ltd.	12,000	
Interest received on listed debentures	1,40,000	
Winning from Lotteries	50,000	
Gift in kind	50,000	252,000
Gross Total Income		11,87,400
Less: Deduction under section 80C to 80U		NA
Total Income		**11,87,400**

(B) Computation of Tax on Total Income

Tax on winning from lotteries (30% of Rs. 50,000)	15,000
Tax on long-term capital gains (20% of Rs. 2,25,000)	45000

Balance of Total Income Rs. 9,12,400	61,860
Total tax	1,21,860
Add: Health and Education cess at 4%	4874.40
Total liability	1,26,734.40
Total liability (round off)	1,26,730

Notes:

1. Exemption from House Rent Allowance / Children Education allowance, Standard Deduction, Deduction under section 80C & 80G is not allowed
2. The tax liability is subject to set-off of TDS for winning from lotteries and interest from listed debentures.

Illustration 4:

Mr. X aged 62 years, resident individual furnishes the following particulars relevant for the assessment year 2023-24:

Profit and Loss Account			
Particulars	***Amount (Rs.)***	***Particulars***	***Amount (Rs.)***
Salaries	30000	Gross profit	436000
General Expenses	45000	Commission	120000
Bad Debts	15000	Sundry Receipts	40000
Reserve for losses	3000	Short term capital gain	30000
Insurance	5200	Discount	2000
Advertisement	10000	Profit on sale of import license	100000
Add: outstanding 2000	12000		
Interest on capital	4500		
Interest on bank loan	12500		
Expenditure on acquisition of patent and put to use on 30.06.21	16000		
Depreciation on Plant	24000		
Depreciation on building	10000		
Depreciation on Furniture	4000		

Provision for outstanding GST liability	12000		
Taxation reserve	12000		
Loss by fire of a part of building (Uninsured)	8000		
Net profit	514800		
Total	**728000**	**Total**	**728000**

Other information

1. Bank loan is used for business purposes.
2. The amount of depreciation as per tax rates, in respect of plant, building, furniture, amounts to Rs. 20000, 12000, 7400 respectively.
3. Salary include payment to a relative which is unreasonable to the extent of Rs. 5000.
4. Out of GST liability Rs. 2000 is paid on 04.07.22 and Rs. 6000 is paid on 03.10.22. The balance is still outstanding. Due date of filling the return of income is 31.7.22
5. Income of X from other sources is Rs. 24000.
6. X paid medical insurance premium Rs. 16000 for himself and Rs. 16000 for his mother (dependent)
7. X repaid housing loan to the extent of Rs. 45000.

Determine the taxable income and tax liability of Mr. X for the assessment year 2023-24 assuming STT is not applicable on STCG.

Assume Assesee has not opted for section 115BAC.

Solution:

Computation of total income of Mr. X for the AY 2023-24

Particulars	***Rs.***
Profit and gain from business profession (Note)	537900
Income under the head capital gain [STCG]	30000
Income from other sources	24000
Gross Total Income	591900
Less: Deduction	
80C Repayment of Housing Loan	(45000)
80D Medical Insurance Premium	(32000)
Total Income	**514900**

Computation of Tax on Total Income

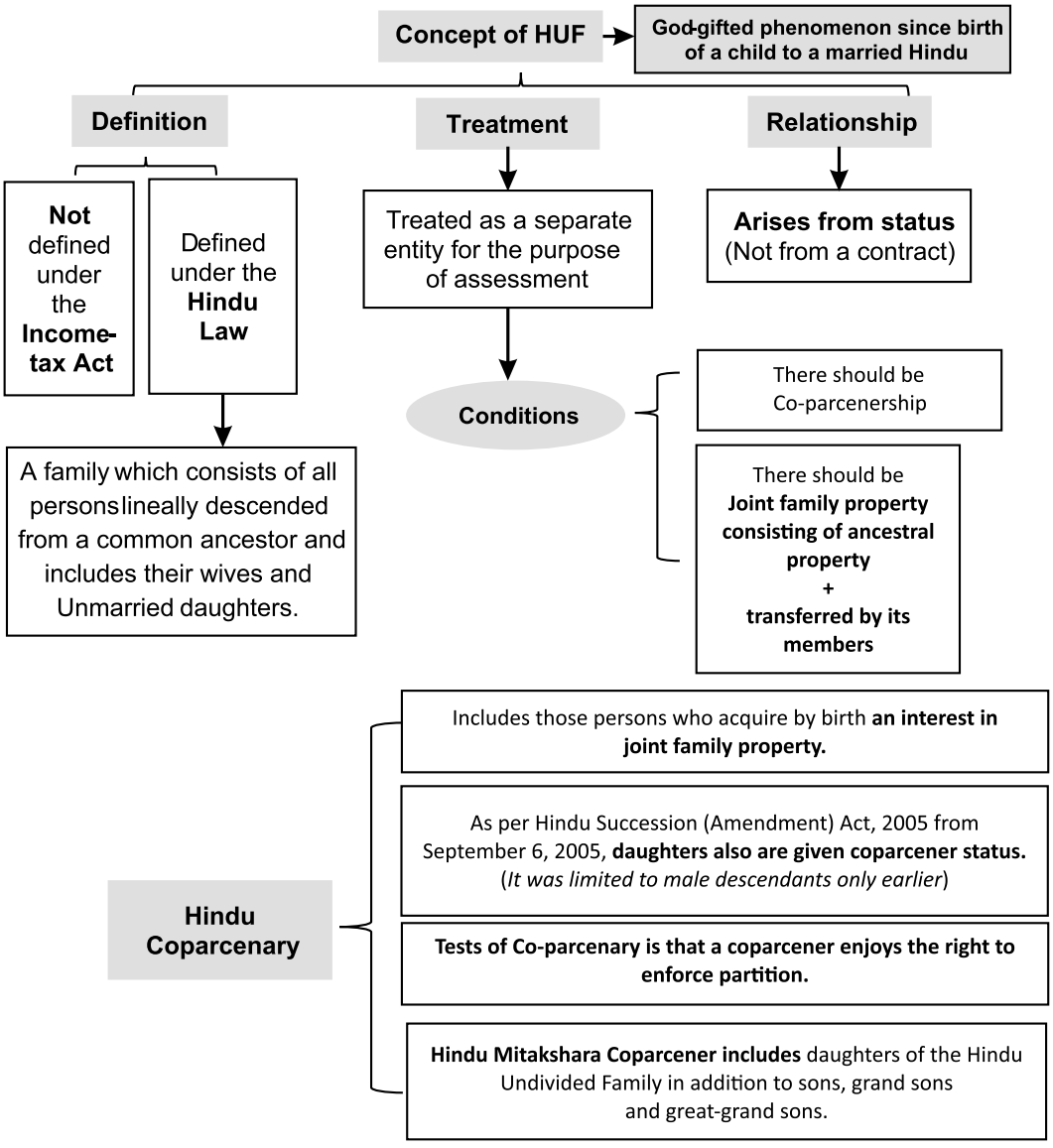
Tax on Rs. 300000	Nil
Tax on Rs. 200000 @ 5%	10000
Balance of Total Income 14900 @ 20%	2980
Total tax	12980
Add: Health and Education cess at 4%	519.2
Total liability	13499.2
Total liability (round off)	**13,500**

Working Note:

Calculation of Business Income

Particulars	***Rs.***
Profit as per P&L A/C	514800
Add: Inadmissible Expenses	
Reserve for losses	3000
Interest on capital	4500
Patent right [16000- 25% of 16000]	12000
Excess salary paid to relative	5000
Outstanding GST liability [12000-2000]	10000
Taxation reserve	12000
Loss by fire of part of building	8000
Less : Admissible Expenses Depreciation [39400-38000]	(1400)
Less : Income taxable under head capital gain (STCG)	(30000)
Business Income	**537900**

TAXATION OF HINDU UNDIVIDED FAMILIES (HUF)



The term 'Hindu undivided family' has not been defined in the Income-tax Act but it is treated as a separate entity or person under section 2(31) of the Income-tax Act, 1961 for the purpose of assessment under the Act. Under Hindu Law, an HUF is a family which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. Jain and Sikh families even though are not governed by the Hindu Law, but they are treated as HUF under the Act. An HUF cannot be created under a contract and is created automatically in a Hindu Family. Creation of a HUF is a God-gifted phenomenon since birth of a child to a married Hindu, automatically creates a new HUF. It is not at all necessary that every HUF must have joint property or family income. [*R. Subramania Iyer v. CIT (1955) 28, ITR, 352*]. However, to become an assessee under the Income-tax Act, there must be 'income-yielding' joint property of the family.

A HUF may consist of a number of smaller HUFs. A smaller HUF has a legal existence and may be assessable as a unit distinct from the apex joint family even when the bigger HUF is in place [*CIT v. Khanna (1963) 49 ITR 232*].

The Supreme Court's decision in the case of *Surjit Lal Chhabra v. CIT (1975 101 ITR 776)* has come to stay as one of the leading case laws. The ratio laid down by the Supreme Court had been applied by the Andhra Pradesh, Orissa and Madras High Courts, followed by Bombay, Patna, Madhya Pradesh and Delhi High Courts and relied upon by the Punjab High Court. In the latest case, the Delhi High Court held in *Commissioner of Income-tax v. S.P. Chopra (1991, 191 ITR 455)* that the income from the half share of the property had to be treated as the individual income of the assessee under the personal law and not as income of the family. The character of the property had to be determined in accordance with the personal law of the assessee and not on the basis of how the property had been treated by the revenue in respect of earlier assessments.

A son conceived or in his mother's womb is equal in many respects to a son actually in existence, viz., inheritance, partition, survivorship etc. But this doctrine does not apply to the Income-tax Act. Hence, a son conceived is not treated a member of the H.U.F. for Income-tax purposes. [*IS. Srinivasan v. C.I.T., (1966) 60, ITR, p.36 (S.C.)*].

Jain and Sikh undivided families are also treated as Hindu undivided families unless, under special circumstances, the assessee claims not to be treated as such. If such claim is made, the assessee shall have to prove that there is some such custom in his family on account of which it cannot be treated as a Hindu undivided family.

A Hindu does not cease to be a Hindu merely because he declared for the purpose of the Special Marriage Act, 1872, that he does not profess Hindu Religion. Such a Hindu does form an H.U.F. with his children from such marriage. [*CIT v. Partap Chand (1959), 36 ITR, 262*]. Similarly, a Muslim family governed by the Marumakkathayam law constitutes 'Tarwad' or 'Thavazhi' and falls within the definition of a H.U.F. *[V.K.P. Abdul Kadar Haji v. Ag. ITO (1967) 66, ITR, 173].*

If a Hindu gets converted as a Christian, the family of such a person will not be a HUF. However a Hindu, along with his son (by a christian wife) who has been brought up as a Hindu will be a HUF. *[CWT v. R. Sridharan (1976) 104, ITR, 436 (S.C.)].*

A Hindu Joint Family consists of two types of members:

1. **Coparceners**: The lineal male descendants of a person up to the third generation of such person are known as coparceners. The coparceners acquire, on birth, ownership in the ancestral properties of such ascendant and have a right to claim partition of such property at any time. However, w.e.f. 9.9.2005 due to amendment of Hindu Succession Act, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. Hence, the daughter can also ask for partition.
2. **Other members**: Such members include wives of male members of the family and other male members. Widow or widows of deceased male member or members. *[Gowli Buddanna v. C.I.T. (1966) 60, ITR, p. 293 (S.C.)]*

However, an unmarried coparcener who receives share on the partition of joint family properties, cannot form a Hindu undivided family unless he marries. After his marriage, he can hold the property received from family as joint family property consisting of himself and his wife. *[C. Krishna Prasadv. C.I.T. (1974) 97, p. 493 (S.C.)].*

The joint property of the HUF is managed through Karta: Property of the family is ordinarily managed by the father or other senior member for the time being of the family. He is called Karta. However, the senior member may give up his right of management and a junior member may be appointed as Karta with the consent of all other members. [Narendra Kumar J. Modi v. CIT (1976) 105, ITR, 109 (S.C.)]. In the absence of a male member in the family or when all male members are minors, a woman member can be treated as manager of the family for income- tax purposes. [*Smt. Champa Kumari Singhi v. Addl. Member of the Board of Revenue (1962) 46, ITR, p. 81*].

Views of different schools of Hindu law under taxation of HUF	
School of Hindu Law	• Dayabhaga School of law • Mitakshara School of law
Dayabhaga School of law (Summarized Provision) ↓ **No coparcener till the death of father**	• It prevails in **West Bengal and Assam.** • **Son does not acquire any interest by birth in an ancestral property but acquires such interest only after the death of his father.** *(i.e. No enjoyment of right to demand partition during the lifetime of his father)* • On the other hand, **the father enjoys an absolute right to dispose of the property of the family according to his desire.** • Father is assessed as an individual (Not as HUF)
Mitakshara School of law	• Applicable to the whole of India except West Bengal and Assam • **Both son and daughter acquire by birth an equal right in the ancestral property along with their father.** • The Co-parcenary is **a fluctuating body** which is enlarged at the time of each birth and reduced at the time of each death of a Co-parcenary child.
Note:	• As per Hindu Succession Act, 2005 (Amendment), **Daughter and Her Children** (In case of pre-deceased daughter) are **eligible for share in the family assets on partition.** • **Ancestral property refers** to property which a man inherits from any of his **3 immediate male ancestors** (i.e. His father, grandfather and great grandfather) • **Jain and Sikh families will not be governed as per Hindu Law but treated as HUF for the purpose of Income Tax Act.**

Position under Hindu Succession Act, 1956

This Act came into force on and from 17th June, 1956. It lays down a uniform and comprehensive system of inheritance and applies to persons governed by the Mitakshara as well as the Dayabhaga Schools, superseding and abrogating all previous law or customs or usage having the force of law.

Under this Act, the heirs of a male Hindu dying intestate on or after 17th June, 1956 are divided into three classes. Class I heirs get the right to the deceased's property simultaneously to the exclusion of all other Classes of heirs. Class II relations succeed only if there is no class I relation and, the heirs in the first entry of class II being preferred to heirs in the second entry, and so on, but heirs in any one entry taking in equal shares amongst themselves.

The students should note that Section 4 of the Hindu Succession Act, 1956 clearly lays down that "save as otherwise expressly provided in the Act, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Act shall cease to have effect with respect to any matter for which provision is made in the Act." And, Section 8 of the Hindu Succession Act, 1956, lays down the scheme of succession to the property of a Hindu dying intestate. The schedule classifies the heirs on which such property shall devolve.

The preferential heirs of class I are as under:

(1) Son (2) Daughter (3) Widow (4) Mother (5) Son/daughter/widow of a predeceased son (6) son/daughter of a predeceased daughter (7) Son/daughter/ widow of a predeceased son of a predeceased son.

A son's son is not mentioned as an heir under Class I of the schedule and, therefore, he cannot get any right in the property of his grandfather under the provision. The right of a son's son in his grandfather's property during the lifetime of his father which existed under the Hindu Law as in force before the Act, is not saved expressly by the Act and, therefore the earlier interpretation of Hindu Law giving a right by birth in such property 'ceased to have effect'.

Therefore, the property which devolves on a Hindu on the death of his father intestate after coming into force of the Hindu Succession Act, 1956, does not constitute H.U.F. property consisting of his own branch including his sons. [*Shri Vallabhdas Modani v. C.I.T. (1982) 138, ITR, p. 673*].

The Allahabad High Court's decision supra in the case of *Shri Vallabhdas Modani v. Commissioner of Income-tax* was followed by the Andhra Pradesh High Court (1983, 144 ITR 18) and later approved by the Supreme Court in the case of *Commissioner of Wealth-Tax v. Chander Sen* (1986, 161 ITR 370) holding that it is not possible to say that when a son inherits the property in the situation contemplated by the Hindu Succession Act, 1956, he takes as Karta of his own undivided family.

COMPUTATION OF INCOME OF HINDU UNDIVIDED FAMILY 'HUF'

Income of the HUF is assessed as joint family income of HUF if there exists a co-parcenership and joint property of the family till partition is claimed by any of its coparceners.

Joint Property of the family consists of:

(i) ancestral property which a man inherits from any of his three immediate male ancestors, namely, father, grandfather, great grandfather;

(ii) accretion thereto;

(iii) acquisition with joint funds; and

(iv) self-acquired property of any member thrown by him into the common stock to be treated as family property. In the case of *Pushpa Devi v. C.I.T.* the Supreme Court has held that a Hindu female, not being a coparcener, cannot blend her separate property with Joint family property. However, she can make a gift of her property or sell the property to the family. [(1977) 109, ITR p. 730].

The gross total income of the family for the relevant previous year shall be computed under the relevant heads (as per the provisions of the Income-tax Act) as it is computed for other assessee's. Incomes exempt under section 10 to 13A are exempt and deductions allowable under chapter VIA are to be provided. However, in this connection the following points are worth noting:

(i) The holder, who is the senior most male member of the family, of a impartible estate is liable to tax on income from that estate in his individual capacity though the estate belongs to HUF.

(ii) Conversion of self-acquired property into joint family property- Section 64(2) provides that where an individual being a member of Hindu undivided family transfers his separate property after 31st December, 1969 to the family for the common benefit of the family, otherwise than for adequate consideration, such property is known as converted property. The income derived from the converted property or any part thereof shall be included in the total income of the transferor individual and not in the income of the family.

(iii) If the funds of a Hindu Undivided family are invested in a company or a firm, fees or remuneration

received by the member as a director, or a partner in the company or firm may be treated as income of the family in case the fees or remuneration is earned essentially as a result of investment of funds. But, if the fees or remuneration is earned essentially for services rendered by the member in his personal capacity, the income shall constitute the personal income of the member.

(iv) Where a member of a HUF is a partner in a firm on behalf of the family and on partition of the property of the family, the share in the firm is allotted to such a member, subsequent to such allotment when the firm settles its accounts the whole income for that year would be the income of the individual member and no part of the income would be added to the income of the family. [*CIT v. Ashok Bhai Chiman Bhai (1965) 56, ITR, 42 (SC)*].

(v) The personal earning, including income from self acquired property of a member of the HUF, even though he has sons, would not be included in the income of the family. Such income shall be assessed as income of that individual. [*Kalyanji Vithal Das v. CIT (1937) 5 ITR 90 (PC)*].

(vi) Any sum paid by an HUF to a member of the family out of its income is not deductible in computing the income of the family. However, such amount will not be included in the income of such individual whether the family had paid tax on its income or not [Section 10(2)].

(vii) If any remuneration is paid by the Hindu Undivided family to the karta or any other member for services rendered by him in conducting family's business, the remuneration is deductible if remuneration is (a) paid under a valid and bona fide agreement; (b) in the interest of, and expedient for, the business of family; and (c) genuine and not excessive. *Jugal Kishore Baldeo Sahai v. CIT [1967] 63 ITR 238 (SC).*

(viii) If salary is paid by the Hindu undivided family to its karta for looking after its interest in firms in which it is partner through said karta, such salary is allowable as deduction - *CIT v. Prakash Chand Agarwal [1982] 11 Taxman 55 (MP).*

(ix) Income from 'stridhan' is not includible in the income of the family. Property derived by a woman from her father or brother or husband or any other relative either before or after her marriage is known as 'stridhan'.

(x) Under the Dayabhaga School of law, as stated in a preceding page, no son has any right in the ancestral property during the lifetime of his father. If, therefore, the father does not have any brother as a coparcener, income arising from ancestral property is taxable as his individual income.

Partition of a Hindu Undivided Family [Section 171]

'Partition' signifies division of property. In the cases of property capable of physical division, share of each member is determined by making physical division thereof. It must be noted that a division of income without physical division of property does not amount to partition. Where, however, the property is not capable of physical division, partition implies such division as the property may admit.

Who is entitled to share on partition

Though only coparceners can demand partition, once the partition takes effect, the following persons are entitled to a share:

(a) all coparceners;

(b) a son in the womb of his mother at the time of partition;

(c) mother, who gets an equal share if the partition takes place among her sons after the death of her husband; and

(d) wife, who gets a share equal to that of a son at the time of a partition between father and sons.

Assessment after partition (Section 171)

Section 171 applies to an HUF which is assessed as such. Therefore, if in case a family is not assessed as a hindu undivided family this section does not apply. A joint family, once assessed as a HUF, continues to be assessed as such till one or more coparceners claim partition. Such claim must be made by the coparceners before the assessment of the income of the HUF for the relevant assessment year is completed. On the receipt of such a claim, the Assessing Officer must make an inquiry after giving due notice to the members and record a finding whether there has been a partition and, if so, the date of the partition. The income of the family from the first day of the previous year to the date of partition is assessed as income of the HUF and from the next date of the partition to the date of close of the previous year, as the individual income of the recipient-members. If the recipient member forms another HUF along with his wife and son(s), the income of the property which was subject to partition is chargeable to tax in the hands of the new H.U.F.

A partition of the HUF can be both total and partial

Where the entire joint family property is divided among all coparceners and the family ceases to exist as an undivided family, the partition is total. A partial partition may be as regards: (a) the persons constituting the joint family, or (b) the properties belonging to the joint family, or (c) both. In case of partial partition, some coparceners continue as a joint family or some properties continue as a joint estate as against some coparceners or properties which separate from HUF. The device of partial partition has been used as a medium for reduction of proper tax liability. To curb such a practice, the Finance (No. 2) Act, 1980 inserted Sub-section 9 in Section 171 which lays down that partial partitions of HUFs assessed as such (*Union of India* vs. *MV Valliappan 1999 AIR SCW 2689*), effected after 31st December, 1978 will not be recognised for tax purposes.

The provisions made by Sub-section (9) in Section 171 are as follows:

(i) In a case where a partial partition of a HUF has taken place after 31.12.1978, no claim of such partition will be enquired into and the Assessing Officer will not record a finding as to whether there has been a partition of the family property. Further, any finding regarding partial partition recorded under Section 171(3) will be null and void and of no legal effect.

(ii) Such family will continue to be assessed as if no such partial partition has taken place, i.e., the property or source of income will be deemed to continue to belong to the Hindu undivided family and no member will be deemed to have separated from the family.

(iii) Each member or group of members of such family will be jointly and severally liable for any tax, interest, penalty, fine or other sum payable under the Act by the family, whether before or after such partition. The several liability of any member or group of members of such family will be computed according to the portion of the joint family property allotted to him on such partial partition. This amendment has come into force with effect from April 1, 1980 and has, accordingly, been applicable with effect from assessment year 1980-81 and onwards.

Illustration 5:

Ram Manhar & Sons HUF, running Raghuveer Departmental Stores consists of Karta, his wife, two sons and daughter. Both the sons who are having professional/technical qualifications as a Chartered Accountant and as an Automobile Engineer started in partnership, a garage for the repairing of motor cars, with a clear understanding that the technical side of the business be looked after by the Engineer while the general administration and finance part be taken care by the Chartered Accountant. They had taken an interest-free loan of Rs. 5,00,000 from the HUF for starting the venture. The business of garage resulted in a net profit of Rs. 15,00,000 for the year ended 31.03.2022. The Assessing Officer proposes to assess the income from the business of motor garage in the hands of HUF. Examine the validity of the proposition of the Assessing Officer in the light of a decided case law.

Solution:

The facts of the case are similar to that of the case of *CIT v. Charan Dass Khanna & Sons (1980) 123 ITR 194,* where the Delhi High Court observed that if the investment made by the HUF in the business started by the coparceners plays a minor role and it is primarily the personal efforts, specialized skill and enterprise of the individual coparceners which resulted in setting up of a new business and earning of goods profits, then it may not essentially be said that the income belongs to the HUF.

The Supreme Court has also supported this view in the case of *K.S. Subbiah Pillai v. CIT (1999) 237 ITR 11* and held that where the remuneration and commission earned by the Karta were on account of the personal qualifications and exertions and not on account of the investment of the family funds, such income cannot be treated as income of the HUF.

Thus, in the given case, profits were earned primarily because of the specialized skills acquired by both the partners in their respective fields and used in the business of motor garage. The initial capital taken from the HUF as interest free loan, of course, has its role but it is nevertheless a minor one. Therefore, the income from the business set up by the brothers is assessable in their individual hands and not as the income of the family.

Further, the proposition of the Assessing Officer to tax the profits of the business of motor garage earned by the two sons in the hands of the HUF is not valid.

Illustration 6:

Ram (59 years) and his two brothers (Ramesh (57 years) and Somesh (50 years) are engaged in family business of cultivation of wheat. Last year they had losses to the extent of Rs. 12,000 but this year, due to good season the Business earned a Profit of Rs. 2,20,000.

The family owns a house property, the municipal valuation of which is Rs. 280000 and the market rent of similar property is Rs. 2,85,000. The standard rent as per Rent Control Act is Rs. 3,50,000. The family pays Rs. 48,000 for municipal taxes during the previous year out of which Rs. 20,000 pertains to earlier year which could not be paid due to business loss. Interest on capital borrowed for repaying original loan for construction of house Rs. 75,000. Further, the rental income of the property is Rs. 3,10,000.

Dividend received from Indian Company X Ltd. Rs. 12,000.

Interest received on listed debentures Rs.8,10,000 (net).

Compute the total income and Tax liability of the family X (HUF) for the Assessment year 2023-24.

Option 1: Assessee has not opted for Section 115BAC.

Option 2: Assessee has opted for Section 115BAC.

Solution:

Option 1: Assessee has not opted for Section 115BAC

Computation of Total Income of X (HUF) for the Assessment Year 2023-24

Income from House Property	***(Rs.)***
Gross annual Value	3,10,000
Less: Municipal Taxes	(48,000)

Net annual Value	2,62,000
Less: Standard Deduction @ 30% of 2,62, 000	(78,600)
Less: Interest on capital borrowed	(75,000)
Income from House property	**1,08,400**
Income from Business/Profession	
Agricultural income (Exempt)	NIL
Income from other sources	
Dividend received from Indian Company X Ltd.	12,000
Interest on listed debentures	9,00,000
Gross Total Income	**10,20,400**
Less: Deduction under section 80C to 80U	NIL
Total Income	**10,20,400**

Note: The share of Karta and other coparceners in the profits of HUF will be exempt under section 10(2)

Computation of tax on Total Income of X (HUF) for the Assessment Year 2023-24

	Particulars	***Amount***
(a)	Agricultural income (2,20,000-12,000)	2,08,000
(b)	Non-agricultural income	10,20,400
(c)	Total of (a) and (b)	12,28,400
(d)	**Tax payable on (c)**	**1,81,020**
	Tax on first 2,50,000 NIL	
	Tax on next 250,000 @ 5% = Rs. 12,500	
	Tax on next 500,000 @ 20% = Rs. 100,000	
	Tax on remaining income Rs. 2,28,400@ 30% = 68,520	
(e)	Total of agricultural income and basic exemption limit	4,58,000
(f)	Tax payable on (e) (As per slab rates)	10,400
(g)	Net tax payable = (d)-(f)	1,70,620
(h)	*Add:* Health and Education cess of 4% on Rs.170620	6,824
(i)	Total tax (round off)	1,77,440

Option 2: Assessee has opted for Section 115BAC

Computation of Total Income of X (HUF) for the Assessment Year 2023-24

Income from House Property	***(Rs.)***
Gross annual Value	3,10,000
Less: Municipal Taxes	(48,000)
Net annual Value	2,62,000
Less: Standard Deduction @ 30% of 2,62,000	(78,600)
Less: Interest on capital borrowed	NIL
Income from House property	1,83,400
Income from Business/Profession	**(Rs.)**
Agricultural income (Exempt)	NIL
Income from other sources	
Dividend received from Indian Company X Ltd.	12,000
Interest on listed debentures	9,00,000
Gross Total Income	10,95,400
Less: Deduction under section 80C to 80U	NIL
Total Income	**10,95,400**

Note: The share of Karta and other coparceners in the profits of HUF will be exempt under section 10(2).

Computation of Tax on Total Income of X (HUF) for the Assessment Year 2023-24

	Particulars	***Amount***
(a)	Agricultural income (2,20,000-12,000)	2,08,000
(b)	Non-agricultural income	10,95,400
(c)	Total of (a) and (b)	13,03,400
(d)	Tax payable on (c)	1,35,680
	Tax on first 2,50,000 NIL	
	Tax on next 2,50,000 @ 5% = Rs. 12,500	
	Tax on next 2,50,000 @ 10% = Rs. 25,000	
	Tax on next 2,50,000 @ 15 % = Rs.37,500	
	Tax on next 3,03,400 @ 20 % = Rs.60,680	
(e)	Total of agricultural income and basic exemption limit	4,58,000
(f)	Tax payable on (e) (As per slab)	10,400

(g)	Net tax payable = (d)-(f)	1,25,280
(h)	*Add:* Health and Education cess of 4% on Rs.1,10,200	5,011
(i)	Total tax (round off)	1,30,291

Illustration 7:

Ram, 66 years is the karta of a HUF with his two sons Ramesh (39 years) and Somesh (25 years). The family owns a house property, the rental income of the same is Rs. 3,10,000. Family business profits Rs. 2,80,000. Long- term capital gains Rs. 25,000 and short term capital gains for the year Rs.11,000 (STT applicable). Dividend received from Indian Company X Ltd. Rs. 12,000. Interest received on listed debentures Rs.8,000 (gross) Ram invested in PPF Rs. 1,50,000 out of family funds and received share of profits from a firm in which he represented HUF being Karta. Ram gifts Rs. 1,00,000 to family. Salary income of Ramesh Rs. 6,00,000 Interest on Government Securities Rs. 10,000(gross) out of own funds of Ram.

Compute the total income and Tax liability of the family X (HUF) and Ram, Ramesh and Somesh for the Assessment year 2022-23. Assume assesees have not opted for section 115BAC.

Solution:

Computation of Total Income of X (HUF) for the Assessment Year 2023-24

Income from house property	***Amount (Rs.)***
Rent	3,10,000
Less: Standard Deduction @ 30%	93,000
Income from House property	2,17,000
Income from Business/Profession	
Business Profits	2,80,000
A Firm (Exempt)	NIL
Income under the head Capital Gains	
Long-term Capital Gain	25,000
Short term Capital Gain	11,000
Income from other sources	
Dividend received from Indian Company X Ltd.	12,000
Interest received on listed debentures	8,000
Gift (Exempt)	NIL
Gross Total Income	**5,53,000**
Less: Deduction under section 80C to 80U	
Under section 80C (maximum)	1,50,000
Total Income	**4,03,000**

Note : The share of Karta and other coparceners in the profits of HUF will be exempt under section 10(2)

Computation of tax on Total Income of HUF for the assessment year 2023-24

Tax on long-term capital gains (20% of Rs. 25,000)	5,000
Tax on short-term capital gains (15% of Rs. 11,000)	1,650
Balance of Total Income Rs. 3,67,000	5,850
Total tax	**12,500**
Add: Health and Education cess at 4%	500
Total liability (round off)	**13,000**

Note : The share of Karta and other coparceners in the profits of HUF will be exempt under section 10(2)

Computation of taxable income of Ram, Ramesh and Somesh for the assessment year 2023-24

Particulars	***Ram***	***Ramesh***	***Somesh***
Salary Income		6,00,000	
Business Income:			
Profit share in HUF	Exempt	Exempt	Exempt
Income from other sources			
Interest on Government Securities	10,000		
Gross Total Income	**10,000**	**6,00,000**	
Deductions u/s 80C to 80U			
Taxable Income	**10,000**	**6,00,000**	
Tax liability	**NIL**	**33,800**	**NIL**

TAXATION OF FIRMS

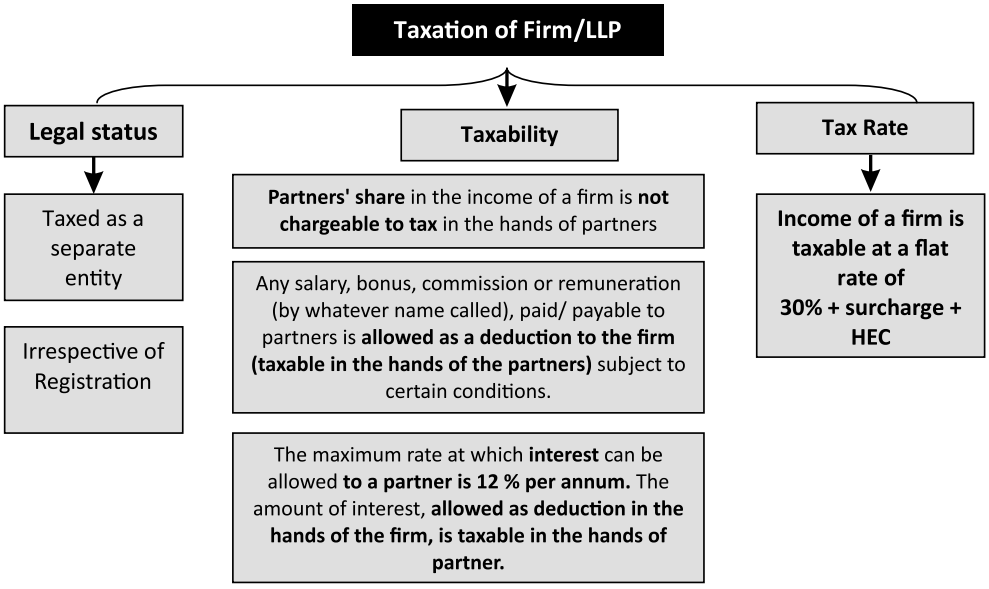
Under Section 2(23) of the Income-tax Act, the terms “firm”, “partner”, and “partnership” have the meanings respectively assigned to them in the Indian Partnership Act, 1932 and Limited Liability Partnership Act, 2008.

The expression “partner” also includes a minor who has been admitted to the benefits of partnership and a partner of a Limited Liability Partnership Act, 2008. However a minor cannot validly enter into any partnership as a ‘full partner’ with other persons but he can be admitted to the benefits of partnership only.

A joint Hindu family as such cannot be a partner in a firm. However, through its Karta it may enter into a valid partnership with a third person or with a member of the undivided family in his individual capacity. In such a case, the Karta occupies a dual position. On the partnership he functions in his individual capacity; on the relations to other members of the Hindu undivided family, in his representative capacity.

An incorporated company being a legal person may form a partnership with an individual or with another company. In considering the maximum number of partners comprising a firm, the company will be considered as one person only.

A partnership firm as such is not entitled to enter into a partnership with another firm, H.U.F., individual, or a company. However, its partners in their individual capacity can enter into another partnership.



Assessment as a Firm [Section 184]

As per the scheme, a partnership firm in the first assessment year shall be assessed as a firm if the following conditions are satisfied:

1. The partnership is evidenced by an instrument, i.e., partnership deed which is to be in writing containing necessary clauses.
2. The individual shares of the partners as specified in that instrument (including how the loss will be borne by major partners in case of a minor admitted for benefits only).
3. A copy of the partnership deed certified by all the partners or their duly authorized agents, in writing (other than the minors) is submitted along with the return of income in respect of which assessment as a firm is first sought.

Where the return is made after the dissolution of the firm, the copy of the partnership deed should be certified in writing by all persons (excluding minors) who were partners of the firm immediately before its dissolution and by the legal representative of any deceased partner.

When a firm is assessed as such for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or in the shares of partners as evidenced by the partnership deed on the basis of which assessment as a firm was first sought.

Where any such change has taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year. In doing so all the provisions of Section 184 will apply to the firm. Further, any change in remuneration or interest to partners is to be notified in the same manner to comply with section 40(b).

Circumstances where the firm will be assessed as a firm but shall not be eligible for deduction on account of interest, salary, bonus, etc.

Where the firm -

(a) fails to make the return required under Section 139(1) and has not made a return or revised return under Section 139(4) or 139(5), or

(b) fails to comply with all the terms of a notice issued under Section 142(1) or fails to comply with a direction issued under Section 142(2A), or

(c) having made a return, fails to comply with all the terms of a notice issued under Section143(2),

(d) does not comply with three conditions mentioned above u/s 184.

then the firm shall not be eligible for any deduction on account of interest to a partner and remuneration to a working partner although the same is mentioned in the partnership deed.

Computation of Income and Tax thereon of Firm

The income of the firm shall be computed as per the normal provisions of the Act under various heads of income excluding incomes exempt from tax and deductions under section 80 as applicable.

Rate of Tax: In the case of a firm which is assessable as such (i.e., as a firm), tax is chargeable on its total income at the rate of 30%.

Surcharge @12% shall be applicable where the total income exceeds Rs. 1 crore.

Health and Education Cess shall be added as 4% of tax plus surcharge. However, firm and LLP is subject to Alternate Minimum Tax 'AMT' under section 115JC (discussed in detail later in this chapter).

Partnership is not a separate entity distinct from the partners, but for tax purposes a partnership is taxed as a separate entity and therefore total income will be computed under various heads of income. A partnership firm is also entitled for deductions under section 30 to 38 for expenditures incurred. However, for payment of remuneration to partners and interest on capital are allowed subject to conditions laid down under section 40(b).

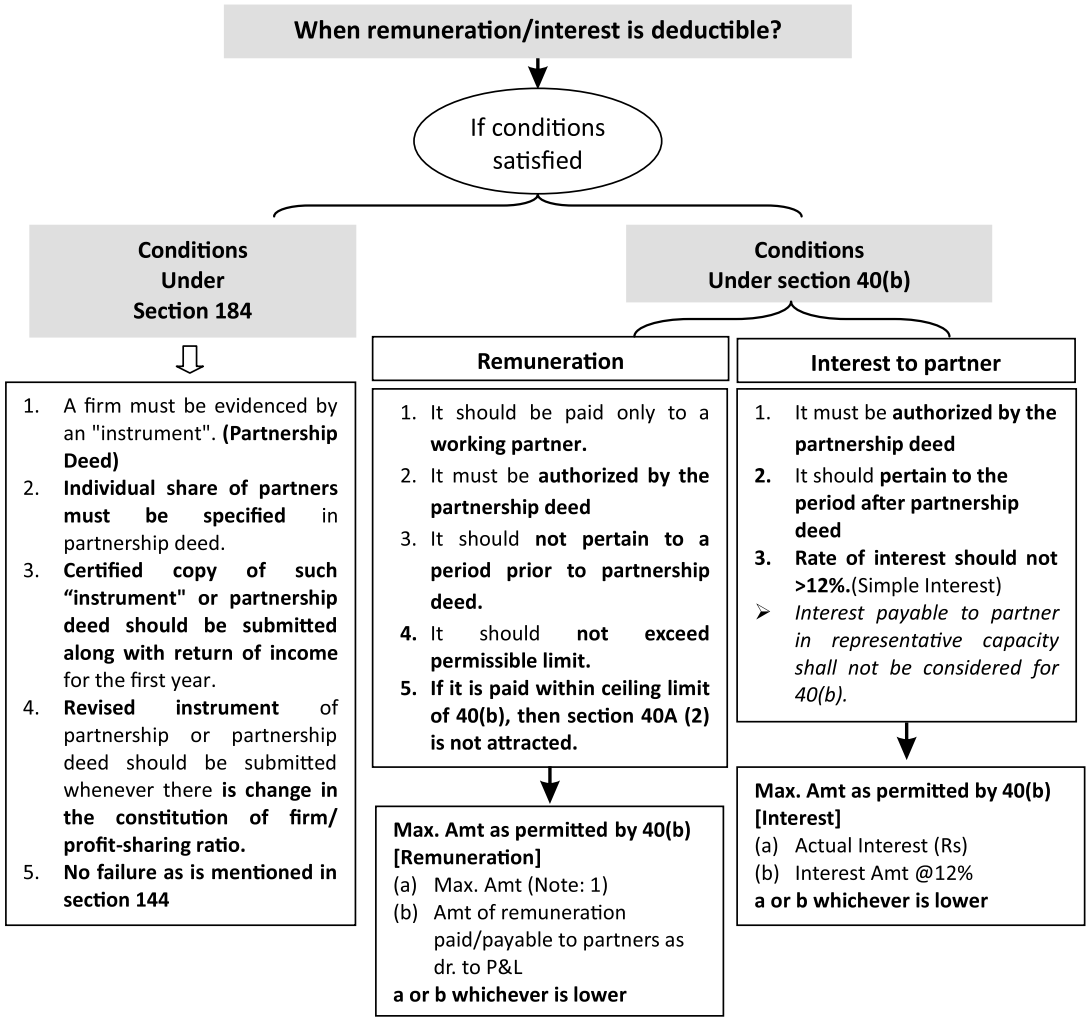
Section 40(b), contains the following conditions which need to be complied with while making payment of remuneration and interest on borrowed capital to the partners:

(i) Payment of salary, bonus, commission or remuneration by whatever name called to a non-working partner shall not be allowed as deduction. Such payments are allowed only to working partners if it is authorised by the partnership deed and are in accordance with partnership deed. Also, such payments should pertain to the period after the partnership deed.

(ii) Interest payable to a partner, authorised by the partnership deed for period after the partnership deed shall be allowable as deduction subject to a maximum of 12% p.a. If the partnership deed provides for interest at less than 12% p.a, the deduction of interest shall be allowed to the extent provided by the partnership deed.

(iii) the payment of remuneration to working partner, although authorised by partnership deed however it is subject to maximum of the following limits.

Uniform limits for both Professional Firms and Non-Professional Firms:	
On the first Rs. 3,00,000 of the book-profit or in case of a loss.	Rs. 1,50,000 or 90% of the book-profit, whichever is more.
On the balance of the book-profit	60% of the book profits.



Meaning of Book Profit [Explanation 3 to section 40(b)]

Book-profit" means the net profit, as shown in the profit and loss account and make the additions and deductions as per section 28 to 44DB explained under the head income from Business and Profession increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit. Interest paid/payable to partners in excess of 12% shall also be disallowed as per section 40(b).

Net profit as per P&L account	**
Add/less: Adjustments as provided by sections 28 to 44DB *Add:* Remuneration to partners if debited to the P&L	
Book profit	**

Note:

a) Income chargeable to tax under the heads "Income from house property"," Capital gains" and "Income from other sources" is not part of "book profit"

b) Brought forward business losses are not to be deducted from "book profit" (Adjust b/f unabsorbed depreciation from earlier years); and for allowing unabsorbed depreciation, b/f business loss shall have to be notionally allowed first from current business income.

c) Permissible deductions from gross total income under sections 80C to 80U shall be ignored for computing "book profit".

d) Interest on FD is a considered to be business income and hence it will be included in book profit. *CIT* v *J.J. Industries* [2013] 216 Taxman 162(Guj.)

CASE 1

D Patel & Associates, a firm carrying on business provides details for the FY 2022-23 stated a book profit before adjusting unabsorbed depreciation and b/f business loss of Rs 185000. However, the unabsorbed depreciation of earlier years and b/f business loss would be Rs 85000 and Rs. 115000 respectively. Kindly advice towards treatment of Brought forward business losses and allowable remuneration under section 40(b).

Solution:

Provision for Brought forward business losses

Brought forward business losses are not to be deducted from "book profit" (Adjust b/f unabsorbed depreciation from earlier years); and for allowing unabsorbed depreciation, b/f business loss shall have to be notionally allowed first from current business income.

Computation of allowable remuneration under section 40(b)

Particulars	***Amount Rs***
Book profit before adjusting unabsorbed depreciation and b/f business loss	185000
Less: B/F business loss (Notional Deduction)	(115000)
Balance	70000
Less: Set off unabsorbed depreciation (To the extent of Rs70000)	(70000)
Balance	0
Add: B/F business loss (Notional Deduction) but not allowed to be set off as carried under section 72	115000
Book Profit	115000
Allowable Remuneration under section 40(b) a) 150000 b) 90% of Book profit (i.e. 90% of 115000) = 103500 Whichever is higher	150000

Summarised provisions of carry forward and set off of loss in the case of Firm		
Points to be noted	• No separate provision of **carry forward and set off of loss of firms.** • **Same as applicable in case of other assesses** • **Losses and unabsorbed depreciation of firm can be carried forward by firm only.**	
Set off and carry forward Change in the constitution of firm.	• Section 78 provides that where there is a change in the constitution of the firm on account of death/ retirement, the firm shall not be entitled to carry forward of so much of the loss as is attributable to such partner. • This provision covers when a partner goes out of the firm (i.e., the case of retirement or death). • It does not cover the case of change in profit-sharing ratio or the case of admission of a partner. • Section 78 is not applicable in **the case of unabsorbed depreciation and unabsorbed capital expenditure on scientific research.**	
Tax Treatment in case of change in constitution of firm	***Step 1:*** Compute Share of outgoing partner in the profit of the firm in the year of change in the constitution of firm	**
	Step 2: Compute the share of loss of outgoing partner in the brought forward loss.	**
	Step 3: Set off share in b/f loss of outgoing partner for his hare of profit of current year.	**

CASE 2

XL and Associates (A firm) having 3 partners sharing profit in the ratio of 2:2:1 provides you the following details for the PY 2021-22.

Profit (Before) setting of b/f loss and depreciation	360000
B/F depreciation for AY 2021-22 (i.e. P.Y 2020-21)	150000
B/F loss of AY 2021-22	200000

You are requested to advice on Tax Treatment in case of change in constitution of firm when one of the partners retired on 31.8.2021 from the firm.

Solution:

Particulars		***Amount***
Step 1: Share of outgoing partner in the profit of the firm in the year of change in the constitution of firm (360000*2/5*5/12) [Period from 1.4.2021-31.8.2021]		60000
Step 2: Share of loss of outgoing partner in the brought forward loss. (200000*2/5)		80000
Step 3: Set off loss to the extent of profit		
Loss	80000	
Less: Set off of profit	(60000)	
Balance of Loss (Can't be carried forward and set off by firm)		20000
Firm is allowed to set off b/f loss (200000-20000) to the extent of		180000

Assessment of Partners

As per Section 10(2A) of the Act, any person who is a partner of a firm which is assessed as such, his share in the total income of the firm will not be included in computing his total income. Partner includes a minor admitted to the benefits of partnership as per Section 2(23) of the Act.

Further, the explanation to Sub-clause (2A) provides that the share of a partner in the total income of the firm assessed as a firm shall be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm (in accordance with the partnership deed) bears to such profits.

In terms of a formula, the amount exempt would be: Partners share in the profit of the firm =as shown in the partnership deed Total Profits of the Firm x Total income of the firm.

Any interest, salary, bonus, commission or remuneration by whatever name called which is due to or received by a partner of a firm from the firm will be chargeable to tax in the hands of the partner (to the extent allowed as deduction to the firm) under the head "profits and gains of business or profession". However, if such salary, interest, bonus, commission or remuneration (or any part thereof) has not been allowed as deduction as per Section 40(b) in the hands of the firm, the amount not allowed as deduction shall not be charged to tax in the hands of partners.

Further, deductions under Sections 32 to 37 can be claimed by a partner from any income where any expenditure was incurred to earn such income.

Succession of one firm by another firm [Section 188]

When all the partners in the predecessor firm are replaced by new partners in the successor firm, it is known as succession of one firm by another firm. If a firm is dissolved and some of the partners take over the firm's business or carry on a similar business with or without new partners, it would be a case of succession by a new firm (62 I.T.R. 75).

In *CIT v. K.H. Chambers (1965) 55 ITR 674*, the Supreme Court laid down the following requisites of succession:

(i) There is a change of ownership.

(ii) The whole business is transferred.

(iii) Substantially the identity and the continuity of the business are preserved.

Where the partnership deed does not provide specifically for continuance of the firm on the death of a partner, there would be no change in constitution of the firm but it would be a case of succession. [*Addl. CIT v. Thyagasundara Mudaliar (1981) 127 ITR 520*].

Where a firm is succeeded by another firm, separate assessments are made on the predecessor and successor firms respectively in accordance with the provisions of Section 170. Section 170 provides that the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession and the successor shall be assessed in respect of the income of the previous year after the date of succession. If the predecessor cannot be found, or the tax assessed on the predecessor cannot be recovered from him for the previous year (in which the succession took place) and the previous year immediately preceding such previous year, the unrealised tax payable by the predecessor shall be recovered from the successor.

However, the successor firm is entitled to recover from the predecessor firm any tax paid by it on behalf of the former. If any tax is due against any partner of the predecessor firm, it cannot be recovered from the successor firm.

Joint and Several Liabilities of Partners for Tax Payable by Firm [Section 188A]

Section 188A provides that every person who was, during the previous year, a partner of a firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable along with the firm for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant, and all the provisions of Income-tax Act, so far as may be, shall apply to the assessment of such tax or imposition or levy of such penalty or other sum.

Firm Dissolved or Business Discontinued [Section 189]

Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the assessment of the total income of the firm shall be made as if no such discontinuance or dissolution had taken place and all the provisions of the Act, including the provisions relating to penalty or any other sum (interest, fine) chargeable under the Act, shall apply. Consequently, every person who was a partner of the firm at the time of discontinuance of business or dissolution of the firm and legal representative of the deceased partner shall be jointly and severally liable to the amount of tax penalty and any other sum. Where the dissolution or discontinuance of business takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the partners or legal representative of a deceased partner from the stage at which the proceedings stood at the time of such dissolution or discontinuance.

Thus, every partner of the firm and the legal representative of the deceased partner is liable to pay the tax which is already due or may have become due after the dissolution, irrespective of his interest in the firm.

However, if there was any irrecoverable amount at the time of dissolution or discontinuance of business and later on it was recovered by the partners, the partners shall personally pay the tax on their share so recovered.

ALTERNATE MINIMUM TAX (AMT) [SECTION 115JC]

<table>
<tr><th colspan="2">Summarized provisions of Alternate Minimum Tax [AMT]</th></tr>
<tr><td>Chapter</td><td>XIIBA (Special provisions relating to certain persons other than a company)</td></tr>
<tr><td>Section</td><td>115JC to 115JF</td></tr>
<tr><td>Applicability
↓
Non corporate Assessee</td><td>
<table>
<tr><th>Non corporate Assessee</th><th>Condition</th></tr>
<tr><td>Individual/HUF/AOP/BOI/AJP</td><td>If Adjusted Total Income (ATI) >Rs 20Lakh</td></tr>
<tr><td>LLP/Any other firm/Any person other than co.</td><td>If claimed deduction
• u/s/ 10AA/80H to 80RRB (Except 80P) for AY 13-14 or 14-15 or
• u/s 10AA/35AD/80H to 80RRB (Except 80P) for AY 15-16 onwards</td></tr>
</table>
</td></tr>
<tr><td>Non Applicability</td><td>• Non Corporate Assessee whose adjusted total income (ATI) is Rs 20,00,000 or less.
• Person who has opted Alternative Tax Regime under section 115BAC/115BAD.</td></tr>
<tr><td>Tax Rate (AMT)</td><td>
<table>
<tr><td>Normal Tax Rate</td><td>18.5% of ATI</td></tr>
<tr><td>Co-Operative Society</td><td>15% of ATI (From AY 23-24)</td></tr>
<tr><td>Units located in IFSC and derived income solely in convertible forex</td><td>9% of ATI</td></tr>
</table>
</td></tr>
</table>

Tax liability	A. Tax on total income as per normal provision of Income Tax Act B. 18.5% (+SC+HEC) of Adjusted Total Income Amount of tax payable = (A) or (B) whichever is higher	
A > B	• Non Corporate has to pay normal income tax • Non Corporate can utilize amount of AMT credit in that year if available. **Maximum Amount of Credit Utilized = A-B**	
A<B	• Non Corporate has to pay AMT u/s 115JC • Non Corporate can only avail AMT credit. **AMT Credit Available = B-A**	
How to compute ATI	Net Income or Total Income	**
	Add: • Deduction under section 10AA • Deduction under section 80H to 80RRB (Except 80P) • Deduction claimed, if any, under section 35AD (as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under section 35AD was allowed in respect of the assets on which the deduction under that section is claimed).	** ** **
	Adjusted Total Income	**
Set off and Carry forward AMT credit	• Not beyond 10th assessment year (up to the assessment year 2017-18) and • **Not beyond 15th assessment year (from the assessment year 2018-19)]** • **From AY 2018-19,** AMT Credit shall not be carried forward to subsequent year to the extent such credit relates to difference between Foreign Tax Credit (FTC) allowed against AMT. • **No interest is payable on AMT credit.** • **AMT can't be adjusted in case of person who has opted for the Alternative Tax regime under section 115BAC/115BAD.**	
Report form CA	The assessee will have to **obtain a report in Form No. 29C electronically from a chartered accountant 1 month** prior to the due date of submission of return **certifying** that the **ATI and AMT have been computed in accordance with the provisions of this Chapter**.	
Other Provisions	Advance tax, interest u/s 234A/B/C shall apply to assessee	

The provisions of section 115JC are applicable to all assessees except companies where the regular income tax payable for a previous year is less than the alternate minimum tax payable for such previous year then the adjusted total income shall deemed to be the total income of that person for such previous year and it shall be liable to pay income tax on such adjusted total income @ 18.5% plus Health and Education Cess @ 4%.

12% surcharge if Adjusted Total income of the firm or LLP exceeds INR 1 crore plus 4% Health & Education cess in all cases. In case of individual surcharge will be 10% if Adjusted Total income of the firm or LLP exceeds INR 50 Lacs and 15% if it exceeds INR 1 crore and 25% if it exceeds INR 2 crores and 37% if it exceeds INR 5 crores.

It is further provided that the provisions of AMT under Chapter XII-BA shall only apply to an individual or a Hindu undivided family or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person if the adjusted total income of such person exceeds **twenty lakh rupees.**

However, AMT is levied @ 9% in case of a non-corporate assessee being a unit located in International Financial Services Centre and deriving its income solely in convertible foreign exchange. For Co-operative Society rate of AMT will be 15% from AY2023-24 onwards. Surcharge and cess as applicable will also be levied. (Applicable from Assessment Year 2020-21)

The regular income tax payable shall be the income-tax payable for a previous year by a person other than a company on his total income in accordance with the provisions of the Act other than the provisions of Chapter XII- BA, i.e., section 115JC to 115JF.

Adjusted total income shall be the total income before giving effect to the provisions of Chapter XII-BA as increased by the deductions claimed under any section 80H to Section 80RRB (other than section 80P) included in Chapter VI-A under the heading "C - Deductions in respect of certain incomes" and deduction claimed under section 10AA. Further, total income shall be increased by the deduction claimed under section 35AD for purpose of computation of adjusted total income. The amount of depreciation allowable under section 32, as if no deduction u/s 35 AD in respect of such assets was allowed, shall however, be reduced in computing the adjusted total income.

Particulars	***(Rs.)***
Taxable income of the taxpayer	XXXX
Add : Amount of deduction claimed under section 80H to 80RRB (except 80P)	XXXX
Add : Amount of deduction claimed under section 35AD (as reduced by the amount of depreciation allowable in accordance with the provisions of section 32)	XXXX
Add : Amount of deduction claimed under section 10AA	XXXX
Adjusted total income	XXXX

The provisions can be summarized as:

1. If regular income tax payable is more than or equal to the alternate minimum tax (18.5% plus Health and Education cess @ 4% of adjusted total income), the regular income tax payable is the tax liability of the assessee.
2. If regular income tax payable is less than the alternate minimum tax (18.5% plus Health and Education cess @ 4% of adjusted total income), the adjusted total income is the deemed income of the assessee for that year and alternate minimum tax is the tax liability.

However, it is also provided that the credit for tax (tax credit) paid by a person on account of AMT under Chapter XII- BA shall be allowed to the extent of the excess of the AMT paid over the regular income-tax. This tax credit shall be allowed to be carried forward up to the fifteen assessment years immediately succeeding the assessment year for which such credit becomes allowable and set off against regular tax liability. In other words, it shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the AMT, to the extent of the excess of the regular income-tax over the AMT.

The amount of AMT credit shall not be allowed to be carried forward to the subsequent year to the extent such credit relates to the difference between the amounts of foreign tax credit (FTC) allowed against AMT and FTC allowable against the tax computed under regular provisions of the Act.

Every person to which this section applies shall obtain a report, before the specified date referred to in section 44AB, in such form as may be prescribed, from an accountant referred to in the Explanation below sub-section (2) of section 288, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report by that date. [Inserted by Finance Act, 2020]

All other provisions of the Act, like advance tax, interest u/s 234A/B/C shall apply to assessee who is liable to pay AMT.

The provisions of AMT shall not apply to a person who has exercised the option referred to in section 115BAC or section 115BAD. [Finance Act, 2020]

Illustration 8:

A, B and C are the partners for 3:2:1 share respectively, in a firm engaged in medical profession. Compute the total income of the firm for the year ended 31st March, 2023:

Particular	*Rs.*	*Particular*	*Rs.*
Office Expenses	15,400	Gross Profit	40,000
Income Tax	1,000	Net Loss A	8,700
Salary to A	5,000	Net Loss B	5,800
Salary to B	4,000	Net Loss C	2,900
Salary to C	10,000		
Bonus to A	10,000		
Bonus to B	12,000		
Total	**57,400**	**Total**	**57,400**

Solution:

Computation of Book Profit of the Firm	*Rs.*	*Rs.*	*Rs.*
Net Loss as per P & L A/c			(17,400)
Add: Inadmissible Expenses:			
Income-tax		1,000	
Salary to partners:			
A	5,000		
B	4,000		
C	10,000	19,000	

Bonus to partners			
A	10,000		
C	12,000	22,000	42,000
Book Profit			**24,600**

Permissible Remuneration to Partners

90% of first Rs. 3,00,000 of Book-profit or Rs. 1,50,000 whichever is more, is allowed as deduction. Here the permissible remuneration comes to Rs. 1,50,000, but as the partners have claimed Rs. 41,000 only, hence the entire amount will be allowed.

Computation of total income of the firm

Book Profit		***24,600***
Less: Salary to Partners	19,000	
Bonus to Partners	22,000	(41,000)
Loss of the Firm		(16,400)

Note: Loss of the firm will be carried forward by the firm to the next year(s).

Illustration 9:

M, N and O are partners sharing profits and losses in the ratio of 2:1:1 respectively. Their summarised Profit and Loss A/c for the year ending 31st March, 2023 is appended below:

Particulars	***Amount Rs.***	***Particulars***	***Amount Rs.***
Office salaries	5,680	Gross Profit	60,570
Telephone and Telegram	2,000	Rent received	6,000
Interest on loan from M	2,000	Interest on securities	4,000
Local taxes (let out property)	1,000		
Salary to N	3,000		
Commission to partners			
M	4,000		
N	5,000		
O	6,000		
Collection charges of interest on securities	50		
Bad debts reserve	1,000		

Net Profit to partners:			
M	20,420		
N	10,210		
O	10,210		
Total	**70,570**	**Total**	**70,570**

Compute total income of the firm for the assessment year 2023-24 and tax liability thereon. Interest paid to M has been calculated at the rate of 20% p.a.

Solution:

Computation of Book-Profit

Particulars	***Rs.***	***Rs.***
Net Income as per P & L A/c		40,840
Add: Inadmissible items -		
Local taxes (on let out property)	1000	
Salary to N (Partner)	3000	
Commission to partners	15,000	
Collection charges	50	
Bad debts reserve	1,000	20,050
		60,890
Less: Other Incomes -		
Rent received	(6,000)	
Interest on securities	(4,000)	(10,000)
Book Profit		50,890

Maximum remuneration payable to partners

Here Rs. 1,50,000 will be allowed as maximum remuneration. But as the partners have drawn only Rs. 18,000 by way of salary and commission, the entire amount will be allowed as deduction.

Computation of Total Income of the Firm [Assessment Year 2023-24]

Particulars	***Rs.***	***Rs.***
Book Profit:		50,890
Less : Salary and commission to partners		(18,000)
– Taxable Business Profit		32,890
– Income from house property		
Rent received		6,000
Less : Municipal taxes		(1,000)

Net adjusted annual value (NAAV)		5,000
Less : Repairs (30% of NAAV) u/s 24		(1,500)
Income from House Property		3500
– Income from other sources:		
Interest on Securities	4,000	
Less: Collection charges	(50)	3,950
Gross Total Income (32,890 + 3,500 + 3,950)		40,340

The firm will have to pay tax on Rs. 40,340 @ 30%, which comes to Rs. 12,102 plus health and education cess @ 4% on 12,102 making the total liability as Rs. 12,586.

Illustration 10:

Compute tax liability of the firm X & Co. for the assessment year 2023-24 considering the provisions of Section 115JC. The business income of the firm is Rs. 21,00,500 before deduction under section 32 and before deduction under section 35AD Rs. 11,00,000, because of which depreciation of Rs. 40,000 cannot be claimed. Deduction under section 80IB Rs. 1,00,000. Donation paid to a political party Rs. 85,000.

Solution:

Particulars	***Rs.***
GTI - Business Income (Rs. 21,00,500 less 11,00,000)	10,00,500
Less: Deductions	
Under section 80IB	1,00,000
Under section 80GGC	85,000
Net Income	8,15,500
Tax on Rs. 8,15,500 @ 30%	2,44,650
Add : Health and Education Cess @ 4%	9786
Tax liability	2,54,436
Adjusted total income and alternate minimum tax for the purpose of section 115JC	
Net Income	8,15,500
Add: Under section 80IB	1,00,000
Add: under section 35AD (Rs. 11,00,000 less 40,000)	10,60,000
Adjusted total income	19,75,500
AMT on Rs. 19,75,500 @ 18.5%	3,65,467
Add: Health and Education Cess @ 4%	14,618

AMT liability	3,80,085
AMT liability (round off)	3,80,090
Tax payable is Rs. 3,80,090 being higher of tax liability Rs. 2,54,436 and AMT Rs. 3,80,090.	

Illustration 11:

Income & Expenditure A/c of Lawyers & Co. for the year ending March 31, 2023

Particulars	*Amount (Rs.)*	*Particulars*	*Amount (Rs.)*
To Expenses	1,50,000	By Professional Receipts	3,80,000
To Depreciation	20,000	By Other fees	90,000
To Remuneration to partners	1,50,000		
Interest on Capital to partners @ 20 per cent	20,000		
To Net Profit	1,30,000		
Total	**4,70,000**	**Total**	**4,70,000**

Other Information:

1. Expenses include Rs. 18,000 and Rs. 12,000 paid in cash as brokerage to a single party on a single day.
2. Depreciation calculated as per section 32 is Rs. 40,000.

Compute the Total Income of the Firm.

Solution:

Computation of Total Income of Lawyers & Co. for A. Y. 2023-24

Particulars		*Amount Rs.*
Net profit as per profit and loss account		1,30,000
Add : Expenses not allowable		
Section 40A(3)- Cash payments to a broker exceeding Rs. 10,000 (Note 1)	30,000	
Section 40(b)-Excess interest on capital to partners 20%-12%,i.e., (20000*8/20) (Note 2)	8,000	38,000
Add : Remuneration to partners debited to profit and loss account		1,50,000
Less : Depreciation u/s 32 (Rs. 40,000 - Rs. 20,000 debited in profit and loss account)		(20,000)
Book profit (Note 3)		2,98,000

Maximum permissible remuneration (higher of the two : (i.e., 90 per cent of Rs. 2,98,000 or Rs. 1,50,000) OR	2,68,200	
Actual (Subject to actual)	1,50,000	(1,50,000)
Business Income of the Firm		1,48,000
Tax Liability (30% of 1,48,000)		44,400
Add : Health and Education Cess @ 4%		1,776
Total Tax Liability		**46,176**

Notes :

1. As per section 40A(3) of the Act, if the aggregate payment made (otherwise than by an account payee cheque/draft) to the same person during a day exceeds Rs. 10,000/- the entire amount of such payment is disallowed.
2. As per section 40 (b) of the Act, if the interest payable to the partners exceeds simple interest of 12% per annum, the excess amount is not deductible.
3. The remuneration paid to the working partners cannot exceed the permissible limits specified under section 40 (b) of the Act.

Illustration 12:

Mr. X, carrying on the business of operating a warehousing facility for storage of sugar, has a total income of Rs. 80 lakh. In computing the total income, he had claimed deduction under section 35AD to the tune of Rs. 70 lakh on investment in building (on 1.4.2021) for operating the warehousing facility for storage of sugar. Compute his tax liability for A.Y. 2023-24. Show the calculations of Alternate Minimum Tax also.

Option 1 : Assessee has not opted for Section 115BAC

Option 2 : Assessee has opted for Section 115BAC

Solution:

Option1: Assessee has not opted for Section 115BAC

Computation of Tax payable by Mr. X for AY 2023-24

Computation of Normal Tax

Particulars	***Amount (Rs. in lakh)***
Tax liability under the normal provisions of the Income-tax Act, 1961	22.125
Add: Surcharge @ 10% of Total income > 50 lacs	2.2125
Add: Health and Education Cess @ 4% of 24.3375	0.9735
Total Tax Liability	**25.311**

Computation of Alternate Minimum Tax

Particulars	*Amount (Rs. in lakh)*
Adjusted Total Income	80.00
Add : Deduction under section 35AD	70.00
Less : Depreciation under section 32	(7.00)
Adjusted Total Income	143.00
AMT @18.5%	26.46
Surcharge @ 15% (since adjusted total income> Rs. 100 lakh)	3.97
Tax	30.43
Add: Health and Education Cess @ 4%	1.217
Total tax Liability	**31.647**

Since the regular income tax payable is less than the AMT payable, the adjusted total income of Rs. 143 lakhs shall be deemed to be the total income of Mr. X and tax is payable @18.5% thereof plus surcharge @ 15% and cess @4%. Therefore, tax liability is 31.647 lakhs.

However, Mr. X would be eligible for credit in 15 subsequent years to the extent of difference between the AMT and Normal Tax, i.e. Rs., 6.336 lakhs.

Option 2: Assessee opted for Section 115BAC

Computation of Tax payable by Mr. X for AY 2023-24

Computation of Normal Tax

Particulars	*Amount (Rs. in lakh)*
Tax liability under the normal provisions of the Income-tax Act, 1961	21.375
Add: Surcharge @ 10% of Total income > 50 lacs	2.1375
Add: Health and Education Cess @ 4% of 23.5125	0.9405
Total Tax Liability	**24.453**

Note: Alternate Minimum Tax is not applicable if assessee covered u/s 115BAC

Illustration 13:

Mr. A, 42 years, and Mr. B , 50 years, are equal partners in a partnership firm AB and Co. engaged in furniture business. From the profit and loss account of the firm compute net income and tax liability of the firm as well as the partner's for the assessment year 2023-24.

Profit and Loss Account

For the year ending March 31, 2023

Particulars	*Amount (Rs.)*	*Particulars*	*Amount (Rs.)*
Cost of goods sold	5,10,000	Sales	1,90,0000
Salary to staff	6,00,000	Long term capital gain	1,00,000

Depreciation	1,20,000	Lottery prize	35,000
Fees for technical service	40,000	Other business receipts	1,47,000
Remuneration to partners A 140000 B 60000	2,00,000		
Other Expenses	2,10,000		
Interest on capital@20%			
A 43000			
B 60000	10,3000		
Provision for bad debts	10,000		
Net profit	3,89,000		
Total	2,18,2000	Total	2,18,2000

Other Information

1) Remuneration and interest to partners is paid as per partnership deed
2) Depreciation as per income tax rules Rs. 100000
3) Firm paid bonus to employees Rs. 20,400 relating to last year on 15-12-2022.
4) Other expenses include donation to approved charitable institution for the purpose of family planning Rs. 45,000.
5) Fees for technical services are paid out of India wherein TDS rules apply. Tax has been deducted at source on time on 31 July, 2022 but it is deposited to Government 21 days late on 28 August, 2022.
6) The firm complies with conditions of section 184 and 40(b)
7) Income and investments of Mr. A and Mr. B are as follows:

Particulars	***Mr. A (Rs.)***	***Mr. B (Rs.)***
Interest on Government Securities	60,000	56,000
Interest on Bank Deposit (gross)	4,500	5,000
Dividend from Indian Company	20,000	22,000
Contribution to PPF	1,00,000	1,10,000
Interest on listed Debentures (net)	6,300	6,300

8) Mr. A received gift of Rs. 80,000 from a friend.
9) Assessee has not opted for section 115BAC

Solution:

Computation of Total Income of AB and Co. for the Assessment Year 2023-24

Calculation of Business Income

Particulars	***Amount (Rs.)***
Net Profit as per P&L A/C	3,89,000
Add: Inadmissible Expenses	
Excess depreciation [120000-100000]	20,000
Remuneration to partners	2,00,000
Interest on capital in excess of 12% p.a.	
A: 43000*8/20 = 17200	
B: 60000*8/20 = 24000	41,200
Provision for bad debts	10,000
Donations	45,000
Less: Admissible Expenses	
Bonus to employees	(20,400)
Less: Income taxable under head capital gain and other sources	
LTCG	(1,00,000)
Lottery prize	(35,000)
Book profit	5,49,800
Less: Remuneration to partners	
On First 3,00,000 of book profit @90%	=2,70,000
Balance 2,34,800 @60%	=1,40,880
4,10,880 or Rs. 2,00,000 whichever is less	(2,00,000)
Business Income	3,49,800
Income under the head capital gain [LTCG]	1,00,000
Income from other sources	
Lottery prize 35,000*100/70	50,000
Gross total income	4,99,800
Less: Deduction u/s 80	
80G [100% of 45,000 or 10% of {4,99,800 – 1,00,000}]	(39,980)
Taxable Income	**4,59,820**

Share of A and B in the income of the firm Rs. 2,29,910 (4,59,820/2)

Computation of Tax on Total Income of AB and Co. for the Assessment Year 2023-24

Particulars	*Amount*
Tax on winning from lotteries (30% of Rs. 50,000)	15,000
Tax on long-term capital gains (20% of Rs. 1,00,000)	20,000
Balance of Total Income 3,09,820 @ 30%	92,946
Total tax	1,27,946
Add: Health and Education Cess @ 4%	5,118
Total liability	**1,33,064**

Rs. 1,33,060 (round off, subject to setoff of TDS for winning from lotteries)

Computation of Taxable Income of partners for the Assessment Year 2023-24

Particulars	*A (Rs.)*	*B (Rs.)*
Business Salary		
Remuneration	1,40,000	60,000
Interest on capital	25,800	36,000
Profit share in firm	Exempt	Exempt
Income from other sources		
Interest on Government securities	60,000	56,000
Interest on Bank deposits	4,500	5,000
Dividend from Indian companies	20,000	22,000
Interest on listed debentures (6,300*100)/90	7,000	7,000
Gift from a friend	80,000	-
Gross Total Income	3,37,800	1,86,000
Deductions u/s 80-80C PPF	1,00,000	1,10,000
Taxable Income	2,37,800	76,000
Tax liability	NIL	NIL
TDS amounting to Rs. 700 to be claimed for refund		

Illustration 14:

Mr. A (40 years) and Mr. B (49 years) are equal partners in a firm of Chartered Accountants, AB Co. On April 1, 2022 they amended their partnership deed and provided for salary and interest to partners as follows:

Particulars	*Amount (Rs.)*
Salary to A	2,50,000 p.a.
Salary to B	3,00,000 p.a.
Interest to A and B	24 % p.a.

From the income and expenditure account of the firm compute net income and tax liability of the firm as well as the partner's for the assessment year 2023-24. Assesee has not opted for section 115BAC.

Income and Expenditure Account For the year ending March 31, 2023

Particulars	*Amount (Rs.)*	*Particulars*	*Amount (Rs.)*
Office expenses	2,51,000	Receipts from clients	8,40,000
Salary to staff	82,000	Interest on drawings	3,500
Income Tax	39,000		
Salary to A	2,50,000		
Salary to B	3,00,000		
Interest on loan to minor son of X @15%	6,000		
Interest on capital@24%			
A 17000			
B 19000	36,000		
Net profit	1,14,500		
Total	**843500**	**Total**	**8,43,500**

Other Information

1) Office expenses include expenses not deductible under sections 30 to 37 Rs. 48,000.
2) The firm does not comply with conditions of section 184 and 40(b)
3) The firm sells a capital asset on August 10, 2021 and LTCG on the same amounts to Rs. 5,50,000.
4) The firm has received funds from minor son of X as loan.
5) Income and investments of Mr. A and Mr. B are as follows:

Particulars	*Mr. A (Rs.)*	*Mr. B (Rs.)*
Investment in 5% Government Loan	12,00,000	11,20,000
Interest from Post office savings bank	4,500	5,000
Medical Insurance Premium	12,000	15,000
Dividend from Foreign Companies	40,000	30,000

Solution:

Computation of Total Income of AB and Co. for the Assessment Year 2023-24

Calculation of Business Income

Particulars	*Rs.*
Net Profit as per P&L A/C	1,14,500
Add: Inadmissible Expenses	
Income Tax	39,000

Salary to A	2,50,000
Salary to B	3,00,000
Interest on capital in excess of 12% p.a.	
A: 17000*12/24 8,500	
B: 19000*12/24 9,500	18,000
Book profit	7,21,500
Less: Remuneration to partners (not allowed as conditions of section 184 &40(b) are not met)	NIL
Business Income	7,21,500
Taxable Income	7,21,500

Share of A and B in the income of the firm Rs. 7,21,500/2= 3,60,750

Computation of tax on Total Income for the Assessment Year 2023-24

Particulars	***Amount***
Tax on Rs. 7,21,500@30%	2,16,450
Add: Health and Education Cess @ 4%	8,658
Total liability	2,25,108
Total (round off)	2,25,110

Computation of taxable income of partners for the Assessment Year 2023-24

Particulars	***A***	***B***
Business Salary		
Remuneration	–	–
Interest on capital	–	–
Profit share in firm	Exempt	Exempt
Income from other sources		
Interest on Government Loan (5% of 12,00,000; 5% of 11,20,000)	60,000	56,000
Interest on Post office savings bank (exempt upto Rs. 3500 u/s 10(15)(i)	1,000	1,500
Dividend from Foreign companies	40,000	30,000
Gross Total Income	1,01,000	87,500
Deductions u/s 80		
80D Mediclaim Insurance	12,000	15,000
Taxable Income	89,000	72,500
Tax liability	NIL	NIL

CASE 1

Tax on total income as per normal provision of Income Tax Act is Rs. 205000 and AMT is Rs. 305000. Compute the tax liability and implications assuming Foreign Tax Credit (FTC) will be Rs. 45000 and Rs. 60000 attributable to Normal provision and AMT respectively.

Solution:

Computation of tax liability and adjustment of FTC

Particulars	***Amount***	***Amount***
Tax on total income as per normal provision of Income Tax Act	205000	
Less: FTC attributable to Normal Tax	(45000)	
A. Tax on total income as per normal provision of Income Tax Act		**160000**
Alternate Minimum Tax	305000	
Less: FTC attributable to AMT	(60000)	
B. Tax as per AMT		**245000**
Amount of tax payable = (A) or (B) whichever is higher		**245000**
Tax Implications:		
A<B ➢ Non Corporate has to pay AMT u/s 115JC ➢ Non Corporate can only avail AMT credit. AMT Credit Available = B-A = 245000-160000 = **Rs. 85000**		

CASE 2

The taxable income for the year 2022-23 of Mr. Shah (resident and age 40 years) computed as per the provisions of Income-tax Act is Rs. 28,40,000. The taxable income has been computed after deduction of Rs. 2,00,000 under section 80QQB in respect of royalty on books. Compute the tax liability and tax implications with reference to AMT assuming Mr. Shah does not opt to be taxed under section 115BAC/BAD.

Solution:

Check the eligibility	
Applicable to Non-Corporate Assessee (i.e. Mr Shah)	Yes
If claimed deduction ● u/s/ 10AA/80H to 80RRB (Except 80P) for AY 13-14 or 14-15 or ● u/s 10AA/35AD/80H to 80RRB (Except 80P) for AY 15-16 onwards	Yes
ATI > Rs 2000000 (i.e. 30,40,000 Refer Note:2)	Yes
Provision of AMT apply	**Yes**

Computation of Adjusted Total Income (ATI)	
Net Income or Total Income	28,40,000
Add:	
• Deduction under section 10AA	Nil
• Deduction under section 80H to 80RRB (Except 80P) (i.e. 80QQB)	2,00,000
• Deduction claimed, if any, under section 35AD (as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under section 35AD was allowed in respect of the assets on which the deduction under that section is claimed).	Nil
Adjusted Total Income (ATI)	**30,40,000**

A	Tax on total income as per normal provision of Income Tax Act	6,91,080

Tax on 28,40,000	6,64,500
Less: Rebate u/s 87A	N.A
Balance	6,64,500
Add: Surcharge	N.A.
Tax and Surcharge	6,64,500
Add: HEC@4%	26,580
Total Tax Payable	**6,91,080**

B	18.5% (+SC+HEC) of Adjusted Total Income	5,84,896

18.5% on 30,40,000	5,62,400
Add: Surcharge	N.A.
Tax and Surcharge	5,62,400
Add: HEC@4%	22,496
Total Tax Payable	**5,84,896**

Amount of tax payable = (A) or (B) whichever is higher	**6,91,080**

Tax Implications

A > B	➢ Non Corporate (i.e. Mr. Shah) has to pay normal income tax ➢ Non Corporate can utilize amount of AMT credit in that year if available. **Maximum Amount of Credit Utilized = A-B** = 6,91,080 - 5,84,896 = **1,06,184**

CASE 3

The taxable income for the financial year 2022-23 of Mr. Jay (resident and age 35 years) computed as per the provisions of Income-tax Act is Rs. 20,84,000. The taxable income has been computed after deduction of Rs. 5,00,000 under section 80JJA. Will he be liable to AMT? What will be his tax liability for the year? Assuming Mr. Jay does not opt to be taxed Under section 115BAC/BAD.

Solution:

Check the eligibility	
Applicable to Non-Corporate Assessee (i.e. Mr. Jay)	Yes
If claimed deduction • u/s/ 10AA/80H to 80RRB (Except 80P) for AY 13-14 or 14-15 or • u/s 10AA/35AD/80H to 80RRB (Except 80P) for AY 15-16 onwards	Yes
ATI >Rs2000000 (i.e. 25,84,000 Refer Note:2)	Yes
Provision of AMT apply	**Yes**

Computation of Adjusted Total Income (ATI)	
Net Income or Total Income	**20,84,000**
Add:	
• Deduction under section 10AA	Nil
• Deduction under section 80H to 80RRB (Except 80P) (i.e. 80JJA)	5,00,000
• Deduction claimed, if any, under section 35AD (as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under section 35AD was allowed in respect of the assets on which the deduction is claimed).	Nil
Adjusted Total Income (ATI)	**25,84,000**

A	Tax on total income as per normal provision of Income Tax Act	**4,55,208**

Tax on 20,84,000	4,37,700
Less: Rebate u/s 87A	N.A
Balance	4,37,700
Add: Surcharge	N.A.
Tax and Surcharge	4,37,700
Add: HEC@4%	17,508
Total Tax Payable	**4,55,208**

B	18.5% (+SC+HEC) of Adjusted Total Income	**4,97,162**

18.5% on 25,84,000	4,78,040
Add: Surcharge	N.A.
Tax and Surcharge	4,78,040
Add: HEC@4%	19,122
Total Tax Payable	**4,97,162**

Amount of tax payable = (A) or (B) whichever is higher	**4,97,162**

Tax Implications

A<B

- Non Corporate (i.e. Mr Jay) has to pay AMT u/s 115JC
- Non Corporate (i.e. Mr Jay) can only avail AMT credit.

AMT Credit Available = B-A = 497162-455208 =Rs 41,954

CASE 4

The tax liability of SP Enterprises (a partnership firm) for the financial year 2022-23 under the normal provisions of the Income-tax Act is Rs. 8,40,000 and the liability as per the provisions of AMT is Rs. 10,00,000. Will it be entitled to claim any AMT credit in the subsequent year(s)?

Solution:

A	Tax on total income as per normal provision of Income Tax Act	840000
B	18.5% (+SC+HEC) of Adjusted Total Income	1000000
Amount of tax payable = (A) or (B) whichever is higher		**1000000**

Note: Tax Implications

A<B

- Non Corporate has to pay AMT u/s 115JC
- Non Corporate can only avail AMT credit.

AMT Credit Available = B-A = 1000000-840000 = **Rs. 160000**

CASE 5

The taxable income for the financial year 2022-23 of Mr. Dixy (resident and age 35 years) who established **unit located in IFSC** and derived income solely in convertible forex computed as per the provisions of Income-tax Act is Rs. 20,84,000. The taxable income has been computed after deduction of Rs. 5,00,000 under section 80JJA. Will he be liable to AMT? What will be his tax liability for the year? Assuming Mr. Jay does not opt to be taxed under section 115BAC/BAD.

Check the eligibility

Applicable to Non-Corporate Assessee (i.e. Mr Jay)	Yes
If claimed deduction • u/s/ 10AA/80H to 80RRB (Except 80P) for AY 13-14 or 14-15 or • u/s 10AA/35AD/80H to 80RRB (Except 80P) for AY 15-16 onwards	Yes
ATI >Rs. 2000000 (i.e. 25,84,000 Refer Note:2)	Yes
Provision of AMT apply	**Yes**

Computation of Adjusted Total Income (ATI)	
Net Income or Total Income	20,84,000
Add: • Deduction under section 10AA • Deduction under section 80H to 80RRB (Except 80P) (i.e. 80JJA) • Deduction claimed, if any, under section 35AD (as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under section 35AD was allowed in respect of the assets on which the deduction is claimed).	 Nil 5,00,000 Nil
Adjusted Total Income (ATI)	**25,84,000**

A	Tax on total income as per normal provision of Income Tax Act	**4,55,208**

Tax on 20,84,000	4,37,700
Less: Rebate u/s 87A	N.A
Balance	4,37,700
Add: Surcharge	N.A.
Tax and Surcharge	4,37,700
Add: HEC@4%	17,508
Total Tax Payable	**4,55,208**

B	**9%** (+SC+HEC) of Adjusted Total Income	**2,41,862**

9% on 25,84,000	2,32,560
Add: Surcharge	N.A.
Tax and Surcharge	2,32,560
Add: HEC@4%	9,302
Total Tax Payable	**2,41,862**

Amount of tax payable = (A) or (B) whichever is higher	**4,55,208**

Tax Implication	
A > B	➢ Non Corporate (i.e. Mr. Dixy) has to pay normal income tax ➢ Non Corporate can utilize amount of AMT credit in that year if available. **Maximum Amount of Credit Utilized = A-B** = 455208 - 241862 = 213346

TAXATION OF ASSOCIATION OF PERSONS / BODY OF INDIVIDUALS

'Association of Persons' has not been defined in the Income-tax Act. However in the case of *CIT v. Indira Balkrishna [(1960) 39 ITR 546*] the Supreme Court has defined it as:

"**Association of Persons**" means an association in which two or more persons join in for a common purpose or common action to produce income, profits or gains.

An association of persons may consist of non-individuals (Companies, Firms, Joint Families) [*Ipoth v. CIT (1968) 67 ITR 106 (S.C.)*]. A minor can join an AOP if his lawful guardian gives his consent. [*Murugesan & Bros. v. CIT (1973) 88 ITR 432 (SC)*].

Applying the ratio laid down by the Supreme Court in the case of *G Murugesan and Bros. v. Commissioner of Income- tax (1973, 88 ITR 432)*, the Kerala High Court held in the case of *Commissioner of Income-tax* v. *Goel Dalal and Perin C. Dalal* (1990, 184 ITR 248) that in order to acquire the status of an association of persons, the persons must join in a common purpose or action and the object of the association must be to produce income. It is not enough that the persons receive the income jointly.

For the formation of an AOP, the association need not necessarily be on the basis of a contract, consent and understanding may be presumed [*Shanmugham & Co. v. CIT(1971) 81 ITR 310 (S.C.)*].

Applying the ratio laid down by the Supreme Court in the case of *N.V. Shanmugham & Co. v. Commissioner of Income- tax (1971, 81 ITR 310)* the Calcutta High Court held in the case of *Gopal Chand Sen v. Income-tax Officer and others (1977, 109 ITR 820)* that an assessment of business income has to be done in the hands of receivers and in such an assessment, the receivers are never assessed as independent earners of income. The income in the hands of the receiver is assessable in the like manner and to the same extent as it would have been assessed on the real owners.

However, co-owners, co-heirs or co-legatees do not constitute an AOP in respect of the income of the joint or common asset by reason only of their jural relationship. But if they write themselves with the objective of earning income they constitute an AOP for assessment purposes. [*Estate of Mohamed Rowther v. CIT (1963, 49 ITR 39)*]. Section 26 of the Income-tax Act provides that where property consisting of building or buildings and lands appurtenant thereto is owned by two or more persons in definite and ascertainable shares, such persons shall not, in respect of such property be assessed as an AOP, but on their respective share of income therefrom.

In order to constitute an association of persons, there must be joining together in a common purpose or in a common action, the object of which is to produce income, profits and gains. Though a body of individuals is not identical with an association of persons, they have some similarities. An association of persons may consist of non-individuals also but a body of individuals has to consist only of human beings. The word 'body' would require an association for some common purpose or for a common cause or there must be unity under some common tie or occupation. A mere collection of individuals without a common tie or common aid cannot be taken to be a body of individuals failing under Section 2(31) of the Income-tax Act, 1961. [See *CIT v. Deghamwala Estates (1980, 121 ITR 684)*].

Tax Liability of Association of Persons / Body of Individuals

With effect from assessment year 1989-90, the following provisions are applicable to assessees other than companies, co-operative societies and societies registered under the Societies Registration Act, 1860 or any law corresponding to that Act in force in any part of India.

(1) Interest paid by the AOP to a member will not be allowed as deduction from the income of the AOP [(Section 40(ba)]. In cases where interest is paid by the AOP to any member, who has also paid interest to the AOP, the amount of interest, that will be disallowed, is the amount of interest paid by the AOP to the member less the amount of interest paid to the AOP by the member [(Explanation 1 to section 40(ba)].

(2) In cases where an individual is a member of an AOP in a representative capacity, any interest paid by the AOP to such individual or by such individual to the AOP, otherwise than in a representative capacity will not be subject to disallowance under explanation 2(i) to Section 40(ba).

(3) In the cases of interest paid by AOP to such individual or by such individual to the AOP in a representative capacity any interest paid by the AOP to the person represented by such person or vice versa, will not be allowed under Section 40(ba) [Explanation 2(ii) to Section 40(ba)].

(4) Explanation 3 to Section 40(ba) further provides that where an individual is a member of the AOP otherwise than as member in a representative capacity, any interest paid by the AOP to such individual will not be disallowed if the interest is received by him on behalf of any other person.

(5) Any salary, bonus, commission or remuneration (by whatever name called) paid by the AOP to a member will not be allowed as a deduction.

Section 167B makes the following provisions as regards the incidence of charge of tax on the association of persons.

A. Where Shares of Members are Determinate

In this case, tax is chargeable on the income of the association of persons at the same rate as applicable to an individual. However, where the total income of any member of the association of persons for the previous year (excluding his share of income from the association of persons) exceeds the maximum amount not chargeable to tax in the case of an individual, tax will be charged on the total income of the AOP at the maximum marginal rate of 30%, i.e., the highest slab applicable to an individual.

More so, where the total income of any member of the AOP, irrespective of whether or not it exceeds the maximum amount not chargeable to tax in the case of an individual, is chargeable to tax at a rate higher than the maximum marginal rate (e.g. foreign company), tax will be charged on the total income of the AOP at such higher rate for that portion of the income of AOP which relates to the share of such member and the balance of income at a maximum marginal rate of tax.

Note:

1. Some incomes are taxable at special rates.
2. Provisions of alternate minimum tax under section 115JC to 115JF shall apply.

Illustration 15:

Mr. A, Mr. B and a foreign company X Ltd. are members of a AOP sharing profits and losses in the ratio of 2:2:1. The total income of the AOP is Rs. 2,50,000 including long term capital gains Rs. 40,000. Calculate tax liability of the AOP for AY 2022-23.

Solution: Foreign Company X Ltd. is taxable at a rate higher than maximum marginal rate (i.e., 40%)

Tax on LTCG	40,000 at 20%	8,000
Tax on share of X Ltd. (2,10,000 *40%*1/5)		16,800
Balance	(2,10,000 *40%*1/5)	50,400
Total Tax		75,200
Add Cess (4%)		3,008
Tax liability		78,208
Total		**78,210 (round off)**

B. Where the Shares of the Members are Indeterminate

In this case, tax will be charged on the total income of the AOP at the maximum marginal rate, that is, the rate of tax as well as surcharge, if any, applicable to the highest slab of income in the case of an individual as specified in the Finance Act of the relevant year. However, if income of any member of AOP is chargeable to tax at a rate higher than maximum marginal rate, then the rate of tax for the entire income of AOP shall be such higher rate.

The individual shares of the members in the whole or any part of the income of the AOP will be deemed to be indeterminate or unknown if such shares are indeterminate or unknown on the date of formation of the AOP, or at any time thereafter.

Method of Computing Share of a Member of Association of Persons / Body of Individuals [Section 67A]

Section 67A seeks to provide for the method of computing a member's share in the income of an association of persons or a body of individuals, wherein the shares of the members are determinate, in the same manner as provided for in Sub-sections (1) to (3) of Section 67 for computing a partner's share in a firm.

This section lays down the following methods of computing the member's share:

(a) Any interest, salary, bonus, commission or remuneration, by whatever name called, paid to any member in respect of the previous year shall be deducted from the total income of the association or body and the balance ascertained and apportioned among the members in the proportion in which they are entitled to share the income of the association or body.

(b) Where the amount apportioned to a member under (a) hereinabove is a profit, any interest, salary, bonus, commission or remuneration paid to the member by the AOP in respect of the previous year shall be added to that amount - the result shall constitute the member's share in the income of the association or body.

(c) Where the amount apportioned to a member under (a) is a loss, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be adjusted against that amount, the result shall be adjusted against that amount, and the result shall be treated as the member's share in the income of the association or body.

Notes:

(1) The share of each member of AOP/BOI shall be apportioned under the various heads of income as is determined while computing the income of the AOP/BOI.

(2) Deductions under section 80 to the extent allowed to AOP/BOI shall not be allowed to the members.

Taxation of share of income of a member of AOP/BOI

Section 86 relates to shares of members of an association of persons or a body of individuals in the income of the association or body. This section provides that if the assessee is a member of an association of persons or a body of individuals (other than a company or a Co-operative society or a Society registered under the Societies Registration Act, 1860, or any law corresponding to that Act in force in any part of India), his share in the income of the association or body, computed in the manner provided in Section 67A shall not be liable to tax.

Further, The taxability of share of income of a member of AOP/BOI depends on the rate at which income of such AOP/ BOI is taxable:

1. Where AOP/BOI is chargeable to tax on its total income at the maximum marginal rate or any higher rate, the share of the member shall not be included in his total income.
2. Where AOP/BOI is chargeable to tax on its total income at the rate applicable to individuals (normal rate) and tax is paid, share of income of a member shall be chargeable to tax as part of his total income and rebate under section 86 shall be claimed.
3. Where AOP/BOI is chargeable to tax on its total income at the rate applicable to individuals (normal rate) and no tax is chargeable, share of income of a member shall be chargeable to tax as part of his total income and no rebate under section 86 shall be claimed.

Assessment in case of Dissolution of an Association of Persons [Section 177]

Where any business or profession carried on by an AOP has been discontinued or an AOP is dissolved, the Assessing Officer shall make an assessment of the total income of the AOP as if no such discontinuance or dissolution had taken place, and all provisions of this Act, including the provisions relating to the levy of penalty or any other sum chargeable under any provisions of the Income-tax Act shall apply.

Every person who was at the time of such discontinuance or dissolution a member of the AOP and the legal representative of any such person who is deceased, shall jointly and severally be liable for the amount of tax, penalty or other sum payable.

Where such discontinuance or dissolution takes place after any proceeding in respect of an assessment year have commenced, the proceedings may be continued against the members from the stage at which the proceedings stood at the time of such discontinuance or dissolution.

CASE 1

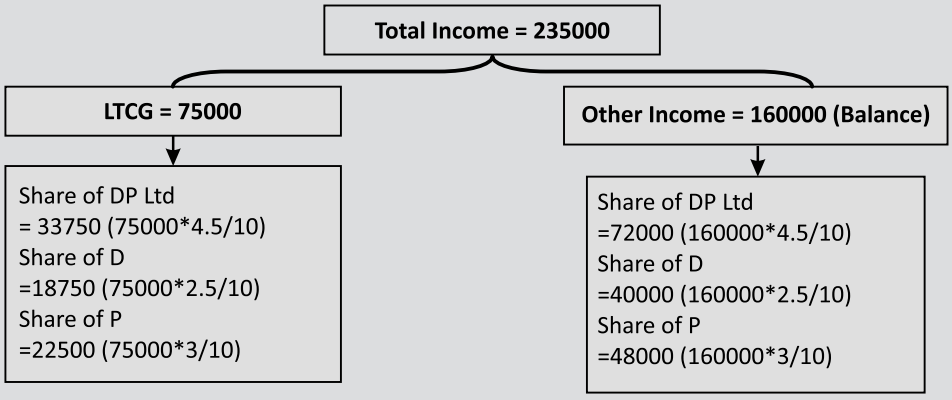
DP ltd, D and P are the three partners of AOP having profit sharing ratio of 4.5:2.5:3. Details of income provided are as follows:

	Rs
DP ltd (Foreign Company)	12 cr
D	35000
P	18000
Taxable income of AOP	235000 (Including LTCG Rs75000)

You are required to compute tax liability of AOP for AY 2023-24

Solution:

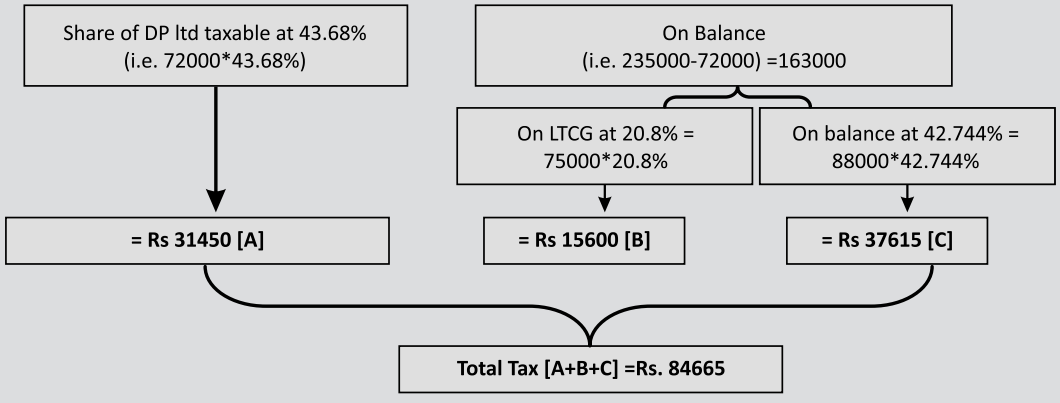
Note: 1 Computation of Total income and Attributable income of DP ltd, D and P



Note: 2

Here, in the above computation, share of DP ltd in other income i.e.72000 is chargeable to tax at 43.68% (Foreign Company) which is higher than MMR i.e. 42.744%.

Note: 3 Computation of Tax liability of AOP



CASE 2

DD, D and P are the three partners of AOP having profit sharing ratio of 2:2:1. Details of income provided are as follows:

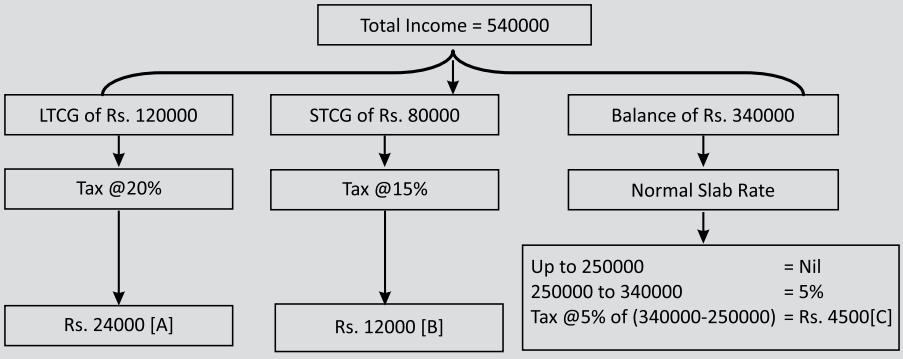
	Rs.
DD	100000
D	90000
P	110000

Total income of AOP 540000 (Including LTCG Rs. 120000 and STCG under 111A Rs. 80000)

You are required to compute tax liability of AOP for AY 2023-24.

Solution:

Here, in this case, AOP will be assessed and taxed like an individual



Total Tax [A+B+C]	40500
Add: HEC @4%	1620
Tax Payable	**42120**

TAXATION OF CO-OPERATIVE SOCIETIES

Meaning [Section 2(10)]

'Co-operative Society' means a co-operative society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any state for the registration of co-operative societies. The Income of the co-operative society is computed in the same manner as provided for other assesses. A co-operative society is entitled to the deductions from its gross total income u/s 80G, 80GGA, 80GGC, 80IA, 80-IB, 80JJA and 80P.

A regional rural bank (to which provisions of the Regional Rural Bank Act, 1976, apply) is deemed to be a co-operative society [Circular No. 319 dated 11.1.1982].

Computation of Income of Co-operative Societies

The income of a co-operative society is computed in the same manner as provided for other assessee's under the Act. The provisions under various heads of income, clubbing of incomes, set off and brought forward losses, deductions under section 80 shall apply.

Further, the subsidy given by the government to a co-operative society for meeting managerial expenses and admission fee collected by the society is treated as revenue receipt and liable to tax. [*Ludhiana Central Co-operative Consumers' Stores Ltd. v. C.I.T (1980) 122, I.T.R. 942*]. There is, however difference of opinion with regard to tax treatment of 'subsidy' received from the Government. Distinguishing the ratio laid down by the Punjab & Haryana High Court in the case of *Ludhiana Central Co-operative Consumers' Stores Ltd. Commissioner of Income-tax (1980, 122 ITR 942)*, the Punjab & Haryana High Court held in the case of *Commissioner of Income-tax v. Jindal Brothers Rice Mills (1989, 179 ITR 470)* that depreciation is allowable on the cost of the machinery or plant reduced by the amount of the subsidy as actual cost stands reduced by the percentage allowed by the subsidy. Though this case was followed by it in the case of *Commissioner of Income-tax v. Janak Steel Tubes (Pvt.) Ltd. (1989, 179 ITR 536)* (the capital subsidy should be deducted from the value of plant and machinery) but had been dissented from by the Bombay, Madras and Rajasthan High Courts in the following cases:

(i) *Srinivas Industries v. Commissioner of Income-tax (1991, 188 ITR 22)*: The Madras High Court held that the subsidy really partook the character of cash grant expendable for any purpose-consequently, the amount of subsidy granted could not be deducted from the capital cost of the machinery.

(ii) In *Commissioner of Income-tax v. Elys Plastics Pvt. Ltd. (1991, 188 ITR 11)* the Bombay High Court held that the subsidies were not deductible in computing the cost of plant and machinery for purposes of allowing depreciation.

(iii) In *Commissioner of Income-tax v. Ambica Electrolytic Capacitors (P) Ltd. and others (1991, 191 ITR 494)* the Rajasthan High Court held that the subsidy or investment subsidy given by the Government cannot be deducted from the actual cost for purposes of investment or depreciation allowance.

Rates of Income-tax on Co-operative Society

The rates of income-tax applicable to a co-operative society for the assessment year 2022-23 are as follows:

1. Where the total income does not exceed Rs. 10,000	10% of total income
2. Where the total income exceeds Rs. 10,000 but total income does not exceeds Rs. 20,000.	Rs. 1,000 plus 20% of the amount by which income exceeds Rs. 10,000
3. Where the total income exceeds Rs. 20,000	Rs. 3,000 plus 30% of the amount by which income exceeds Rs. 20,000

Health and Education Cess @ 4%.

Surcharge @12% shall be applicable where the total income exceeds Rs. 1 crore

Note :

1. Some incomes are taxable at special rates.
2. Provisions of alternate minimum tax under section 115JC to 115JF shall apply.

Deduction in respect of Income of Co-operative Societies [Section 80P]

Section 80P provides for certain deductions from the gross total income of a Co-operative Society. These deductions are:

(a) In the case of Co-operative Society engaged in:

(i) the business of Banking or providing credit facilities to its members, or

(ii) a cottage industry, or

(iii) the marketing of the agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, or

(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, i.e., catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

the whole of the amount of profits and gains of business attributable to any one or more of such activities shall be deducted from the gross total income provided that in the case of a co-operative society falling under Sub-clause (vi) or (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members:

(i) the individuals who contribute their labour or carry on the fishing or allied activities;

(ii) the co-operative credit societies which provide financial assistance to the society;

(iii) the State Government.

(b) In the case of primary co-operative society engaged in supplying milk, oilseeds, fruits, vegetables raised or grown by its members to

(i) a federal co-operative society engaged in supplying the above mentioned products; or

(ii) a Government or a local authority; or

(iii) a Government Company or a Corporation established by or under a Central, State or a Provincial Act (being a company or corporation engaged in supplying the above mentioned products to the public).

the whole of the amount of profits and gains of such business shall be deducted from the gross total income.

In the case of a co-operative society engaged in activities other than those specified in clauses (a) or (b) either independently of, or in addition to, profits and gains attributable to the activities mentioned at clauses (a) and (b) deduction from the gross total income will be allowed to the extent of Rs. 50,000.

(c) Where such co-operative society is a Consumers' Co-operative Society, the deduction shall be Rs. 1,00,000.

(d) In the case of every co-operative society, the whole of the income by way of interest or dividends derived from its investments with any other co-operative society shall be deducted from the gross total income.

(e) In the case of every co-operative society, the whole of the income derived by the society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities shall be deducted from its gross total income.

(f) In the case of every co-operative society, not being a housing society or an urban consumers' society, or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed Rs. 20,000 the amount of any income by way of interest on securities or any income from house property shall be deducted from the gross total income.

Urban Consumers' Co-operative Society

An urban consumers' co-operative society means a society for the benefit of consumers, within the limits of a municipal corporation, municipality, notified areas committee, town area, or cantonment [Explanation to Section 80P(2)].

The provisions of this Section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank.

Other points

- Amount received for letting of godowns, incidental services of taking delivery of stock at rail-head and transporting it to godowns were also rendered and amount received was described as 'commission' was wholly exempt. *I.T. v. South Arcot District Co-operative Marketing Society Ltd. (1989) 43 Taxman 328/176 ITR 117 (SC).*
- Income from ginning and pressing of cotton is exempt. *Broach Distt. Co-operative Cotton Sales, Ginning & Pressing Society Ltd. v. CIT (1989) 177 ITR 418/44 Taxman 439 (SC).*
- Where assessee, an apex co-operative society, derived (i) interest on cash security furnished by it for carrying on sugar agency business, and (ii) interest on temporary loans given by it for financing sugar business, while former interest was not exempt, latter was exempt under Section 14(3)(iii) of the 1922 Act, *CIT v. U.P. Co-operative Federation Ltd. (1989) 176 ITR 435/43 Taxman 20 (SC).*
- Amount of subsidy received by assessee from National Co-operative Development Corpn. towards loss incurred on account of price fluctuation qualifies for deduction under Section 81 (1)(c) - *CIT v. Punjab State Co-operative Supply & Marketing Federation Ltd. (1989) 46 Taxman 156 (Punj. & Har.).*
- Proportionate expenditure relating to such business activities of assessee co-operative society as are contemplated by Section 80P(2) is not to be disallowed. *Baghapurana Co-operative Marketing Society Ltd.* v. *CIT* (1989) 178 ITR, 653/44 Taxman 92 (Punj. & Har.).
- In the cases of agricultural produce, the agricultural produce marketed by assessee co-operative society need not have been produced by assessee's members - *CIT v. Punjab State Co-operative Supply & Marketing Federation Ltd. (1989) 46 Taxman 156 (Punj. & Har.).*
- The expression 'the marketing of the agricultural produce of its members means that agricultural produce should be owned by its members, whether supplied by them (that is, the members) or purchased from the market or acquired from any other producer. *C.I.T. v. Haryana State Co-operative Supply & Marketing Federation Ltd. (1989) 79 CTR (Punj. & Har.) 94.*
- Short-term call deposits are investment within the meaning of Section 80P(2)(d). *CIT v. Haryana Co-operative Sugar Mills Ltd. (1989) 46 Taxman 28 (Punj. & Har.).*

Assessment of Co-operative Societies

The following are the provisions which are specifically applicable to the assessment of Co-operative Societies.

(I) Co-operative Housing Society: Under Section 27(iii), a member of co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be owner of that building or part thereof.

Clause (iiia) further provides that a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 shall be deemed to be the owner of that building or part thereof; and

As per Clause (iiib), a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in Clause (f) of Section 269UA, shall be deemed to be the owner of that building or part thereof.

Clause (f) of Section 269UA, it may be noted, defines "transfer" for the purposes of Chapter XX-C of the Income- tax Act, dealing with purchase by Central Government of immovable properties in certain cases of transfer.

(II) Profits and Gains of Co-operative Society from Insurance Business [Section 44]: The profits and gains of any business of insurance carried on by a Co-operative Society shall be computed in accordance with the rules contained in the First Schedule.

In this connection, the First Schedule and Rule 6E of the Income-tax Rules, 1962 provides as under:

The profits of non-life insurance business, e.g., Fire insurance business, marine insurance business, general insurance business etc. shall be the profits disclosed by the annual accounts required to be prepared under the Insurance Act, 1938 subject to the following adjustments:

(i) If such profits are arrived at after deducting any expenditure or allowance which is not admissible under Sections 30 to 43B of the Income-tax Act, such expenditure or allowance shall be added back to the profits.

(ii) The reserve for unexpired risks shall be allowed as a deduction to the following extent:

(a) where the insurance business relates to fire insurance or miscellaneous insurance - 50% of the net premium income of such business of the previous year;

(b) where the insurance business relates to marine insurance, 100% of the net premium income of such business of the previous year.

'Net premium income' means the amount of premium received, as reduced by the amount of re-insurance premiums paid during the relevant previous year.

In the context of computing the total income of co-operative society, the following cases are worth noting.

(1) Where the credit facility is extended to members of the society by virtue of sale of goods to them by consumers' co-operative society, the exemption is not available. When the society sells goods on credit to its members, such transaction cannot be construed as a credit society to which the benefit of Section 80P(2)(a)(i) can be extended. [*Rodier Mill Employees' Co-operative Stores Ltd. v. CIT (1982) 135 ITR 355*].

Following the ratio laid down by the Madras High Court in the case of *Rodier Mill Employees' Co-operative Stores Ltd. v. Commissioner of Income-tax (1982, 135 ITR 355)*, the Kerala High Court held in the case of Kerala Co-operative Consumers Federation Ltd. v. Commissioner of Income-tax (1988, 170 ITR 455) that the words 'providing credit facilities', occurring in Section 80P(2)(a)(i) of the Income-tax Act, 1961 should be construed as similar to, or akin to the 'carrying on the business of banking', preceding the words "or providing credit facilities" in the same sub-section. The words 'providing credit facilities to its members' means providing credit by way of loans and not selling goods on credit.

(2) Where society purchases auto-rickshaws and sells them to members on hire-purchase, it is not providing credit facility to members and not entitled to exemption [*C.I.T. v. Madras Auto Rickshaw Drivers' Co-operative Society (1983) 143 ITR 981*]. In this case it was held that the tax relief under Section 80P(2)(a)(i) of the Income- tax Act, is a grant not to a category of income but to a category of assessees namely, a co-operative society answering the description of a society engaged in carrying on the business of providing credit facilities to its members. If the society in question does not answer to this description, it is not entitled to the relief.

(3) In *Bihar State Co-operative Bank Ltd. v. C.I.T. [(1960) 39 I.T.R. 114]* the Supreme Court has held that if a co- operative society carrying on banking business invests its circulating capital in such a manner that it is readily available, the interest on such investment shall constitute income from banking business and therefore shall be exempt in the hands of the co-operative society.

(4) Interest received on Government Securities held by co-operative society as its stock-in-trade qualifies for deduction from gross total income. But the deduction is inapplicable to interest received from

Government Securities held as investments. *[CIT v. Bombay State Co-operative Bank Ltd. (1968) 70 ITR 86 (S.C.)]*.

The Madhya Pradesh High Court held in the case of *M.P. State Co-operative Bank Ltd. v. Addl. Commissioner of Income-tax (1979, 119 ITR 327)* that income from investment of reserve capital in securities was not a part of the income from banking business and did not qualify for exemption. Similarly, the interest income from investment of provident fund income did not form part of the income from the banking business and did not qualify for exemption under Section 80(i)(a) (now Section 80P). Distinguishing the ratio laid down in this case, the Madhya Pradesh High Court held in the case of *Commissioner of Income-tax v. Bhopal Co-operative Central Bank Ltd. (1987, 164 ITR 713)* that the security deposits made are in accordance with the Banking Regulation Act, 1949 and interest income received on deposits formed part of income from business of banking and exempt under Section 80P(2)(i) of the Income-tax Act, 1961.

The Allahabad High Court held in the case of *Addl. Commissioner of Income-tax v. U.P. Co-operative Cane Union (1978, 114 ITR 70)* that selling goods on credit was only a mode of carrying on business. It did not become a business of providing credit facility. Following this case, the Allahabad High Court held in the case of *Commissioner of Income-tax v. U.P. Co-operative Cane Union Federation Ltd. (1980, 122 ITR 913)* that the expression 'providing credit facilities' in Section 80P(2)(a)(i) would comprehend the business of lending money on interest. It would also comprehend the business of lending services on profit for guaranteeing payments because guaranteeing payment is as much a part of banking business for affording credit facility as advancing loans.

However, where a co-operative society holds securities as per requirements of Banking Regulation Act and directions of the RBI, the deduction is available on such interest income. Similarly, subsidy from Government for opening new branches and giving loans to poorer sections at lower rate of interest, is income attributable to banking business [*CIT v. Madurai District Central Co-operative Bank Ltd. (1984) 148 ITR 196*].

(5) The Income earned by a co-operative society carrying on the business of banking and providing credit facilities to its members from commission and brokerage by dealing in bills of exchange, subsidy from Government, admission fee from members, incidental charges and financial penalties is attributable to the business of banking of providing credit facilities to its members and hence deductible under Section 80P(2)(a)

(i) [*CIT v. Dhar Central Co-operative Bank (1984) 149 ITR 438 (MP)*].

Following its decision in the case of *Commissioner of Income-tax v. Dhar Central Co-operative Bank (1984, 149 ITR 438)*, the Madhya Pradesh High Court held in the case of *Commissioner of Income-tax v. Bhopal Co- operative Central Bank Ltd. (1988, 172 ITR 423)* that a co-operative society carrying on the business of banking is entitled to exemption in respect of interest on securities, commission, subsidy, donation and locker rent. Again, the said decision was followed by it in the case of *Madhya Pradesh Rajya Sahakari Bank v. Commissioner of Income-tax (1988, 174 ITR 150)* holding that the income from commission, exchange and other miscellaneous income was attributable to the business of banking and that the assessee was entitled to exemption under Section 81 (now 80P) of the Income-tax Act, 1961 in respect thereof.

(6) A society which buys and sells products of other societies or individuals is not entitled to exemption. Where a society manufactures and sells its own products or the products of its members, such society is entitled to exemption. Hence, the Central Cottage Industries Emporium, New Delhi, is not entitled to exemption under Section 80P [*Addl. C.I.T. v. Indian Co-operative Union Ltd. (1982) 134 ITR 108 (Delhi)*].

If the godown or warehouse is let for a purpose other than storage, processing of facilitating the marketing of commodities, the income derived therefrom by a co-operative society would not be deductible under Section 80P. In *C.I.T. v. Ahmedabad Maskati Cloth Dealers Co-operative Warehouses Society Ltd. [(1986) 162 ITR 142 (Guj.)*] it was also held that shops in which wholesale or retail business in cloth is carried on cannot come within the meaning of 'godowns' or 'warehouses'.

The Gujarat High Court's decision in the case of *Commissioner of Income-tax v. Ahmedabad Maskati Cloth Dealers Co-operative Warehouses Society Ltd. (1986, 162 ITR 142)* had since been approved by the Supreme Court in the case of South Arcot District Co-operative Marketing Society Ltd. (infra). The Gujarat High Court had, inter alia, held that the words facilitating the marketing of commodities' would not lend colour to the words 'godowns or warehouses' so as to enlarge their meaning.

CASE 1

P Co-operative Society engaged in procession of agriculture produce and running its activities without aid of power furnishes following details of income, compute taxable income and tax liability for the purpose of A.Y. 2022-23 if it does not opt to be taxed under section 115BAD and if opts to be taxed under section 115BAD.

- Income from processing of agricultural produce of its member 38500
- Income from marketing of the agricultural produce 12000
- Dividend from another co-operative society 41400
- Income from letting of gowdown 24000
- Commission income 91000

Solution:

Statement showing computation of Total income and tax liability

Particulars	***Remarks***	***Not opt to be taxed under section 115BAD***	***Opts to be taxed under section 115BAD***
Income from letting of gowdown [a]		**24000**	**24000**
Income from processing of agricultural produce of its member		38500	38500
Income from marketing of the agricultural produce		12000	12000
Commission income		91000	91000
Income from PGBP [b]		**141500**	**141500**
Dividend from another co-operative society		41400	41400
Income from other Source [c]		**41400**	**41400**
Gross Total Income [a+b+c]		**206900**	**206900**
Deduction under section 80C to 80U			
Deduction under section 80P			

Income of agricultural produce	38500*100%	38500	Nil
Income from marketing of the agricultural produce	12000*100%	12000	Nil
Commission income	Exempt up to 50000	50000	Nil
Letting out of godowns	24000*100%	24000	Nil
Dividend income	41400*100%	41400	Nil
Total Income		**41000**	**206900**
Tax on total income		**At Slab rate**	**At 22%**
Up to 10000 = 10% (10%*10000)=1000 10000-20000=20%(20%*10000) =2000 20000-41000=30% (30%*21000)=6300		9300	45518
Add: Surcharge		**NA**	**NA**
Tax and Surcharge		**9300**	**45518**
Add: HEC@4%		372	1821
Tax Payable (Rounded off)		**9670**	**47340**

Illustration 16:

Delhi Co-operative Society derived the following incomes during the previous year 01.4.2022 to 31.3.2023 - Assessment Year 2023-24.

(1)	Marketing of agricultural produce of its members	10,000
(2)	Interest from members on delayed payment of the price of goods purchased	1,000
(3)	Processing (without aid of power) of agricultural produce of its members	8,000
(4)	Supplying milk to the Government (raised by its members)	15,000
(5)	Agency business	25,000
(6)	Dividends from other Co-operative Societies	15,000
(7)	Income from letting of godowns	20,000
(8)	Income from House Property	30,000

Solution:

Option 1 : Assessee has not opted for Section 115BAD

Computation of total income of Delhi Co-operative Society

Particulars	*Amount (Rs.)*	*Amount (Rs.)*
Income from House Property	30,000	
Letting of godowns	20,000	50,000

Income from Business		
Marketing of agricultural product	10,000	
Processing of goods	8,000	
Supplying milk	15,000	
Agency business	25,000	58,000
Income from other sources		
Interest from members	1,000	
Dividends	15,000	16,000
Gross Income		1,24,000
Deductions under Section 80P		
Letting of godowns	20,000	
Marketing of agricultural produce	10,000	
Processing of goods	8,000	
Supplying milk	15,000	
Agency business	25,000	
Dividends	15,000	(93,000)
Total income		**31,000**

Notes:

(1) Interest from members Rs. 1,000 is not deductible as it is not from the credit facilities provided to the member and for this purpose society cannot be said to be a credit society [*Rodier Mill Employees' Co- operative Stores Ltd. v. CIT (1982) 135 ITR 355*].

(2) The gross total income of the society exceeds Rs. 20,000 hence deduction regarding income from house property is not available.

Option 2: Assessee has opted for Section 115BAD

Computation of total income of Delhi Co-operative Society

Particulars	*Amount (Rs.)*	*Amount (Rs.)*
Income from House Property	30,000	
Letting of godowns	20,000	50,000
Income from Business		
Marketing of agricultural product	10,000	
Processing of goods	8,000	
Supplying milk	15,000	

Agency business	25,000	58,000
Income from other sources		
Interest from members	1,000	
Dividends	15,000	16,000
Gross Income		1,24,000
Deductions under Section 80P		NA
Total income		**1,24,000**

Notes:

(1) Interest from members Rs. 1,000 is not deductible as it is not from the credit facilities provided to the member and for this purpose society cannot be said to be a credit society [*Rodier Mill Employees' Co- operative Stores Ltd.* v. *CIT* (1982) 135 ITR 355].

(2) The gross total income of the society exceeds Rs. 20,000 hence deduction regarding income from house property is not available.

(3) Deduction under section 80P is not allowed u/s 115BAD

TAX EXEMPTIONS TO POLITICAL PARTIES [SECTION 13A]

'Political Party' means an association or body of individual citizens of India registered with the Election Commission of India as a political party and includes a political party deemed to be registered with that Election Commission of India.

Political parties are liable to pay tax on their income and they are assessed as 'An association of persons'. However, the income derived by these parties as income by way of voluntary contributions, Income from House Property; and Income from Other Sources or Capital Gains are exempt subject to the following conditions:

(i) the party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce the income;

(ii) in respect of each such voluntary contribution in excess of' Rs. 20,000, the party keeps and maintains a record of the contributions and names and addresses of the persons who have made such contribution; and the accounts of the party are audited by a Chartered Accountant or other qualified accountant.

(iii) No donation of Rs. 2000 or more can be received by a Political Party otherwise than by an account payee cheque/draft/ECS through a bank account or through electoral bonds.

Return of income under section 139(4B) should be filed by the Political Party on or before due date of filing of return u/s 139(1), otherwise exemption under section 13A will not be given.

The Chief Executive Officer of the political party is required to file a return of income if the total income (computed under this Act without giving effect to the provisions of Section 13A) exceeds the maximum amount which is not chargeable to income-tax. In this connection, the provisions of Section 139(1) shall apply.

Provisions related to Political Parties

Applicable Section

Section 13A of Income Tax Act, 1961

Meaning

An association or body of individual citizens of India registered with the Election Commission of India as a political party and includes a political party deemed to be registered with that Election Commission of India.

Exemptions

- Any income **which is chargeable under the heads "HP", "OS" and "CG".**
- Any income by **way of voluntary contributions.**

Conditions to claim exemption u/s 13A

- keep and maintains such books of account
- Record of voluntary contribution in **excess of Rs 20,000** *(Not applicable from AY2018-19 if received by way of electoral bond)*
- **Audited by a chartered accountant or other qualified accountants**
- **Donation exceeding Rs 2,000 shall not be received by such political party** otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond
- **Return of income** for the previous year should be furnished within due date
- **Submit a report to the Election Commission showing contribution received > Rs 20,000.**

ELECTORAL TRUST

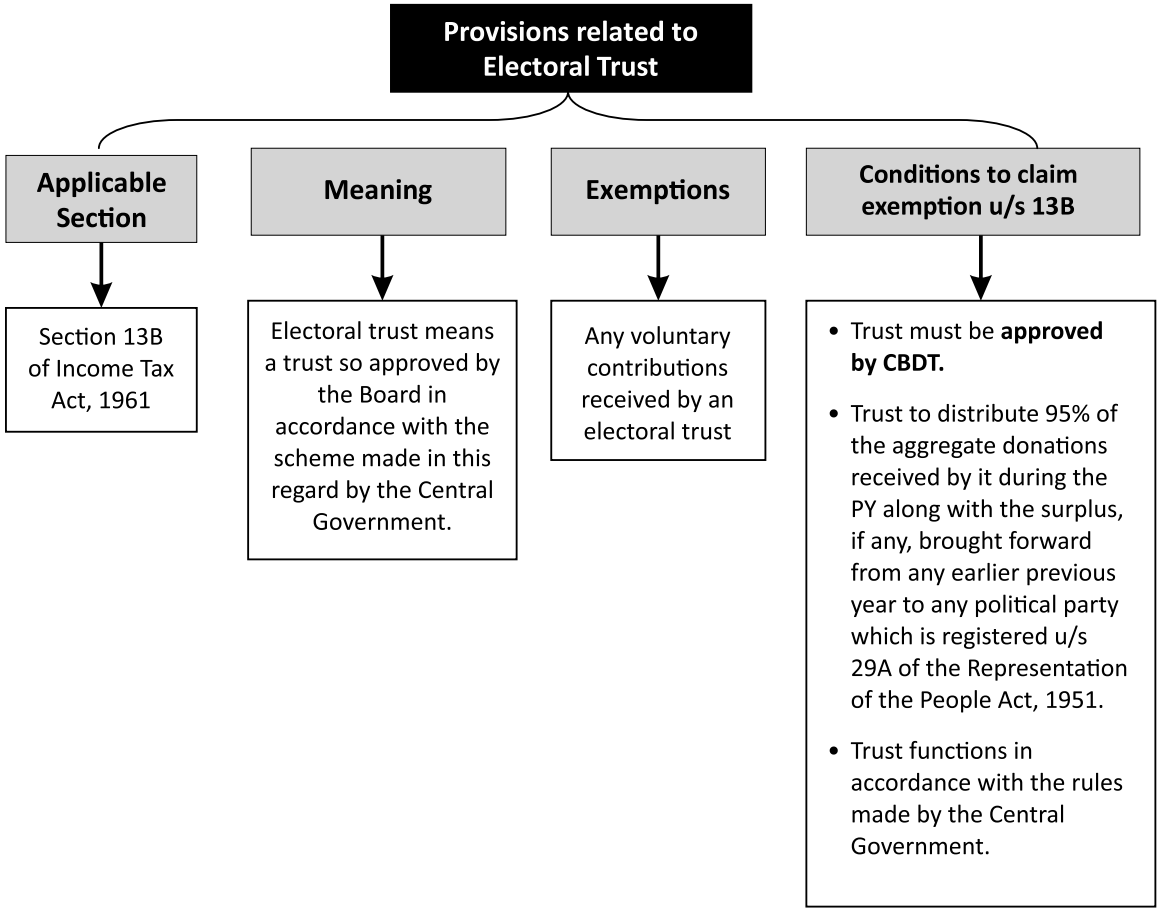
'Electoral Trust' means a trust so approved by the Board in accordance with the scheme made in this regard by the Central Government.

Voluntary contributions received by an Electoral Trust [Section 13B]

Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust, if -

(a) such electoral trust distributes to any political party, registered under section 29A of the Representation of the People Act, 1951, during the said previous year, ninety-five per cent of the aggregate donations received by it during the said previous year along with the surplus, if any brought forward from any earlier previous year; and

(b) such electoral trust functions in accordance with the rules made by the Central Government.



Tax Exemptions for Charitable Trusts and Institutions

Trust : Section 3 of the Indian Trusts Act defines a trust to mean "an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another and the owner".

Institution: An organisation with a constitution composed of a President, Vice-President, Secretary, Committee Members and ordinary members, is known as an Institution. The activities of the institution and its offices are regulated by rules and bye-laws of the institution. A university or a Chamber of Commerce is an Institution.

Charitable purpose: The term 'charitable purpose' has been defined in this Act in a wider sense than what is commonly understood. According to Section 2(15) of the Act, it includes relief of the poor, education, yoga medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and advancement of any other object of general public utility not involving the carrying on of any activity for profit.

In order to qualify for tax exemptions the charity must be of a public character, and the trust or institution should not be created or established for the benefit of any particular religious community or caste, if the trust or institution is established for the benefit of the member of a club or employees of a factory, it would not be a public charitable trust. Vide Circular No. 395 dated Sept. 24, 1984 promotion of sports and games is considered to be a charitable purpose within the meaning of Section 2(15). Accordingly an association or institution, engaged in the promotion of sports or games can claim exemption under Section 11, even if it is not approved under Section 10(23).

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless -

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

Income not to be included in the Total Income [Section 11(1)]

According to Section 11(1), the following items of income are not to be included in the total income of the previous year of the assessee who is in receipt of the same:

***(i) Income derived from property held under trust wholly for charitable or religious purposes*:** Income derived from property held under trust wholly for charitable or religious purposes shall be exempt to the extent to which such income is applied for such purposes in India and where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property.

***(ii) Income derived from property held under trust in part only for charitable or religious purposes*:** Income derived from property held under trust in part only for charitable or religious purposes shall be exempt. This exemption would, however, be available only for trusts created before 1.4.1962. Further, where any such income is finally set apart for application to such purposes in India, shall be exempt to the extent to which the income so set apart is not in excess of 15% of the income from such property.

***(iii) Income from property held under trust created on or after 1.4.1952*:** for a charitable purpose which tends to promote international welfare in which India is interested shall be exempt to the extent to which such income is applied for such charitable purposes outside India.

(iv) Income from property held under trust created before 1.4.1952 for charitable or religious purposes shall be exempt to the extent to which such income is applied for such purposes outside India. This

exemption is, however, subject to the condition that the Central Board of Direct Taxes has, by a general or special order, issued a direction in either of the above two cases that the income in question would not be included in the total income of the person in receipt of such income.

(v) *Income in the form of voluntary contributions* made with a specific direction that they shall form part of the corpus of the trust or institution shall be fully exempt.

Explanation:

In respect of items (i) and (ii) above:

(1) In computing the 15% of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in Section 12 (dealt with later in this Chapter) shall be deemed to be part of the income.

(2) If, in the previous year, the income applied to charitable or religious purposes in India falls short of 85% of the income derived during that year from property held under trust, by any amount on account of (i) not receiving the income during that year, or (ii) for any other reason, then:

(a) In case referred to in (i), so much of the income applied to such purpose in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount shall be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes during the previous year in which the income is received or during the previous year immediately following, as the case may be.

(b) In case referred to in (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount shall be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes during the previous year immediately following the previous year in which the income was derived.

Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.

For the purposes of determining the amount of application of income, the provisions of section 40(a)(ia) relating to 30% disallowance for non deduction of TDS and section 40A(3) and 40A(3A) relating to payment exceeding Rs. 10,000, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession"

Where any income as discussed in (a) and (b) above is not applied to charitable or religious purposes in India within the prescribed time, then such income shall be deemed to be the income of the person in receipt thereof:

(a) *In case of not receiving the income:* Such income shall be deemed to be the income of the previous year immediately following the previous year in which the income was received.

(b) *In any other case:* Such income shall be deemed to be the income of the previous year immediately following the previous year in which the income was derived [Clause (1B)].

Capital Gains [Section 11(1A)]

1. Asset held wholly for religious purposes or charitable purposes

Sometimes a capital asset held under trust wholly for charitable or religious purposes is transferred resulting in a capital gain. The net consideration received on such transfer may be utilised wholly or in part in acquiring another capital asset to be so held wholly for religious or charitable purposes. In such cases the capital gains arising from the transfer shall be deemed to have been applied for charitable or religious purposes to the extent stated herein below:

(i) Where the whole of the net consideration is utilised for acquiring the new capital assets, so much of the capital gains.

(ii) Where only a part of the net consideration is utilised for acquiring the new capital asset, so much of the capital gain as is equal to the amount by which the amount so utilised exceeds the cost of the transferred asset.

Example 1: A charitable trust had a capital asset the cost of which was Rs.80,000 and it sold the same for Rs. 1,00,000. The whole of the consideration, i.e., Rs. 1,00,000 will be exempt from capital gains tax if a new capital asset is bought for Rs. 1,00,000.

Example 2: If a trust had a capital asset costing Rs.1,00,000 and sold the same for Rs. 1,50,000 and then bought a capital asset for Rs. 1,30,000, then the working will be as follows:

Particulars	*Rs.*
Sale proceeds of old asset	1,50,000
Cost of the old asset	(1,00,000)
Capital gain	50,000
Cost of the new asset	1,30,000
Cost of the old asset	(1,00,000)
Capital gain utilised	30,000
Capital gain taxable	20,000

2. Assets held partly for religious or charitable purposes

It is quite possible that a capital asset is held by a trust partly for religious or charitable purposes. Where such a capital asset is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified here under:

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

"Explanation" to Section 11(1A) provides:

'Appropriate fraction' means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes.

'Cost of the transferred asset' means the aggregate of the cost of acquisition (as ascertained for the purposes of Section 48 and 49 of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of Section 55.

'Net consideration' means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

Illustration 17

A trust has a capital asset costing Rs. 2,00,000 and 1/2 of its income is utilised for charitable purpose. It is sold for Rs. 3,50,000. If the trust buys another capital asset for Rs. 3,50,000 then appropriate fraction of the capital gain deemed to have been applied for charitable purpose. Supposing that the trust buys another asset for Rs. 2,90,000.

Solution:

Particulars	***Rs.***
Sale proceeds of Capital asset	3,50,000
Cost of the asset sold	2,00,000
Capital gain on transfer of capital asset	1,50,000
Appropriate fraction i.e. 1/2	75,000
Another asset purchased	2,90,000
Appropriate fraction utilised (1/2 of Rs. 2,90,000)	1,45,000
Appropriate fraction of the original capital asset	
1/2 of Rs. 2,00,000	(1,00,000)
Capital gain utilised	45,000
Capital gain not utilised	30,000

Accumulations of Income [Section 11(2)]

While dealing with Section 11 it has been stated that accumulation of income from trust property held for charitable purpose is permissible up to 15 per cent on the gross receipts without attracting any liability to tax. Where the balance 85 per cent of the income is not applied or is not deemed to have been applied to charitable or religious purposes in India during the previous year, such income so accumulated or set apart shall not be included in the total income if the following conditions are fulfilled:

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);

(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Explanation : Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub- section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub- clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

It is important to note that to claim exemption subject to Section 11(2) it is enough to invest in Government securities etc., only that part of the unspent balance which falls over and above 15% of the total income derived from the property held under trust [*C.I.T. v. H.H. Marthanda Varma Elayaraja of Travancore Trust and others (1981) 129 I.T.R. 191 (Ker.)*].

Section 11(3) provides that:

(i) if the income accumulated for the specific purpose under Section 11(2) is applied to purposes other than charitable or religious, or ceases to be accumulated or set apart for application thereto, it will be chargeable to tax as income of that year. Further, such accumulated income will become liable to be taxed if,

(ii) it ceases to remain invested in any security or deposited in the manner provided under Section 11(5), or

(iii) it is not utilised for the purpose for which it is so accumulated or set apart during the specified period, or in the year immediately following the expiry thereof;

(iv) is credited or paid to any trust or institution registered under Section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of Section 10.

it shall be deemed to be the income of the previous year in which it ceases to remain so invested or deposited or is not so utilised, as the case may be.

Section 11(3A) provides that where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of Section 11(2) cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf allow such person to apply such income for such other charitable or religious purpose in India, as is specified by the person in the application subject further to the condition that it is in conformity with the objects of the trust.

Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of Sub-section (3) of section 11.

For the purposes of Section 11, 'property held under trust' includes a business undertaking so held and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking

in accordance with the provisions of the Income-tax Act relating to assessment and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious.

Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of Sub-section (3) of Section 11:

Provided further that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of Sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of Sub-section (3) in the year in which such trust or institution was dissolved.

Sub-section (4A) as substituted by Finance Act, 1991 with effect from 1.4.1992 states that Sub-sections (1) oror (3) or (3A) of Section 11 shall not apply in relation to any business income of a trust or institution unless the business is incidental to the attainment of the objectives of the trust or institution and separate books of accounts are maintained by such trust or institution in respect of such business.

Forms and Modes of Investment [Section 11(5)]

The forms and modes for investing funds of charitable and religions trusts and institutions are given hereunder:

(i) Investment in saving certificates as defined in clause (c) of Section 2 of the Government Savings Certificates Act, 1959, and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government. Investments in Indira Vikas Patra and Kisan Vikas Patra also qualify for the purpose of this Section;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank);

Explanation : In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or under Section 3 of the Banking Companies (Acquisition and Transfer of Undertaking Act, 1980, or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

(iv) Investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963.

(v) Investment in any security for money created and issued by the Central Government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

(vii) investment or deposit in any public sector company;

Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company:

(a) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;

Investment in debt instruments issued by and infrastructure Finance Company registered with RBI.

(b) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;

(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of Sub-section (1) of Section 36;

(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance or construction or purchase of houses in India for residential purposes and which is approved by the Central Government for the purposes of clause (viii) of Sub-section (1) of Section 36;

(ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.

Explanation: For the purpose of this clause:

(a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

(b) "public company" shall have the meaning assigned to it in Section 3 of the Companies Act, 1956;

(c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport.

(x) Investment in immovable property.

Explanation: "Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;

(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964;

(xii) any other form or mode of investment or deposit as may be prescribed including investments in units of Mutual Fund and Transfer of Deposits to Public Account of India.

Where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year [Section 11(6)].

Where a trust or an institution has been granted registration under clause (b) of sub- section (1) of section 12AA or has obtained registration at any time under section 12A and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (1) and clause (23C) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year [Section 11(6)].

Income of Trusts or Institutions from Contributions [Section 12]

The income of a trust by way of voluntary contributions would also be treated for all purposes as income deemed to have been derived by the trust from property held by it under trust except, however, in case where the voluntary contribution is received with a specific direction that it shall form part of the corpus of the trust. As a result, voluntary contribution received by a trust should also be applied for charitable purposes before the end of the accounting year or within 3 months following so that income-tax exemption could be availed of. However, voluntary contributions could be accumulated for future obligation for charitable purposes in the same manner as specified earlier.

The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in Clause (a) or Clause (b) or Clause (c) or Clause (cc) or Clause (d) of Sub-section (3) of Section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of Sub-section (1) of Section 11.

Explanation: For the purposes of this sub-section, the expression "value" shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in Clause (a) or Clause or Clause (c) or Clause (cc) or Clause (d) of Sub-section (3) of Section 13.

Notwithstanding anything contained in Section 11, any amount of donation received by the trust or institution in terms of Clause (d) of Sub-section (2) of Section 80G which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of Sub-section 5(C) of Section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.

REGISTRATION OF TRUSTS

The provisions of Sections 11 and 12 shall not apply in relation to any trust or institution unless the following conditions are fulfilled:

1. The person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and manner to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;
2. the person in receipt of the income has made an application for registration of the trust or institution, and subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of 30 days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;
3. Notwithstanding anything contained above, the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution:
    (i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 or under section 12AA, [as it stood immediately before its amendment by the Finance Act, 2020] within three months from the date on which this clause has come into force;

(ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;

(iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;

(iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;

(v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;

(vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought, and such trust or institution is registered under section 12AB; **[Clause (ac) inserted by Finance Act, 2020]**

4. Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income- tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation to sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

5. The person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.

Where an application has been made, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.

[Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

(a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;

(b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment years for which it was provisionally registered: [Inserted by Finance Act, 2020]

Provided that where registration has been granted to the trust or institution under section 12AA or section 12AB, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year.

Rule 17A of the Income-tax Rules, 1962 provides that an application for registration of a trust shall be made in duplicate in Form No. 10A and shall be accompanied by the following documents:

(i) where the trust is created or the institution is established under an instrument, the instrument in original together with a copy thereof and where it is created otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution together with one copy thereof. The Principal Commissioner or Commissioner may accept a certified copy instead of the original where the original cannot be conveniently produced.

(ii) where the trust is in existence during any year or years prior to the financial year in which the application for registration is made, two copies each of the accounts of the trust for the three years (immediately) preceding the years in which the application for which the accounts have been made-up.

Procedure for Registration [Section 12AA]

Nothing contained in this section shall apply on or after the 1st day of June, 2020. **[Inserted by Finance Act, 2020]** In terms of Section 12AA, on receipt of application for registration, the Principal Commis sioner or Commissioner shall call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf. He has to either grant or decline registration within six months from the end of the month in which the application was received. If no order is passed within the said six months then it shall be deemed that the trust has been registered.

Where the Principal Commissioner or Commissioner is satisfied that the activities of the trust or institution are not genuine or are not carried out in accordance with the objects of the trust or institution then the commissioner may pass an order in writing for the cancellation of registration granted under section 12AA or under section 12A after giving an opportunity of being heard.

Further, where a trust or an institution has been granted registration or has obtained registration at any time under section 12A and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution.

However the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

Procedure for Fresh Registration [Section 12AB]

(1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub- section (1) of section 12A, shall,—

(a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;

(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause of the said clause,—

(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of the trust or institution; and

(B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; and

(ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub- clause (i),—

(A) pass an order in writing registering the trust or institution for a period of five years;

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;

(C) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the trust or institution.

(2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub- section (1) of section 12A on that date.

(3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.

(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that—

(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.]

[Section 12AB Inserted by Finance Act, 2020]

Levy of tax where the charitable institution ceases to exist or converts into a non-charitable organization

Sections 11 and 12 of the Act provide for exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions, subject to various conditions contained in the said sections.

The primary condition for grant of exemption is that the income derived from property held under trust should be applied for the charitable purposes, and where such income cannot be applied during the previous year, it has to be accumulated and invested in the modes prescribed and applied for such purposes in accordance with various conditions provided in the section. If the accumulated income is not applied in accordance with the conditions provided in the said section within a specified time, then such income is deemed to be taxable income of the trust or the institution. Section 12AA provides for registration of the trust or institution which entitles them to be able to get the benefit of sections 11 and 12. It also provides the circumstances under which the registration can be cancelled. Section 13 of the Act provides for the circumstances under which exemption under section 11 or 12 in respect of whole or part of income would not be available to a trust or institution.

A society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In such a situation, the existing law does not provide any clarity as to how the assets of such a charitable institution shall be dealt with.

In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a new chapter has been introduced that provides for levy of additional income-tax in case of conversion into, or merger with, any non-charitable form or on transfer of assets of a charitable organization on its dissolution to a non- charitable institution. The elements of the regime are under:

(i) The accretion in income (accreted income) of the trust or institution shall be taxable on conversion of trust or institution into a form not eligible for registration u/s 12AA or on merger into an entity not having similar objects and registered under section 12AA or on non-distribution of assets on dissolution to any charitable institution registered u/s 12AA or approved under section 10(23C) within a period of twelve months from dissolution.

(ii) Accreted income shall be amount of aggregate of total assets as reduced by the liability as on the specified date. The method of valuation is proposed to be prescribed in rules. The asset and the liability of the charitable organisation which have been transferred to another charitable organisation within specified time will be excluded while calculating accreted income.

(iii) The taxation of accreted income shall be at the maximum marginal rate.

(iv) This levy shall be in addition to any income chargeable to tax in the hands of the entity.

(v) This tax shall be final tax for which no credit can be taken by the trust or institution or any other person, and like any other additional tax, it shall be leviable even if the trust or institution does not have any other income chargeable to tax in the relevant previous year.

(vi) In case of failure of payment of tax within the prescribed time, a simple interest @ 1% per month or part of it shall be applicable for the period of non-payment.

(vii) For the purpose of recovery of tax and interest, the principal officer or the trustee and the trust or the institution shall be deemed to be assessee in default and all provisions related to the recovery of taxes shall apply. Further, the recipient of assets of the trust, which is not a charitable organisation, shall also be liable to be held as assessee in default in case of non-payment of tax and interest. However, the recipient's liability shall be limited to the extent of the assets received.

LESSON ROUND-UP

- The term 'Hindu undivided family' has not been defined in the Income-tax Act. However, in general parlance it means an undivided family of Hindus. Creation of a HUF is a God-gifted phenomenon. As soon as a married Hindu gets a child, a new HUF comes into existence. It is not at all necessary that every HUF must have joint property or family income.
- A Hindu Joint Family consists of Coparceners & members.
- The gross total income of the family for the relevant previous year shall be computed under the relevant heads (as per the provisions of the Income-tax Act) as it is computed for other assessees.
- 'Partition' signifies division of property. In the cases of property capable of physical division, share of each member is determined by making physical division thereof. It must be noted that a division of income without physical division of property does not amount to partition.
- **Partnership Firm:** Under Section 2(23) of the Income-tax Act, the terms "firm", "partner", and "partnership" have the meanings respectively assigned to them in the Indian Partnership Act, 1932 and Limited Liability Partnership Act, 2008.
- As per the scheme, a partnership firm shall be assessed as a firm if the following conditions are satisfied:
  - The partnership is evidenced by an instrument i.e. partnership deed.
  - The individual shares of the partners are specified in that instrument.
  - A copy of the partnership deed certified by all the partners in writing (other than the minors) is submitted along with the return of income in respect of which assessment as a firm is first sought.
- As per Section 10(2A) of the Act, any person who is a partner of a firm which is assessed as such, his share in the total income of the firm will not be included in computing his total income. Partner includes a minor admitted to the benefits of partnership as per Section 2(23) of the Act.
- When all the partners in the predecessor firm are replaced by new partners in the successor firm, it is known as succession of one firm by another firm. If a firm is dissolved and some of the partners take over the firm's business or carry on a similar business with or without new partners, it would be a case of succession by a new firm .
- Where a change has occurred in the constitution of a firm on account of death or retirement, the firm is not entitled to carry forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year.
- **Alternate Minimum Tax:** From the assessment year 2012-13 onwards, where the regular income tax payable for a previous year by a person other than a company is less than the alternate minimum tax payable for such previous year then the adjusted total income shall be deemed to be the total income of such person for such previous year and it shall be liable to pay income tax on such adjusted total income @ 18.5% + SC plus health and education cess (HEC) @ 4%. AMT is applicable if adjusted total income exceeds Rs. 20 lakh.
- **Association of persons:** "Association of persons" means an association in which two or more persons join in a common purpose or common action to produce income, profits or gains.
- For the formation of an AOP the association need not necessarily be on the basis of a contract, consent and understanding may be presumed.

- Section 167B makes the following provisions as regards the incidence of charge of tax on the association of persons.
- Where shares of members are determinate, tax is chargeable on the income of the association of persons at the same rate as applicable to an individual. However, where the total income of any member of the association of persons for the previous year (excluding his share of income from the association of persons) exceeds the maximum amount not chargeable to tax in the case of an individual, tax will be charged on the total income of the AOP at the maximum marginal rate of 30%, i.e., the highest slab applicable to an individual.
- Where the shares of the members are indeterminate, tax will be charged on the total income of the AOP at the maximum marginal rate, that is, the rate of tax as well as surcharge, if any, applicable to the highest slab of income in the case of an individual as specified in the Finance Act of the relevant year
- Section 67A seeks to provide for the method of computing a member's share in the income of an association of persons or a body of individuals, wherein the shares of the members are determinate, in the same manner as provided for in Sub-sections (1) to (3) of Section 67 for computing a partner's share in a firm.
- Co-operative Society means a co-operative society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State for the registration of co-operative societies.
- The income of a co-operative society is computed in the same manner as provided for other assessees.
- Section 80P provides for certain deductions from the gross total income of a Co-operative Society.
- A new alternative Tax system is introduced for cooperative societies w.e.f. AY 2021-22 u/s 115BAD.

TEST YOURSELF

(*These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.*)

Multiple Choice Questions "MCQs"

1. Alternative Minimum Tax (AMT) is applicable if adjusted Total Income of individual, AOP, artificial juristic person, Firm etc. exceeds:
   (a) 15 lakhs
   (a) 20 lakhs
   (a) 25 lakhs
   (a) 10 lakhs
   Answer: (b)
2. Share in the profits of the firm is taxable in the hands of partner under the head:
   (a) Salary
   (b) Business & Profession
   (c) Income from other sources
   (d) Exempt from tax
   Answer: (d)

3. Salary, fees, bonus received by a partner from the firm is Taxable in the hands of partner under the head:
   (a) Salary
   (b) Business & Profession
   (c) Income from other sources
   (d) Exempt from tax

   Answer: (b)
4. Income earned from sale of "Stridhan" is taxable in the hands of:
   (a) HUF
   (b) Husband of such woman
   (c) Such woman herself
   (d) None of above

   Answer: (c)
5. Personal earning including income from Self Acquired Property of a member of the HUF is included in Income of:
   (a) HUF income
   (b) Son's income
   (c) Individual's income
   (d) None of these

   Answer: (c)

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann
- **Direct Taxes Ready Reckoner with Tax Planning**

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta

  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Classification and Tax Incidence on Companies

Lesson 12

KEY CONCEPTS

■ Indian Company ■ Domestic Company ■ Foreign Company ■ Minimum Alternate Tax ■ Carbon Credit ■ Equalization Levy ■ Buyback ■ Amalgamation ■ Mergers ■ De-mergers

Learning Objectives

To understand:

- What are the constitutional provisions for Companies with regard to Income tax?
- The provisions related to Tax Incidence on Companies
- When the provisions of Minimum Alternate Tax 'MAT' shall be applicable?
- Provision related to Carbon Credit
- Provision related to Equalization Levy
- Specific provisions related to:
  - Buyback of Shares
  - Tax on Income distributed by specified company or Mutual Fund
  - Tax liability of Company in the event of liquidation
  - Taxation aspects of Share Premium
  - Taxation aspects of Amalgamation, Mergers and De-mergers

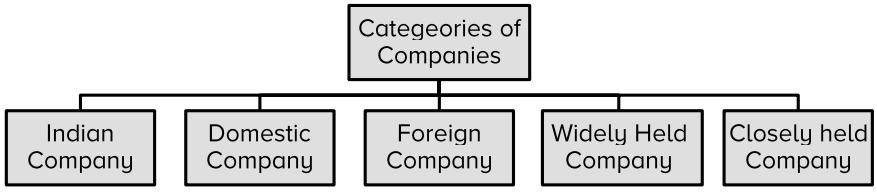
Lesson Outline

REGULATORY FRAMEWORK

Sections	Income-tax Act, 1961
Section 2(26)	Indian Company
Section 2(22A)	Domestic Company
Section 2(23A)	Foreign Company
Section 6(3)	Residential Status of Company
Section 115BA	Tax on Income of certain manufacturing Domestic Companies
Section 115BAA	Tax on Income of certain Domestic Companies
Section 115BAB	Tax on Income of new manufacturing Domestic Companies
Section 115JB	Minimum Alternate Tax
Section 115JB(2)	Meaning of Book Profit
Section 115JAA	MAT Credit
Section 115BBD	Taxability of Dividend Income of an Indian company from a Specified Foreign Company
Section 115BBG	Carbon Credit

BACKGROUND

Before we begin to examine and understand the taxability and tax incidence on companies, we must understand the meaning of company and its types that are in existence today scenario post the Companies Act, 2013.



Indian Company

Section 2(26) of the Income-tax Act, 1961 defines the expression '**Indian Company**' as a company formed and registered under the Companies Act, 2013 and the registered office or the principal office should be in India and it also includes:

(a) a company formed and registered under any law relating to companies formerly in force in any part of India [other than Jammu and Kashmir, and the Union Territories specified in (d) below];

(b) any corporation established by or under a Central, State or Provincial Act;

(c) any institution, association or body which is declared by the Board to be a company under Section 2(17) of the Income-tax Act, 1961;

(d) in the case of any of the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, a company formed and registered under any law for the time being in force in that Union Territory.

Provided that the registered or, as the case may be, principal office of the company, corporation, institution, association or body in all cases is in India.

From the above definition, it may be seen that statutory corporations as well as government companies are automatically treated as Indian companies for purposes of the Income-tax Act, 1961. The definition of an Indian company has been specifically given under the Income-tax Act, 1961 because of the fact that Indian companies are entitled to certain special tax benefits under this Act.

Domestic Company

Section 2(22A) of the Income-tax Act, 1961, defines –

- Domestic company as an Indian company or
- Any other company which, in respect of its income liable to tax under the Income Tax Act, has made the prescribed arrangements for the declaration and payment within India, of the dividends (including dividends on preference shares) payable out of such income.

From this definition, it is clear that –

- All Indian companies are domestic companies while
- All domestic companies need not necessarily be Indian companies. In other words, a non-Indian company would be considered as a domestic company if it makes the prescribed arrangements for the declaration and payment of dividends in India on which tax is deductible under Section 194.

Under Rule 27 of Income tax rules, the prescribed arrangements are as follows:

(i) the **share register of the company concerned, for all its shareholders, shall be regularly maintained at its principal place of business within India** in respect of any assessment year from a date not later than the first day of April of such year;

(ii) the **general meeting** for passing the accounts of the previous year relevant to the assessment year declaring any dividends in respect thereof shall be **held only at a place within India**;

(iii) the **dividends declared**, if any, shall be **payable only within India** to all shareholders.

Foreign Company

Section 2(23A) of the Income-tax Act defines –

- Foreign company as a company, which, is not a domestic company.
- However, all non-Indian companies are not necessarily foreign companies. If a non-Indian company has made the prescribed arrangements for declaration and payments of dividends within India, such a non- Indian company must be treated as a **"domestic company"** and not as a **"foreign company".**

Company in which public are substantially interested (A widely-held company)

Section 2(18) of the Income-tax Act defines the expression "**company in which the public are substantially interested**". A company is said to be one in which public are substantially interested in the following cases:

A company owned by Government / RBI	If it is a company owned by the Government (either central or state but not foreign) or the Reserve Bank of India or in which not less than 40 per cent of the shares, whether singly or taken together, are held by the Government or the Reserve Bank of India or a corporation owned by the Reserve Bank of India; or

Section 8 company	If it is a company which is registered under Section 8 of the Companies Act, 2013 ; or
A company having no share capital declared by CBDT	If it is a company, having no share capital and if, having regard to its objects, the nature and composition of its membership and other relevant considerations, it is declared by an order of the Board (CBDT) to be a company in which the public are substantially interested. However, such a company shall be deemed to be one in which the public are substantially interested only for the assessment year(s) as may be specified in the declaration; or
Nidhi/ Mutual Benefit Society	If it is mutual benefit finance a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under Section 406 of the Companies Act, 2013 to be a Nidhi or Mutual Benefit Society; or
A company owned by Co-operative Society	If it is a company in which shares carrying not less than 50 per cent of the voting power have been allotted unconditionally to or acquired unconditionally by, and are throughout the relevant previous year beneficially held by, one or more cooperative societies; or
Listed Company	If it is a company which is not a private company as defined in Companies Act, and equity shares of the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in the profits, i.e., preference shares) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India;
Public company owned by Govt. and/ or public limited company	If it is a company which is not a private company within the meaning of the Companies Act, and the shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than 50 per cent (40 per cent in case of an industrial company) of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant accounting year beneficially held by (a) the Government, or (b) a corporation established by a Central or State or Provincial Act, or (c) any company in which the public are substantially interested or a wholly owned subsidiary company.

Note: **Industrial Company** means an Indian company where business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power.

It may be noted that, a public company under the Companies Act, need not necessarily fall within the meaning of a company in which the public are substantially interested under the Income-tax Act, 1961 because a public company under the Companies Act, may be considered as one in which the public are not substantially interested under the Income-tax Act, 1961 after considering the nature and extent of shareholding.

Illustration 1:

State with reason whether in the following cases Companies are widely held or closely held:

(a) The shares of ABC Private Limited are held as follows:

i	A corporation owned by RBI	15%
ii	Central Govt.	18%
iii	R.B.I.	10%
iv	Mr. Raman	28%
v	Mr. Bhuvan	27%

(b) 85% equity shares of Progressive Private Limited were held by the public and its affairs during the relevant previous year were controlled by seven persons.

Solution:

(a) Shares held by Govt., RBI and Corporation owned by RBI = 18%+10%+15% = 43%.

As shares held by CG along with RBI are more than 40%, therefore, ABC Pvt. Ltd. is a Govt. Participating company. Hence it is a company in which Public is substantially interested, i.e., widely held.

(b) As none of the criteria mentioned in Section 2(18) are met in case of Progressive Pvt. Ltd. (such as Govt. Participating, Section 8 Company or Nidhi etc.) therefore, it is a closely held company.

Closely Held Company

A Company in which the public is not substantially interested is known as a closely held company.

The distinction between a closely held and widely held company is significant from the following viewpoints.

(i) Section 2(22) (e), which deems certain payments as dividend, is applicable only to the shareholders of a closely-held company; and

(ii) A closely held company is allowed to carry forward its business losses only if the conditions specified in Section 79 are satisfied.

TAX INCIDENCE ON COMPANIES

The incidence of Income tax depends upon the residential status of a company in India during the relevant previous year. A Company may be either resident or non-resident in India, i.e., company cannot be ordinary or not-ordinary resident.

According to Section 6(3) of the Act, a company is said to be resident in India (resident company) in any previous year, if:

(i) It is an Indian company; or

(ii) Its place of effective management, (POEM), in that year, is in India.

If any of the above two tests is satisfied the company would be a resident company in India during that previous year.

A foreign company is resident in India if its Place of Effective Management (POEM) during the previous year is in India. For this purpose, the Place of Effective Management means a place where Key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance are made.

According to Section 5(1) of the Act, the total income of any previous year of a resident company would consist of:

(i) Income received or deemed to be received in India during the previous year by or on behalf of such company;

(ii) Income which accrues or arises or is deemed to accrue or arise to it in India during the previous year;

(iii) Income which accrues or arises to it outside India during the previous year.

Under Section 5(2) of the Act, the total income of any previous year of **non-resident company** would consist of:

(i) Income received or deemed to be received in India in the previous year by or on behalf of such company;

(ii) Income which accrues or arises or is deemed to accrue or arise to it in India during the previous year.

CORPORATE TAX RATES

Domestic Company	***Assessment Year 2023-24***
• **Where it has opted for Section 115BA [other than those opted under section 115BAA and section 115BAB]** [This regime shall be available only for the manufacturing companies in corporated in India on or after 01-03-2016.	25%
• **Where it opted for Section 115BAA** [This benefit shall be available when total income of the company is computed without claiming specified deductions, incentives, exemptions and additional depreciation available under the Income-tax Act.]	22%
• **Where it opted for Section 115BAB** [This regime shall be available only for the manufacturing companies incorporated in India on or after 01-10-2019. Hence, old companies will not be able to take the benefit of this section.]	15%
• **Where it has not opted for Section 115BAA and the Total Turnover or Gross receipts of the company in the previous year 2020-21 does not exceeds 400 crore** rupees	25%
• **Any other domestic company**	30%
Foreign Company	40%

Add:

(a) Surcharge:

Type of Company	***10 Crores>Total Income> 1 Crore***	***Total Income> 10 Crore***
Domestic Company	7%	12%
Foreign Company	2%	5%
Company opting for taxability under Section 115BAA / 115BAB	Flat 10% irrespective of amount of total income	

(b) Health and Education Cess: The amount of income-tax and the applicable surcharge, shall be further increased by health and education cess calculated at the rate of 4% of such income-tax and surcharge.

Domestic companies have to pay tax at the specified rate on profit earned during the previous year. Generally the tax rate applicable on domestic companies is 30%. It is 25% if the total turnover or gross receipt does not exceed Rs. 400 crore during the preceding previous year.

In addition to the above tax rate, there are three other sections i.e. Section 115BA / BAA / BAB of the Income tax Act, 1961. Domestic Companies have the option to choose to pay tax in any of these sections only on fulfillment of certain conditions. The conditions are appended below:

Criteria	***Tax on Income of certain manufacturing Domestic Companies [Section 115BA]***	***Tax on income of certain Domestic Companies [Section 115BAA]***	***Tax on Income of new manufacturing Domestic Companies [Section 115BAB]***
Tax Rates	25% + SC as applicable + HEC @ 4%	22% + SC @ 10% + HEC @ 4%	15% + SC @ 10% + HEC @ 4%
Set-up and engaged	Company has been set-up & registered on or after 01-03-2016 and engaged in business of manufacture/production of any article/thing and research in relation to, or distribution of, such article or thing manufactured	Applicable on Domestic Companies	Company should be set-up as a domestic company engaged in manufacturing / production of any article and include research or distribution of such article. The company has been set-up and registered on or after 1st Oct 2019 and must commence manufacturing on or before 31st March, 2024. Is not formed by splitting up or reconstruction of business already in existence (exception provided for undertaking formed as a result of reestablishment, reconstruction or revival of business referred to in section 33B of the Act). Does not use any building previously used as a hotel or convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.

Criteria	*Tax on Income of certain manufacturing Domestic Companies [Section 115BA]*	*Tax on income of certain Domestic Companies [Section 115BAA]*	*Tax on Income of new manufacturing Domestic Companies [Section 115BAB]*
Following Deduction not allowed while calculating total Income	• Section 10AA: Deduction from special economic zone unit. • Section 32AD: Investment allowance towards new plant and machinery made in notified backward areas. • Section 33AB: Deduction for Tea, Coffee and Rubber manufacturing. • Section 33ABA: Deposits made by companies engaged in production or extraction of petroleum and natural gas in India towards the site restoration fund. • Deduction under section 32AC, 35(1)(ii)(iia)(iii) or 35(2AA)(2AB) or 35AC • Section 35AD: Capital expenditure by any specified business. • Section 35CCC: Expenditure on an agriculture extension project. • Section 35CCD: Expenditure on skill development project • Section 80C to 80U (profit based) other than u/s 80JJAA. • Additional depreciation u/s 32.	• Section 10AA: Deduction from special economic zone unit. • Section 32AD: Investment allowance towards new plant and machinery made in notified backward areas. • Section 33AB: Deduction for Tea, Coffee and Rubber manufacturing. • Section 33ABA: Deposits made by companies engaged in production or extraction of petroleum and natural gas in India towards the site restoration fund. • Deduction under section 32AC, 35(1)(ii)(iia)(iii) or 35(2AA)(2AB) or 35AC. • Section 35AD: Capital expenditure by any specified business. • Section 35CCC: Expenditure on an agriculture extension project. • Section 35CCD: Expenditure on skill development project • Section 80C to 80U (profit based) other than u/s 80JJAA. • Additional depreciation u/s 32.	• Section 10AA: Deduction from special economic zone unit. • Section 32AD: Investment allowance towards new plant and machinery made in notified backward areas. • Section 33AB: Deduction for Tea, Coffee and Rubber manufacturing. • Section 33ABA: Deposits made by companies engaged in production or extraction of petroleum and natural gas in India towards the site restoration fund. • Deduction under section 32AC, 35(1)(ii)(iia)(iii) or 35(2AA)(2AB) or 35AC. • Section 35AD: Capital expenditure by any specified business. • Section 35CCC: Expenditure on an agriculture extension project. • Section 35CCD: Expenditure on skill development project. • Section 80C to 80U (profit based) other than u/s 80JJAA. • Additional depreciation u/s 32.

Criteria	*Tax on Income of certain manufacturing Domestic Companies [Section 115BA]*	*Tax on income of certain Domestic Companies [Section 115BAA]*	*Tax on Income of new manufacturing Domestic Companies [Section 115BAB]*
Set-off of loss	No set off of any loss c/f from any earlier AY if such loss is attributable to any of the deductions referred above	No set off of any loss c/f from any earlier AY if such loss is attributable to any of the deductions referred above	No set off of any loss c/f from any earlier AY if such loss is attributable to any of the deductions referred above.
MAT	Applicable	Not Applicable	Not Applicable
Exercise of Options	This Option has to be exercised upto due date of income tax return filing.	This Option has to be exercised upto due date of income tax return filing.	This Option has to be exercised upto due date of income tax return filing.
Opt-out options	Company cannot opt out once this option has been exercised ,except when the company choose to opt for Section 115BAA.	Company exercises the option under Section 115BAA for a given assessment year, it cannot withdraw it for the same or subsequent assessment years.	Company exercises the option under Section 115BAB for a given assessment year, it cannot withdraw it for the same or subsequent assessment years.

MINIMUM ALTERNATE TAX (MAT)

At times it may happen that a taxpayer, being a company, may have generated income during the year, but by taking the advantage of various provisions of Income-tax Law (like exemptions, deductions, depreciation, etc.), it may have reduced its tax liability or may not have paid any tax at all. Due to increase in the number of zero taxpaying companies, MAT was introduced. The objective of introduction of MAT is to bring into the tax net "zero tax companies" which in spite of having earned substantial book profits and having paid handsome dividends, do not pay any tax due to various tax concessions and incentives provided under the Income-tax Law. Since the introduction of MAT, several changes have been introduced in the provisions of MAT and today it is levied on companies as per the provisions of section 115JB.

MAT Applicability

If the income tax payable by a company on its total income as computed under the normal provisions of the Income Tax Act in respect of any previous year relevant to the assessment year, is less than 15% of such book profit plus surcharge plus health and education cess, then such book profit shall be treated as total income of the company and the tax payable for the relevant previous year shall be deemed to be 15% (add surcharge and cess) of such book profit. This non- absolute provision will override any other provision of the Income-tax Act.

Note: MAT is levied at the rate of 9% (plus surcharge and cess as applicable) in case of a company, being a unit of an International Financial Services Centre and deriving its income solely in convertible foreign exchange.

MAT provision shall not apply to:

(i) any income arising to a company from life insurance business.

(ii) Domestic Company who has exercised the option referred to under sections 115BAA or 115BAB.

(iii) any shipping income arising to a company liable to tonnage taxation.

(iv) a foreign company resident of a country with which India has an Double Taxation Avoidance Agreement (DTAA) and such company does not have a permanent establishment in India.

(v) the foreign company is a resident of a country with which India does not have an agreement (DTAA) and such company is not required to seek registration under any law for the time being in force relating to companies.

(vi) a foreign company, whose total income comprises of profits and gains arising from business referred to in section 44B, 44BB, 44BBA, or 44BBB and such income has been offered to tax at the rates specified in those sections.

MEANING OF BOOK PROFITS

As per Explanation 1 to section 115JB(2) "book profit" for the purposes of section 115JB means net profit as shown in the statement of profit and loss prepared in accordance with Schedule III to the Companies Act, 2013 as increased and decreased by certain items prescribed in this regard. The items to be increased and decreased are as follows:

Computation of Book Profits (Table A)	***Amount***
Net profit as per statement of profit and loss prepared in accordance with Schedule III to the Companies Act, 2013	
Add : Following items (if they are debited to the statement of profit and loss)	
Income-tax paid/payable and the provision thereof (*)	
Amounts carried to any reserves by whatever name called (Other than reserve specified under Section 33AC)	
Provisions for unascertained liabilities	
Provisions for losses of subsidiary companies	
Dividends paid/proposed	
Expenditure related to incomes which are exempt under section 10 [other than section 10(38)] section 11 and section 12	
The amount or amounts of expenditure relatable to, income, being share of the taxpayer in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86	
The amount or amounts of expenditure relatable to income accruing or arising to a taxpayer being a foreign company, from : (a) the capital gains arising on transactions in securities; or (b) the interest, dividend royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII if the income-tax payable on above income is less than the rate of MAT	

The amount representing notional loss on transfer of a capital asset, being share or a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47 or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii) of section 47	
Expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF	
Amount of depreciation debited to P & L A/c	
Deferred tax and the provision thereof	
Provision for diminution in the value of any asset	
The amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such an asset if not credited to statement of profit and loss	
The amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit and loss as the case may be	
***Less* : Following items (if they are credited to the statement of profit and loss)**	
Amount withdrawn from any reserve or provision if credited to P&L account (**)	
Incomes which are exempt under section 10 [other than section 10(38)] section 11 and section 12	
Amount of depreciation debited to statement of profit and loss (excluding the depreciation on revaluation of assets)	
Amount withdrawn from revaluation reserve and credited to statement of profit and loss to the extent it does not exceed the amount of depreciation on revaluation of assets	
The amount of income, being the share of the taxpayer in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any such amount is credited to the statement of profit and loss	
The amount of income accruing or arising to a taxpayer being a foreign company, from : (a) the capital gains arising on transactions in securities; or (b) the interest, dividend royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII if such income is credited to the statement of profit and loss and the income-tax payable on above income is less than the rate of MAT.	
The amount (if any, credited to the statement of profit and loss) representing (a) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or (b) notional gain resulting from any change in carrying amount of said units; or	

(c) gain on transfer of units referred to in clause (xvii) of section 47, The amount representing notional gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit and loss, as the case may be.	
Income by way of royalty in respect of patent chargeable to tax under section 115BBF	
Aggregate amount of unabsorbed depreciation and loss brought forward in case of: a) A company and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government under Section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government under Section 242 of the said Act; A company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under Section 7 or Section 9 or Section 10 of the Insolvency and Bankruptcy Code, 2016	
Amount of brought forward loss or unabsorbed depreciation, whichever is less as per books of account (in case of a company other than the company undergoing insolvency proceedings)	
Profits of a sick industrial company till its net worth becomes zero/positive	
Deferred tax, if credited to statement of profit and loss	
Book profit to be used to compute MAT	

(*) The amount of Income-tax shall include:

i. Any tax on distributed profits under section 115-O (dividend distribution tax - i.e., DDT) or tax on distributed income under section 115R;

ii. Any interest charged under this Act;

iii. Surcharge, if any, as levied by the Central Acts from time-to-time;

iv. Education Cess on Income-tax, if any, as levied by the Central Acts from time-to-time; and

v. Secondary and Higher Education Cess on Income-tax, if any, as levied by the Central Acts from time-to-time.

(**) Withdrawals made from reserves created or provisions made on or after the 1-4-1997, shall be deducted only if the book profit of the year of creation of such reserve has been increased by the amount transferred to such reserve or provisions (out of which the said amount was withdrawn)

Meaning of book profit for Indian Accounting Standards (Ind AS) compliant companies

(1) As per newly inserted section 115JB(2A) by the Finance Act, 2017, "book profit" for Ind AS compliant company for the purpose of section 115JB means the book profit as computed in accordance with Explanation 1 to section 115JB(2) as:-

(a) increased by all amounts credited to other comprehensive income (OCI) in the statement of profit and loss that will not be re-classified to profit or loss;

(b) decreased by all amounts debited to other comprehensive income (OCI) in the statement of profit and loss that will not be re-classified to profit or loss;

(c) increased by all amounts or aggregate of amounts debited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger of companies in accordance with Appendix A of Ind AS 10; and

(d) decreased by all amounts or aggregate of amounts credited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger of companies in accordance with Appendix A of Ind AS 10.

(2) Any item credited/debited to OCI that will not re-classified to profit or loss should be ignored for the purpose of computing book profit if that item is:

i. Revaluation surplus for fixed assets and intangible assets under Ind AS 16 and Ind AS 38; or

ii. Gains or losses from investments in equity instruments measured at fair value through other comprehensive income (FVTOCI) as per Ind AS 109.

But, the book profit of the previous year in which the asset or investment as referred to in above points (i) and (ii) is retired, disposed, realised or otherwise transferred shall be increased or decreased by the amounts of above points (i) and (ii) to the extent relatable to the disposed asset or investment.

(3) In the case of a resulting company, where the assets and liabilities of the undertaking or undertakings being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before demerger, any change in such value shall be ignored for the purpose of computation of book profit of the resulting company.

So, for the computation of book profit of an Ind AS compliant company, may proceed as follows:

Particulars	***Amount***
Book profit as computed in Table A	
Adjustments as mentioned in point (3) above	
Adjustments for revaluation gain/loss for fixed assets & intangible assets in the year of their disposal or transfer	
Adjustments for gains or losses from investments in equity instruments measured at FVTOCI in the year if their disposal or transfer	
Adjustments for any other OCI items that will not be re-classified to profit or loss	
Book profit to be used to compute MAT	

MAT CREDIT [SECTION 115JAA]

MAT Credit for taxes paid as per Section 115JB in earlier years (in which MAT liability was more than tax liability as per normal provisions of the Act) is available in the Assessment year in which Tax payable on the total income computed under the normal provisions of this Act is more than tax payable u/s 115JB for that Assessment year.

MAT Credit to be set off in an AY = Regular Income tax - Minimum alternate tax

Carried Forward of MAT Credit

Credit of MAT in respect of tax excess paid under Section 115JB will be available and it can be carried forward for **15 Assessment Years** succeeding the assessment year in which the credit became allowable.

The amount of MAT credit shall not be allowed to be carried forward to the subsequent year to the extent such credit relates to the difference between the amount of foreign tax credit (FTC) allowed against MAT and FTC allowable against the tax computed under regular provisions of the Act.

In case of conversion of a company into LLP, MAT Credit available in the hands of company shall not be allowed to LLP.

Illustration 2:

Number of years for which credit of MAT excess paid under section 115JB can be carried forward is –

(a) 7 Assessment years (b) 8 Assessment years

(c) 15 Assessment years (d) 9 Assessment years.

Solution: (c) 15 Assessment years

Illustration 3:

A domestic company ABC Ltd furnishes the following particulars for AY 2023-24 and solicits your advice on the application of section 115JB. You are also required to compute the total income and tax payable.

	Particulars	***Amount (Rs.)***
	Profits as per P&L Account as per Companies Act, 2013	1,95,00,000
	This includes:	
a)	Excess realized on sale of land held as investment	30,00,000
b)	Depreciation on SLM basis	1,00,00,000
c)	Provision for losses of subsidiaries	60,00,000
	Depreciation allowable per Income Tax Rules, 1962	1,50,00,000
	STCG on sale of land mentioned above	40,00,000
	B/f losses	50,00,000
	Unabsorbed Depreciation	60,00,000

The Company has also represented to you that the excess realized on sale of land cannot form part of the book profits u/s 115 JB. You will have to deal with the issue assuming that the Co. is not required to comply with Ind. AS. The annual turnover of ABC Ltd. was INR 40 Crores.

Solution:

Computation of Total Income

	Particulars	*Amount (Rs.)*	*Amount (Rs.)*
	Net Profit per P&L Account		1,95,00,000
Less:	Excess realized on sale of land (treated separately)		30,00,000
			1,65,00,000
Add:	Depreciation on SLM Basis	1,00,00,000	
	Provisions for losses of subsidiaries	60,00,000	
			1,60,00,000
	Total		3,25,00,000
Less:	Depreciation allowable per Income-tax Act		(1,50,00,000)
	Business Income		1,75,00,000
Less:	Set-off of B/F losses		(50,00,000)
	Net Business Income		1,25,00,000
	Capital Gains		40,00,000
	Total Income		1,65,00,000
Less:	Unabsorbed Depreciation		(60,00,000)
	Total Income per as Income-tax Act, 1961		1,05,00,000

Computation of Book Profit u/s 115JB

	Particulars	*Amount (Rs.)*	*Amount (Rs.)*
	Net Profit per P&L Account		1,95,00,000
Add:	Depreciation on SLM Basis	1,00,00,000	
	Provisions for losses of subsidiaries	60,00,000	1,60,00,000
			3,55,00,000

Less:	Depreciation		(1,00,00,000)
	Business Income		2,55,00,000
Less:	B/f Business Loss as it's less than Unabsorbed Depreciation		(50,00,000)
	Book Profits		2,05,00,000

(a) Note that the profit on sale of land held as investment is not excluded from the P&L for purposes of computing the Book Profits.

(b) Note that the least of the B/f loss and the Unabsorbed Depreciation is reduced to compute Book Profits.

Income Tax Liability under Normal Provisions		
Tax Liability @ 25% as the Turnover is < 400 Crores		26,25,000
Add:	Surcharge @ 7% as the Income is > 1 Cr.	1,83,750
	Total Tax Payable	28,08,750
Add:	Health and Education Cess @ 4%	1,12,350
	Total Income Tax Liability	29,21,100

Income Tax Liability per MAT Provisions		
15% of Book Profits		30,75,000
Add:	Surcharge @ 7% as the Income is > 1 Cr.	2,15,250
	Total Tax Payable	32,90,250
Add:	Health and Education Cess @ 4%	1,31,610
	Total Income Tax Liability	34,21,860

Note:

(a) Since 15% of book profits exceeds the tax payable per Income-tax Act, 1961, the book profit would be deemed to be the total income and the tax payable on such total income, which is INR 34,21,860 (rounded off) would become the liability for AY 2022-23 for the Company.

(b) With regards to the company's representation, in respect of the capital gains, whether liable for book profit tax u/s 115JB, it may be noted that since the excess realised on sale of land which was held as investment, has been included in the net profit computed per Sch. III of the Companies Act, 2013, it shall form part of Book Profits (Bombay HC Judgement in *CIT* vs. *Veekay Lal Investment Co Pvt Ltd.*).

Illustration 4:

Mona Ltd., a resident Co., earned a profit of INR 15,00,000/- after debit / credit of the following amounts:

Items debited

a) Provisions for the losses of Subsidiaries; INR 70,000

b) Provision for doubtful debts; INR 75,000

c) Provision for Income Tax; INR 105,000

d) Provision for Gratuity basis actuarial valuation; INR 200,000

e) Depreciation; INR 360,000

f) Interest to Financial Institution (unpaid before filing of return); INR 100,000

g) Penalty for infraction of law; INR 50,000

Items credited

a) Profits from unit(s) established in SEZ; INR 500,000

b) Share in income of an AOP as a member; INR 175,000

c) Long Term Capital Gains; INR 300,000

Other Information

a) Depreciation includes INR 150,000 on account of revaluation of fixed assets

b) Depreciation per Income Tax Rules is INR 280,000

c) Balance of P&L Account on the assets side of B/S as at 31st March, 2020 was INR 10,00,000; of which the unabsorbed depreciation was INR 400,000

d) Capital Gains has been invested in specified assets u/s 54EC

e) The AOP, of which the Co. is a member has paid the tax at maximum marginal rate

f) Provision for Income Tax includes INR 45,000 as interest

You are required to compute the MAT u/s 115JB of the Income Tax Act, 1961 for AY 2023-24, assuming that the Co. is not required to comply with IND AS.

Solution:

Computation of Book Profit u/s 115JB

Particulars		***Amount (Rs.)***	***Amount (Rs.)***
	Net Profit per P&L Account		15,00,000
Add:	Provisions for subsidiaries' losses	70,000	
	Provision for doubtful debts	75,000	
	Provision for Income Tax	1,05,000	

	Depreciation	3,60,000	
			6,10,000
			21,10,000
Less:	Share in income of an AOP	1,75,000	
	Depreciation (excl. Reval. Amounts)	2,10,000	
	Unabsorbed Business Losses	4,00,000	
			(7,85,000)
	Book Profits		13,25,000
	MAT Liability @ 15%		19,87,50
Add:	Health and Education Cess @ 4%		7,950
	MAT Liability (rounded off)		20,6700

Note:

1. Interest to FI's / Banks which are unpaid prior to filing of return and penalties are not specified items u/s 115JB and hence not added back
2. Provision for Gratuity Liability based on actuarial valuation is an ascertained liability and hence should not be added back to ascertain book profits (*CIT vs. Echjay Forgings P. Ltd.*)
3. Capital Gains reflected in the P&L will form a part of the book profits even if the investments u/s 54EC have been made. Therefore, these cannot be reduced. (*CIT vs. Veekaylal Investment Co. P. Ltd.*)
4. Share of the AOP's income as a member is reduced as the AOP has already paid the tax at maximum marginal rate

Illustration 5:

The table below highlights and explains the modus of MAT Credit, and how it is utilised and carried forward.

MAT CREDIT UTILISATION AND C/F					
A.Y.	***Normal Tax Liability***	***Liability (MAT)***	***Tax Payable***	***Credit utilised***	***Credit c/f***
2009-10	100	300	300	-	200
2010-11	120	90	120	30	170
2011-12	150	110	150	40	130
2012-13	180	200	200	-	150

2013-14	200	190	200	10	140
2014-15	300	280	300	20	120
2015-16	250	230	250	20	100
2016-17	225	175	225	50	50
2017-18	250	240	250	10	40
2018-19	275	270	275	5	35
2019-20	350	315	350	35	0

TAXATION OF DIVIDEND

Dividend Distribution Tax 'DDT' [Section 115-O]: It is a tax on dividend (interim or final) declared, distributed or paid by a company (whether out of current or accumulated profits). Dividend distribution tax is in addition to income tax on total income. Term "Dividend" has the same meaning as defined under section 2(22). This tax is applicable on Domestic Company only.

The provisions of section 115-O(1) shall not be applicable w.e.f. April 1,2020 as dividend shall now taxable in the hands of the recipient [As amended by Finance Act, 2020].

The Finance Act, 2020 has abolished the DDT and move to the classical system of taxation wherein dividends are taxed in the hands of the investors. Therefore, the provision of Section 115-O shall not be applicable if the dividend is distributed on or after 01-04-2020. **Thus, if the dividend is distributed on or after 01-04- 2020 the domestic companies shall not liable to pay DDT and, consequently, shareholders shall be liable to pay tax on such dividend income.** As dividend would now be taxable in the hands of the shareholder, various provisions of the Act have been revived such as allow ability of expenses from dividend income, deductibility of tax from dividend income, treatment of inter-corporate dividend, etc.

As per the Finance Act, 2020 amended Section 57(i), effective from April 1, 2021 states that a taxpayer can claim a deduction of interest expenses for earning a dividend income and Interest on money borrowed for investing in the shares can be claimed as a deduction **subject to a maximum of 20% of dividends or income** in respect of units of a mutual fund [**i.e. (a) Actual Income or (b) 20% of Dividend or Income whichever is lower**]. In nut shell, taxpayer cannot claim a deduction of any expense against dividend income, except interest expense on cash borrowed for investment and the dividend income will be taxable. It is immaterial of the sum received at applicable income tax slab rates.

Inter-corporate Dividend relief: As the taxability of dividend has been shifted from companies to shareholders w.e.f. 01.04.2020, the Government has introduced **a new section 80M** under the Act to remove the cascading effect where a domestic company receives a dividend from another domestic company. However, nothing has been prescribed where a domestic company receives dividend from a foreign company and further distribute the same to its shareholders. [**As amended by Finance Act, 2020**]

The taxability in such cases shall be as under:

Domestic company receives dividend from another domestic company: The provisions of **section 80M** removes the cascading effect by providing that inter-corporate dividend shall be reduced from total income of company receiving the dividend if same is further distributed to shareholders one month prior to the due date of filing of return.

Section 80M	Deduction in respect of certain Inter Corporate Dividend (ICD)	
Meaning of ICD	When a company receives dividend by virtue of its shareholding in another company is known as ICD.	
Applicability	**To domestic companies** who have declared dividend and are also in receipt of the dividend from another domestic company.	
Coverage (Period)	Dividend distributed **on or after the 1st of April 2020** (AY 2021-22 onwards).	
Amount of Deduction (₹)	A. Amount of dividend received from domestic companies	***
	B. Amount of dividend distributed **1 month prior** to the due date of filing return	***
	Amount of Deduction= A or B Whichever is lower	***

CASE 1

DP ltd (A Domestic Company) provides you the information related to AY: 2023-24. Dividend received from ACC ltd. (A Domestic Company) ₹1200000 (Interest paid for borrowed money for investment in ACC ltd ₹300000 and dividend collection charges paid would be ₹7000). Income from Mutual Fund (HDFC Equity Oriented) ₹300000 (Interest paid for borrowed money for investment in MF ₹16000 and other charges paid would be ₹4000). DP ltd company has distributed the dividend to shareholders:

Particulars	*FY*	*Date of Payment*	*Amount*
Interim Dividend	2021-22	16-7-2021	80,000
Final Dividend	2021-22	13-4-2022	70,000
Interim Dividend	2022-23	23-7-2022	2,50,000
Interim Dividend	2022-23	29-11-2022	90,000

You are required to compute Taxable Dividend Income and Deduction under section 80M and Section 57 of Income Tax Act.

Solution:

Computation of Taxable Dividend Income and deduction u/s 57

Particulars		*Amount*
Dividend received from ACC ltd		1,20,0000
Less: Deduction u/s 57 in terms of Interest		
(a) Actual Amount	3,00,000	

(b) 20% of income (i.e. 20% *12,00,000)	2,40,000	
a or b whichever is lower		(2,40,000)
Dividend income received		9,60,000
Income from Mutual Fund (HDFC Equity oriented)		3,00,000
Less: Deduction u/s 57 in terms of Interest		
(a) Actual Amount	16,000	
(b) 20% of income (i.e. 20% *3,00,000)	60,000	
a or b whichever is lower		(16,000)
Income received		2,84,000

Computation of Deduction u/s 80M

Due date of filling of return	30.9.2022
(a) Amount of dividend received from domestic companies (As per above)	9,60,000
(b) Amount of dividend distributed 1 month prior to the due date of filing return (i.e.30-9-2022) [80000+70000+250000]	4,00,000
Amount of Deduction u/s 80M = A or B Whichever is lower	4,00,000

Note: Dividend collection charges and other charges are not allowed as a deduction.

Domestic company receives dividend from a foreign company: Dividend received by a domestic company from a foreign company, in which such domestic company has 26% or more equity shareholding, is taxable at a rate of 15% plus Surcharge and Health and Education Cess under **Section 115BBD.** Such tax shall be computed on a gross basis without allowing deduction for any expenditure.

Dividend received by a domestic company from a foreign company, in which equity shareholding of such domestic company is less than 26%, is taxable at normal tax rate. The domestic company can claim deduction for any expense incurred by it for the purposes of earning such dividend income.

Nature of Dividend	Taxability
Final	In the year of declaration at the AGM by Company
Deemed	In the year of distribution or paid by the Company
Interim	In the year of receipt by the shareholders

Taxability of Dividend Income of an Indian company from a Specified foreign company [Section 115BBD]

Applicability	Dividend received by the Indian Company from **Specified foreign company**
Coverage	Dividend Income of an Indian company out of dividend declared, distributed or paid by a specified foreign company
Taxability	Taxable in the hands of Indian Company
Tax Rate	15% + Surcharge (if Total Income > 1 Cr.) + HEC @ 4%
Note:1	No deduction in respect of any expenditure or allowance shall be allowed to the assessees
Note:2	"Specified Foreign Company" means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of company.
Note:3	The Finance (No.2) Act, 2014 extended the benefit of concessional rate of taxation @15% on gross dividend received by Indian companies from specified foreign companies without limiting it to a particular assessment year, in order to encourage Indian companies to repatriate foreign dividends into the country.

Illustration 6:

X Ltd. an Indian Company received dividend of Rs. 15 lakhs from a foreign company in which it holds 28% in nominal value of the equity share capital of the company. X Ltd. incurred expenditure of Rs. 0.25 lakhs on earning this income. Examine the taxability of the dividend under the provisions of the Income-tax Act, 1961.

Solution

Under section 115BBD, dividend received by an Indian company from a foreign company in which it holds 26% or more in nominal value of the equity share capital of the company, would be subject to a concessional tax rate of 15% plus surcharge and cess, as against the tax rate of 30% applicable to other income of a domestic company. This rate of 15% plus surcharge and cess would be applied on gross dividend, in the sense, that no expenditure would be allowable in respect of such dividend. Therefore, dividend of Rs. 15 lakhs received by X Ltd. from a foreign company, in which it holds 28% in nominal value of equity share capital of the company, would be subject to tax@15% under section 115BBD. Such dividend would be taxable under the head "Income from other sources". No deduction is allowable in respect of Rs. 0.25 lakhs spent on earning this income.

Taxability of Dividend in hands of Recipient: Section 10(34), which provides an exemption to the shareholders in respect of dividend income**, is withdrawn from Assessment Year 2021-22.** Thus, dividend received during the financial year 2020-21 and onwards shall now be taxable in the hands of the shareholders. Consequently, Section 115BBDA which provides for taxability of dividend in excess of Rs. 10 lakh has no relevance as the entire amount of dividend shall be taxable in the hands of the shareholder.

The taxability of dividend and tax rate thereon shall depend upon many factors like residential status of the shareholders, relevant head of income. In case of a nonresident shareholder, the provisions of Double Taxation Avoidance Agreements (DTAAs) and Multilateral Instrument (MLI) shall also come into play. [**As amended by Finance Act, 2020**]

CARBON CREDIT [SECTION 115BBG]

Meaning of Carbon Credit	• "carbon credit" in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price. • It is a tradable permit or certificate to an industrial undertaking for reduction of the emission keeping in mind of global warming.
Coverage and Applicability	• Where the total income of an assessee includes any income by way of transfer of carbon credits.
Tax Rate	• **Concessional rate of 10% (+SC+HEC) on the gross amount** of such income. • No expenditure or allowance in respect of such income shall be allowed.

BUY-BACK OF SHARES

Levy of additional income-tax @ 20% on Buyback of Shares [Section 115QA]

The Finance (No. 2) Act, 2019 has extended the levy of additional income-tax on buy back of shares to all companies including listed companies with effect from 05.07.2019. Thus, hereafter, In case of buyback of shares (whether listed or unlisted) by domestic companies, additional income-tax @ 20% (plus surcharge @ 12% and cess @ 4%) is leviable in the hands of the company.

Consequently, the income arising to the shareholders in respect of such buyback of shares by the domestic company would be exempt under section 10(34A), since the domestic company is liable to pay additional income-tax on the buyback of shares.

It means additional income tax is applicable to all companies, whether listed or unlisted, with effect from 5th July, 2019, However, the provision of this sub-section shall not apply to such buy-back of shares being the shares listed on recognized stock exchange in respect of which public announcement has been made before 5th July, 2019 in accordance with the provisions of SEBI (Buy Back Of Securities) Regulation 2018 made under the SEBI Act, 1992 as amended from time to time.

Note: Prior to 05.07.2019, additional income-tax was attracted only in case of buy-back of unlisted shares by domestic companies. Consequently, only holders of unlisted shares were entitled to exemption under section 10(34A).

Taxation provisions in respect of buyback effected on or after 5.7.2019

I	II	III	IV
Taxability in the hands of	**Buyback of shares (listed or unlisted) by domestic companies**	**Buyback of shares by a company, other than a domestic company**	**Buyback of specified securities by any company**
Company	Subject to additional income-tax @ 23.296%.	Not subject to tax in the hands of the company.	Not subject t o tax in the hands of the company.
Shareholder/ holder Of specified securities	Income arising to shareholders exempt under section 10(34A)	Income arising to shareholder taxable as capital gains u/s 46A	Income arising to holder of specified securities taxable as capital gains u/s 46A.

Such tax should be paid to the credit of the Central Government within 14 days from the date of payment of any consideration for such buyback to the shareholder

Meaning of buyback and distributed Income:

1. **Buyback:** Purchase by a company of its own shares in accordance with the provisions of any law for the time being in force to companies [clause (i) of Explanation to section 115QA]
2. **Distributed Income:** The consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares, determined in the manner as may be prescribed [clause (ii) of Explanation to section 115QA]

Liability of Simple Interest on account of non-payment of tax within time [Section 115QB]

The principal officer of the domestic company and the company will be liable to pay simple interest on such additional tax which has not been paid in time.

Such interest is leviable @ 1% for every month or part of the month on such amount of tax not paid / short paid, for the period beginning the date immediately after the last date on which such tax was payable and ending with the date when it was actually paid.

Assessee in Default [Section 115QC]

The principal officer of the domestic company and the company would be deemed to be an assessees in default if such additional tax is not paid to the credit of the Central Government within the specified time. In such a case hence, all provisions of collection and recovery of the income tax would apply.

No credit or deduction shall be claimed

The additional income tax payable by the company shall be the final payment of tax on such income. No credit or deduction shall be claimed by the company or any person in respect of such tax paid.

Summary of Taxability in case of Buyback of Shares			
Applicability	Buy Back of shares by domestic Company (Listed or Unlisted) Redemption of preference shares also amount to buyback of shares.		
Nature of Tax	In addition to Income Tax		
Tax Rate	20% (+ surcharge @ 12% + HEC @ 4%) = 23.296% ***No credit or deduction shall be claimed by the company or any person in respect of such tax paid.***		
Tax Levied on Distributed Income	The consideration paid by the company on buy-back of shares		**
	Less: Amount received by the company for issue of such shares (Including Premium)		**
	Distributed Income		**
Taxability in the hands of	**Company**	Domestic Company is liable to pay tax @23.296% of Distributed Income U/S 115QA	
	Shareholders	Exempted u/s 10(34A) in the hands of shareholders.	

Tax payment to Govt.	Tax should be paid to the credit of the **Central Government within 14 days** from the date of payment of any consideration for such buyback to the shareholder		
Consequences in case of default	**Who is liable to pay?**	The principal officer of the domestic company and the company	
	Liability	Simple interest on leviable **@ 1% for every month or part** of the month on such amount of tax not paid / short paid.	
	Period of Interest	**From**	The date immediately after the last date on which such tax was payable
		To	The date when it was actually paid.

CASE STUDY

ABC Ltd.; a domestic company purchases its own unlisted shares, on 14th October, 2021. The consideration for the buyback amounted to INR 50,00,000, which was paid the very same day. The amount received by the company 2 years ago, for the issue of such shares was INR 27,00,000.

The tax on such buy back was deposited by the company to the credit of the Central Government on 27th February, 2022.

You are required to compute the tax and the interest payable.

Solution

Particulars	***Amount (Rs.)***
Buy Back Consideration	50,00,000
Less: Cost of Shares	27,00,000
Net paid for buy-back	23,00,000
Tax payable @20%	4,60,000
Surcharge	55,200
Cess (on Tax + SC) @ 4%	20,608
Total additional tax payable	5,35,808
Additional Tax Payable (rounded off)	5,35,810
Interest payable	21,432

Note: The tax had to be deposited to the credit of the Central Government within 14 days of the payment of buy- back consideration, i.e., on or before 28th October, 2021. However, the tax was deposited on 27th February, 2022 and hence interest for 4 months @ 1% per month is applicable.

TAX ON INCOME DISTRIBUTED BY SPECIFIED COMPANY OR MUTUAL FUND

Section 115R(2)

Any amount of income distributed by a Mutual Fund, to its unit holders after 1st April, 2003 **but on or before 31 March, 2020** shall be chargeable to tax and the Mutual Fund becomes liable to pay additional tax on such distribution. Section 10(35), which provides an exemption to the unit holder in respect of income distributed by

a Mutual Fund, is withdrawn from Assessment Year 2021-20. Thus, any income distributed by a Mutual Fund received during the financial year 2020-21 and onwards shall not be taxed under section 115R and shall now be taxable in the hands of the Unit holders. **[As amended by Finance Act, 2020]**

Section 115S

The person responsible for making the payments of the income distributed by the Mutual Fund, will be liable to pay simple interest on such additional tax which has not been paid in time. Such interest is leviable @ 1% for every month or part of the month on such amount of tax not paid / short paid, for the period beginning the date immediately after the last date on which such tax was payable and ending with the date when it was actually paid.

Section 115T

The person responsible for making the payments of the income distributed by the Mutual Fund, will be deemed to be an assessee in default if such additional tax is not paid to the credit of the Central Government. Hence, all provisions of collection and recovery of the tax would apply.

EQUALISATION LEVY

The rapid growth of the information and communication technology has resulted in substantial expansion of the supply and procurement of digital goods and services globally, including India, and the digital economy is growing at approximately 10% per annum, faster than the economy as a whole.

These new business models have brought along with themselves, challenges. The typical issues / concerns around taxation vis-à-vis e-commerce are:

a) difficulty in characterizing the nature of payment and establishing a link / nexus between taxable transaction, activity and taxing jurisdiction.

b) the difficulty in locating the transaction, activity and identifying the tax payer.

The Organization for Economic Cooperation and Development (OECD), has recommended several options to tackle these challenges.

In order to address these challenges, Chapter VIII of the Finance Act, 2016 titled "Equalization Levy" provides for an equalization levy of 6% on the amount of consideration for specified services, received / receivable by a non- resident, not having permanent establishment in India, from a resident in India, who carries out business / profession, or from a non-resident who has a permanent establishment in India.

As amended by Finance Act, 2020, an equalization levy of 2% shall be charged on or after 01.04.2020 on the consideration by an e-commerce operator from e-commerce supply made or provided by it:

(a) to a person resident in India;

(b) to a non-resident in the specified circumstances as referred to in sub-section (3);

(c) to a person who buys such goods or services or both using internet protocol address located in India.

Where e-commerce operator means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

E-commerce supply or services means-

(i) online sale of goods owned by the e-commerce operator;

(ii) online provision of services provided by the e-commerce operator;

(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator;

(iv) any combination of activities listed in clause (i), (ii) or clause (iii).

The equalisation levy shall not be charged in the following cases:

(a) where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;

(b) where the equalisation levy is leviable @ 6% under consideration for specified services;

(c) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than 2 Crore rupees during the previous year.

The equalisation levy, shall be paid by every e-commerce operator to the credit of the Central Government for the quarter of the financial year ending with the date specified in column (2) of the Table below by the due date specified in the corresponding entry in column (3) of the said Table:

S. No.	***Date of ending of the quarter of financial year***	***Due date of the financial year***
1	30th June	7th July
2	30th September	7th October
3	31st December	7th January
4	31st March	31st March

Refer to the table below to understand the various parameters and aspects involved.

Section	***Subject***	***Provisions***
166	Person responsible for deduction of equalization levy	Every person being a resident in India, who carries out business / profession, or a non-resident who has a permanent establishment in India shall deduct equalization levy from the amount paid / payable to a non-resident in respect of the specified service.
	Rate	• 6% of the amount of consideration for a specified service, received / receivable by a non-resident, not having permanent establishment in India, from a resident in India, who carries out business / profession, or from a non-resident who has a permanent establishment in India, rounded off to the nearest ten rupees. • **2% on Consideration received or receivable by E-Commerce supply of services [Amendment vide Finance Act, 2020].**
	Threshold	Equalization Levy is deductible if the aggregate amount of consideration for a specified service in a previous year exceeds INR 100,000.
	Time-period	The Equalization Levy so deducted during any calendar month shall be paid by every assessee to the credit of the Central Government by the 7th of following month.

Section	Subject	Provisions
	Consequence of failure	Any assessee who fails to deduct, would anyway continue to be liable to pay to the credit of the Central Government, the Equalization Levy by 7th of the following month.
167	Furnishing the statement	Every assessee shall, within the time prescribed after the end of the FY, submit a statement in the prescribed Form # 1, on or by 30th June immediately following the FY, setting forth all details for specified services pertaining to that FY.
	Revised Statement	If the assessee notices omissions / errors / wrong details, he can furnish a revised statement before the expiry of 2 years from the end of the FY in which the specified service was provided.
	Notice by the Assessing Officer (A.O.)	Where any assessee has failed to file the statement within the prescribed time, the A.O. is empowered to issue a notice calling for the statement and in which case the statement has to be furnished within 30 days of date of serving of such notice.
168	Processing of the Statement	The statement shall be processed, and the amount payable along with interest if any, shall be computed towards the Equalization Levy. The net amount payable by or refundable to the assessee has to be worked out and an intimation must be served upon the assessee. However, no intimation is to be sent after the expiry of one year, from the end of the FY in which the statement is furnished.
169	Rectification of mistake	With a view to rectifying a mistake apparent on the record, the A.O. may amend the intimation and such intimation must be amended within one year from the end of the FY in which the intimation sought to be amended was issued.
170	Interest on delayed payments	Every assessee who fails to deposit to the credit of the Central Government, the applicable Equalization Levy, within 7th of the month following the month in which it was deducted, the assessee shall be liable to pay Interest @ 1% of such levy for every month / part of the month of delay.
171	Penalty	If the assessee fails to deduct the Equalization Levy, in addition to the Equalization Levy and Interest, penalty equal to the amount of Equalization Levy that he failed to deduct would be applicable. If the assessee fails to remit the Equalization Levy so deducted to the credit of the Government by 7th of the following month, a penalty of INR 1000 per day would be leviable, subject to a maximum of the equalization levy that he was to deduct.
172	Penalty for delay in furnishing the statement	If the assessee fails to furnish the statement within 30th June of the following FY, or within 30 days of the notice served by the A.O., a penalty of INR 100 per day is leviable on the assessee.

An assessee aggrieved by an order of the A.O., may appeal to the Commissioner of Income Tax (Appeals) within 30 days of receipt of date of order. An assessee aggrieved by an order of the Commissioner, may appeal to the Appellate Tribunal within 60 days of receipt of date of order.

Illustration 7:

DEF Ltd. is in the business of manufacture and sale of formal apparels and in order to expand its footprints globally, has launched a massive online campaign. For the purpose of the online advertisements, it utilized the services of GHI Ltd., based out of Singapore. During the PY, DEF Ltd. paid a consideration of INR 20,00,000 to GHI Ltd. for such services.

Entail the implications if:

(a) GHI Ltd. has no permanent establishment in India.

(b) GHI Ltd. has a permanent establishment in India.

Solution:

(a) In case GHI Ltd. has no permanent establishment in India, the consideration paid to GHI Ltd. by DEF Ltd. would attract Equalization Levy to be deducted @ 6%. Hence, INR 120,000 has to be deducted by DEF Ltd. and deposited to the credit of the Central Government within 7th of the following month. Non- deduction of equalization levy would attract a disallowance u/s 40(a)(ib) of 100% of the amount paid, while computing business income.

(b) In case GHI Ltd. has a permanent establishment in India, Equalization Levy would not be attracted. Therefore DEF Ltd. need not deduct Equalization Levy from the payment of consideration to GHI Ltd. However, tax has to be deducted u/s 195 in respect of such payments towards TDS. Non-deduction of TDS would attract a disallowance u/s 40(a)(i) of 100% of the amount paid, while computing business income.

CASE 1

Mr. DP has advertised on Facebook for his business purpose. For that, he has to pay Rs. 200000 to Facebook for said advertising services. Discuss the tax implications under chapter VIII of Finance Act, 2016 read with Section 10(50) of Income Tax Act, 1961.

Solution:

Mr. DP deduct Equalization Levy = 6% of 200000 =Rs. 12,000 and Pay balance Rs. 1,88,000 to Facebook, the said advertisement. As per section 10(50) of the Income tax Act, 1961, Rs. 200000 shall be exempted in the hands of Facebook.

CASE 2

Mama web online portal owned by Kremal corp. (US Based Company) providing online platform to Indian and foreign customers. Goods and services provided to Indian customer's amounts to Rs. 20 crores where provided to Non-resident amounting to Rs. 70 crores (other than u/s 165 & 165A). However, online services provided to Indian Customer XL Virtual by way of online advertisement amounts to Rs. 10,00,000. Discus the tax implications in relation to Equalization Levy?

Solution:

1. If Mama web online portal has PE in India. In above case, Equalization Levy is not applicable and company is required to pay tax as per normal income tax provisions.
2. If Mama web online portal does not have PE in India. In above case, Equalization Levy is applicable.
   - EL payable by Mama Web online portal to Govt. =2% *20 Crores = Rs. 4,00,000
   - XL Virtual is required to deduct Equalization Levy for online advertisement = 6% of 10,00,000 = Rs. 60,000

CASE 3

Nozy Inc., a USA based company, is carrying on the business of manufacture and sale of Cosmetic". In order to increase its Indian Market share, Company launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of Kuka Inc., a Ghana based company which also owns and operates a digital platform. The gross receipt of Kuka Inc from provision of such services during the P.Y. 2021-22 is Rs 3 crores. During the previous year 2021-22, Nozy Inc. paid Rs. 5 lakhs to Kuka Inc. for such services. Discuss the tax implications in line with reference to Equalization Levy If –

(a) Nozy Inc. and Kuka Inc. have no PE in India

(b) Nozy Inc. has a PE in India but Kuka Inc. has not PE in India

(c) Kuka Inc. has a PE in India and the advertisement services are effectively connected with such PE

Solution:

(1) Nozy Inc. and Kuka Inc. have no PE in India

- Equalization levy would not be applicable. Therefore, the Nozy Inc. is not required to deduct equalization levy @ 6%
- Equalization levy @2% under section 165A is leviable on Rs. 5 lakhs as the amount of consideration received by Kuka Inc, an e-commerce operator from e-commerce services provided by it to Nozy Inc., a non-resident in the specified circumstance (i.e. sale of advertisement) which targets a customer, who is resident in India, since the gross receipt of Kuka Inc. in the P.Y. 2021-22 exceeds Rs. 2 crores.

(2) Nozy Inc. has a PE in India but Kuka Inc. has not

- Equalization levy @6% is leviable on Rs 5,00,000 received by Kuka Inc., a non-resident not having a PE in India.
- Hence, Nozy Inc. is required to deduct equalisation levy of Rs 30,000 (6% * 5 lakhs) as Services provided by Nozy Inc., a non-resident having no permanent establishment in India.
- Since, equalisation levy is attracted on the amount of Rs 5 lakhs, the said amount is exempt from income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

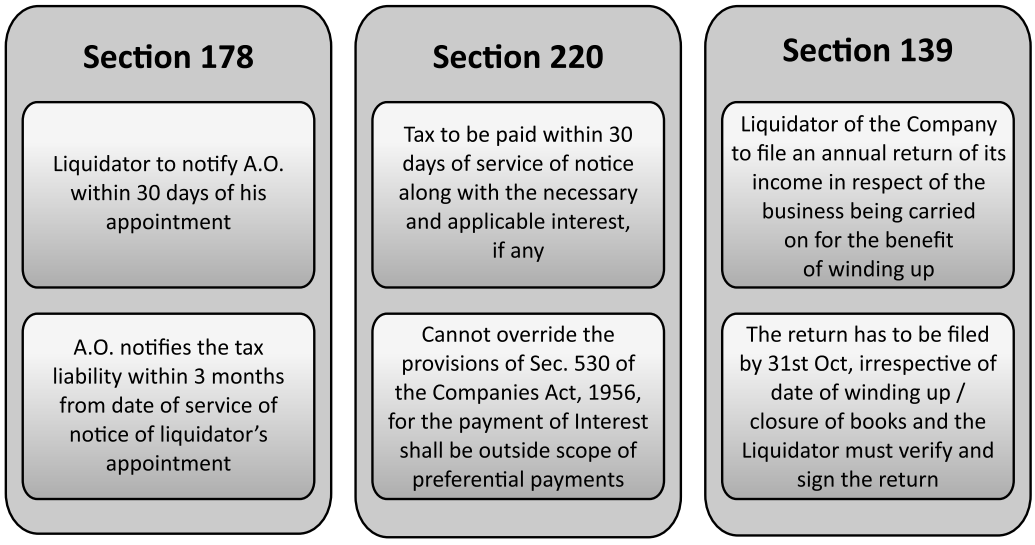
(3) Kuka Inc. has a PE in India and the advertisement services are connected with such PE

- Equalisation levy would not be applicable as the non-resident service provider Kuka Inc., has a PE in India and the service is effectively connected to the permanent establishment in India.
- Hence, Nozy Inc. is not required to deduct equalisation levy on Rs 5 lakhs, being the amount paid towards online advertisement services to Kuka Inc, in this case.

- Since equalisation levy is not applicable in this case hence no exemption under section 10(50) of the Income-tax Act, 1961 would be available.
- It is immaterial whether Nozy Inc. has a PE in India or not for the purpose of equalisation levy implication of advertisement transaction, as in both the cases, equalisation levy would not be attracted.

TAX LIABILITY OF COMPANIES IN THE EVENT OF LIQUIDATION

The table / diagram below explain the various aspects that require careful reading and evaluation.



Key Points		
Section 178	**Section 220**	**Section 139**
1. Until the liquidator receives the intimation of tax liability, he is not permitted to part with the assets of the Company. 2. If the A.O. fails to notify the tax liability within the 3 months' time period, then the demand of made by the A.O. after the expiry of the statutory period of 3 months falls outside the scope of preferential payment within the meaning of Section 530 of the Act and hence, such tax liability then assumes the same preference, i.e., ranks pari passu with the claims of ordinary creditors.	1. The Kerala High Court has held that a Company in Liquidation cannot be deemed to be an assessee in default on the same footing as any other assessee for the purposes of Section 200 of the Income-tax Act, because the Company is under the control of a Liquidator, who acts as such, in accordance to the Companies Act. Hence, he cannot be equated to be a defaulter and thereafter asked to pay the interest u/s 220 or penalty u/s 221. 2. It is settled law that a "company in liquidation" is not the same kind of assessee as a "working company". Interest claim in respect of tax due from the company, prior to the date of winding up, is not entitled to priority u/s 530 of the Companies Act.	If the company fails to file the return, such eventualities could be serious in nature as the company may then lose its exemptions and the tax liabilities may then interfere with and adversely affect the claims of its creditors.

3. In case the liquidator fails to notify his appointment, or parts with any assets of the Company in contravention with the provisions of the section, he will be personally liable for the payment of tax which otherwise the company was liable to pay.	3. The High Court of Kerala held that the provisions of Companies Act are special and those of the Income Tax Act are general and if there is an apparent conflict between the two enactments, the provisions of the Companies Act shall prevail.	

It must be noted that u/s 46, where the assets of the Company are distributed to the Shareholders, on its liquidation, such distribution will not be regarded as a transfer vis-à-vis Capital Gains.

Liability of Directors & Shareholders

- Section 179 of the Income-tax Act fastens the directors of a private company with a personal liability in the event of non-recovery of its tax dues. This liability is "joint and several".
- Section 2(22)(c) of the Income-tax Act, any distribution made to the shareholders of the company on liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before the liquidation, whether capitalized or not, would be consider as deemed dividend.

Taxation in case of Liquidation		
In the hands of Company	• Distribution made to the shareholders of the company on liquidation is treated as **"Deemed Dividend" u/s 2(22) (c)** • If the assets of company are distributed in the event of liquidation, then such distribution shall not be considered as "Transfer". **Hence, Capital Gain shall not be applicable to company.**	
In the hands of Shareholders	If the money or other sums received by shareholders on liquidation, then capital gain is **applicable to shareholders in the year of receipt of assets and computed below:**	
	Consideration received	**
	Add: Fair Market Value of the assets received on date of distribution	**
	Less: Amount assessed as dividend u/s 2(22) (c)	(**)
	Sale Consideration	**
	Less: Cost of Acquisition of shares **or** Indexed Cost of Acquisition of shares	**
	Capital Gain (Short Term/Long Term)	**
	Note: *Cost of Acquisition of assets shall be Fair Market Value of assets on the date of distribution u/s 55.*	

CASE 1

XP Private Ltd. went into liquidation on 1.6.2021. The company was apprehended and controlled of the following funds prior to the distribution of assets to the shareholders: Share capital of Rs. 500000 which was issued on 1st April 2013, Accumulated profit till date would be Rs. 300000. Moreover, Rs. 500000 has been an excess realisation on liquidation. There are five shareholders, each of whom received Rs. 2,60,000 from the liquidator in full settlement. Being Company Secretary of Company, throw light on the various issues and advice the shareholders and company about their liability to Income tax**.**

Solution:

Facts: XP Private Ltd. went into liquidation on 1.6.2021 and having accumulated profit prior to liquidation would be Rs. 300000.

Issue: Taxability in case of liquidation i.e. in the hands of company and shareholder.

Analysis:

In the hands of Company:

- Distribution made to the shareholders of the company on liquidation is treated as **"Deemed Dividend" u/s 2(22)(c)**
- If the assets of company are distributed in the event of liquidation, then such distribution shall not be considered as "Transfer". **Hence, Capital Gain shall not be applicable to company.**

In the hands of Shareholders:

- If the money or other sums received by shareholders on liquidation, then capital gain is **applicable to Shareholders in the year of receipt of assets.**

In this case, the accumulated profits immediately before liquidation is Rs 3,00,000. The share of each shareholder is Rs 60,000 (i.e. 300000/5) shall be treated as deemed dividend under section 2(22) (c). The same is taxable in the hands of the shareholder under the head "Income from other sources".

Consideration received	260000
Add: Fair Market Value of the assets received on date of distribution	-
Less: Amount assessed as dividend u/s 2(22) (c)	(60000)
Sale Consideration in the hands of each shareholder as per section 46(2)	200000

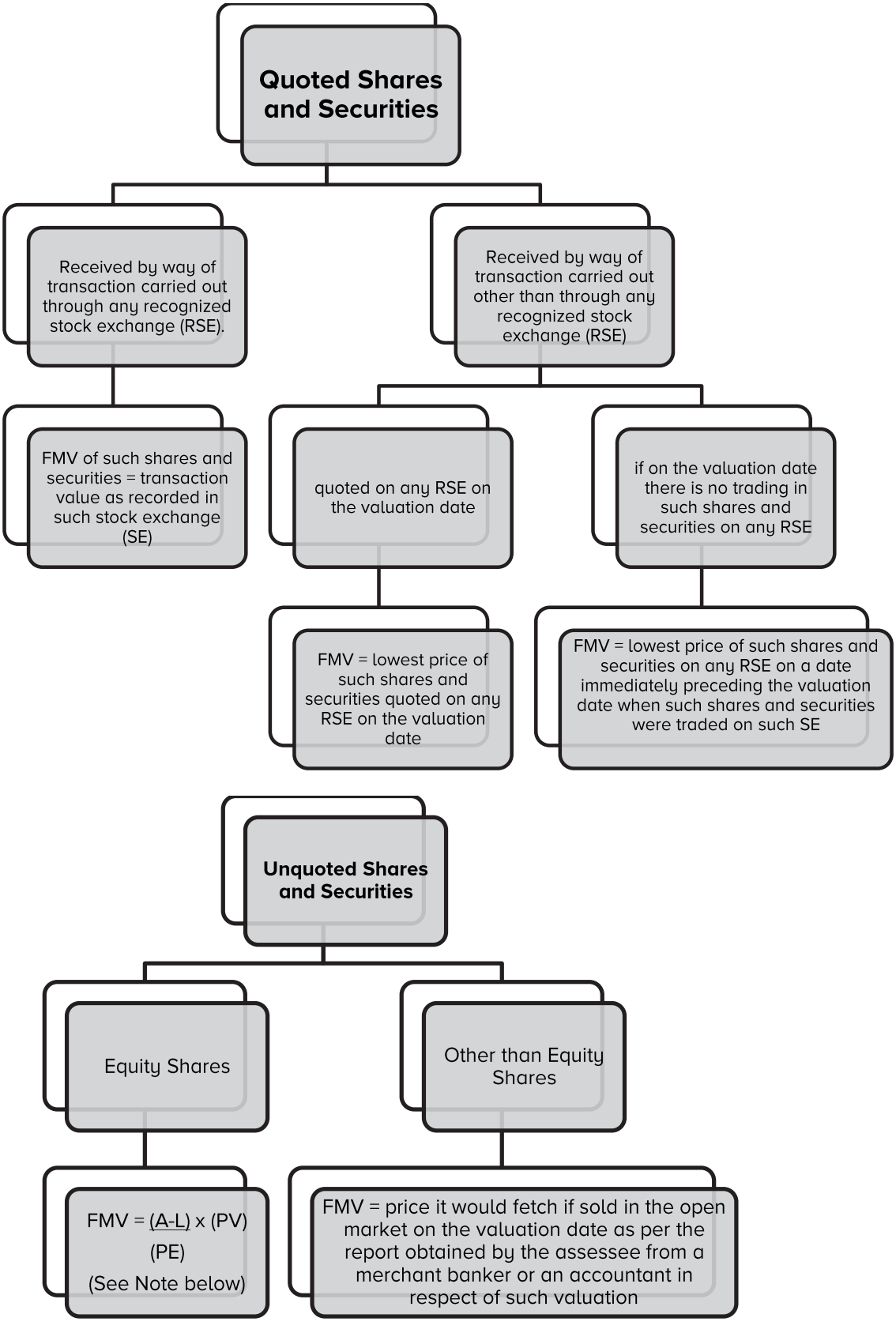
TAXATION OF SHARE PREMIUM

Section 56(2)(viib) of the Income-tax Act, 1961 states that, where a company, not being a company in which the public are substantially interested, receives in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value (FMV) of the shares, shall be chargeable to tax under the head "Income from other sources".

Provided that this clause shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund; or by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Rule 11UA

The rules prescribe separate framework for quoted and unquoted securities in the context of determination of FMV.


Quoted Shares and Securities
Received by way of transaction carried out through any recognized stock exchange (RSE).
FMV of such shares and securities = transaction value as recorded in such stock exchange (SE)
Received by way of transaction carried out other than through any recognized stock exchange (RSE)
quoted on any RSE on the valuation date
FMV = lowest price of such shares and securities quoted on any RSE on the valuation date
if on the valuation date there is no trading in such shares and securities on any RSE
FMV = lowest price of such shares and securities on any RSE on a date immediately preceding the valuation date when such shares and securities were traded on such SE
Unquoted Shares and Securities
Equity Shares
FMV = (A-L) x (PV)
(PE)
(See Note below)
Other than Equity Shares
FMV = price it would fetch if sold in the open market on the valuation date as per the report obtained by the assessee from a merchant banker or an accountant in respect of such valuation

Note :

A = Book value of the assets in Balance Sheet as reduced by certain amounts specified in Rule 11UA(c)(b).

L = Book value of liabilities shown in the Balance Sheet but not including amounts stated in (i) to (vii) in Rule 11 UA(c)(b)

PE = Total amount of paid up equity share capital as shown in Balance Sheet

PV = The paid up value of such equity shares

Illustration 8:

The following details of the shares issued by the following closely held companies are available. You are required to advise the Company on the applicability or otherwise of Section 56(2) (viib).

Company	No. of Shares	FV of Shares (INR)	FMV of Shares (INR)	Issue Price (INR)	Applicability & Chargeable Tax
A (P) Ltd.	10000	100	120	130	Section 56(2) (viib) attracted as the shares are issued at premium. 10000 x (130-120) = INR 100,000 would be chargeable to tax under the head "Income from other sources"
B (P) Ltd.	20000	100	120	110	Section 56(2) (viib) attracted as the shares are issued at premium. However, no amount is chargeable to tax as the Issue Price is < the FMV
C (P) Ltd.	30000	100	90	98	Section 56(2) (viib) are not attracted as the shares are not issued at premium, rather at a discount on FV, even though the issue price is > FMV
D (P) Ltd.	40000	100	90	110	Section 56(2) (viib) attracted as the shares are issued at premium. 40000 x (110-90) = INR 800,000 would be chargeable to tax under the head "Income from Other Sources"

TAXATION ASPECTS OF AMALGAMATIONS, MERGERS AND DEMERGERS

Section 2(1B) of the Income-tax Act, 1961, defines the term "amalgamation" as follows:

"Amalgamation in relation to Companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company, the companies which so merge being referred to as the "amalgamating company" and the company with which they merge or which is formed as a result of the merger, being referred to as the "amalgamated company", in such a manner that:

(a) all the property of the amalgamating company(ies) before the amalgamation become the property of the amalgamated company by virtue of the amalgamation

(b) all the liabilities of the amalgamating company(ies) before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation

(c) shareholders holding not less than 3/4ths in value of the shares in the amalgamating company become shareholders of the amalgamated company by virtue of the amalgamation

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company.

Business Losses & Unabsorbed Depreciation

A special provision is made which relaxes the provision relating to carrying forward and set off of accumulated business loss and unabsorbed depreciation allowance in certain cases of amalgamation. Where there has been an amalgamation of a company owning an industrial undertaking or a ship or a hotel with another company, or an amalgamation of a banking company with a specified bank, then the accumulated losses or the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or the unabsorbed depreciation of the amalgamated company for the PY in which the transfer was effected. Consequently, the amalgamated company can carry forward such loss for 8 AY's immediately succeeding the relevant AY in which the amalgamation was effected.

However, the above relaxations shall not be allowed if:

(a) the amalgamated company is engaged in the business in which the accumulated loss or depreciation remains unabsorbed for >= 3 years;

(b) the amalgamated company has held continuously as on date of the amalgamation >= 3/4ths of the book value of fixed assets 2 years prior to the date of amalgamation;

(c) the amalgamated company holds continuously for >= 5 years from the date of amalgamation, >= 3/4ths of the book value of fixed assets of the amalgamating company so acquired;

(d) the amalgamated company continues the business of the amalgamating company for >= 5 years from the date of amalgamation.

If any of the above conditions are not complied with, then the set off of loss / depreciation, made in any PY, in the hands of the amalgamated company, shall be deemed to be the income of the amalgamated company chargeable to tax for the year of non-compliance.

Capital Gains

Under Section 47(vi) and (vii) transfer does not include any transfer in a scheme of amalgamation of a capital asset by the amalgamating company to the amalgamated company if the latter is an Indian company. From the assessment year 1993-94, any transfer of shares in an Indian company held by a foreign company to another

foreign company in pursuance of a scheme of amalgamation between the two foreign companies will not be regarded as a transfer for the purpose of levying tax on capital gains This provision will apply if >= 25% of the shareholders of the amalgamating company continue to remain shareholders of the amalgamated foreign company and such transfer does not attract tax in the country in which the amalgamating company is situated.

Further, the term "transfer" does not include any transfer by a shareholder in a scheme of amalgamation, of a capital asset, being shares held by him in the amalgamating company, if the transfer is made in consideration of allotment to him, shares in the amalgamated company, and the amalgamated company is an Indian Company. Even, per se, amalgamation doesn't entail exchange or relinquishment of assets, and hence, capital gains tax is not attracted. The same was upheld in the case *CIT* vs. *Rasik Lal Manek*. However, the benefit doesn't continue if the shareholders of amalgamating company are allotted something more than the share in the amalgamated company, viz., bonds / debentures etc. as this was upheld in the case of *CIT* vs. *Gautam Sarabhai Trust*.

Taxation Treatment		
Shareholders	**Amalgamating Company**	**Amalgamated Company**
According to Section 47, It is not considered to be "Transfer" hence, No capital gain would be attracted when shares are allotted to shareholders of amalgamating company.	According to Section 47, No capital gain will be attracted on transfer of capital assets by amalgamating company to amalgamated company.	As per section 49(1), Cost of Acquisition of the assets becomes the property of the amalgamated company. PGBP losses and unabsorbed depreciation of amalgamating company can be carried forward and set off by amalgamated company.

Treatment of Expenditure	
Preliminary Expenses	The benefit of amortization of preliminary expenses under section 35D are ordinarily available only to the assessee who incurred the expenditure. However, the benefit will not be lost in case the undertaking of an Indian company which is entitled to the amortization is transferred to another Indian company in a scheme of amalgamation within the 10 years/ 5-year period of amortization. ln that event, the deduction in respect of previous year in which the amalgamation takes place and the following previous year within the 10 years / 5 years period will be allowed to the amalgamated company and not to the amalgamating company.
Capital Expenditure on Scientific Research & Know-how	In case of an amalgamation, if the amalgamating company transfers to the amalgamated company, which is an Indian company, any asset representing capital expenditure on scientific research, provision of section 35 would apply to the amalgamated company as they would have applied to amalgamating company if the latter had not transferred the asset. The same principle applies in essence for the expenditure on know-how.
Expenditure on Amalgamation	Section 35DD provides that where an assessee being an Indian company, incurs any expenditure, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed, a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the PY in which such amalgamation / demerger takes place.

LESSON ROUND-UP

- **'Indian Company'** as a company formed and registered under the Companies Act, 2013 and the registered office or the principal office should be in India and it also includes:
    1. a company formed and registered under any law relating to companies formerly in force in any part of India [other than Jammu and Kashmir, and the Union Territories specified in (4) below];
    2. any corporation established by or under a Central, State or Provincial Act;
    3. any institution, association or body which is declared by the Board to be a company under Section 2(17) of the Income-tax Act, 1961;
    4. in the case of any of the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diuand Pondicherry, a company formed and registered under any law for the time being in force in that Union Territory;
- **Domestic company** means an Indian company or any other company which, in respect of its income liable to tax under the Income Tax Act, has made the prescribed arrangements for the declaration and payment within India, of the dividends (including dividends on preference shares) payable out of such income.
- **Foreign company** as a company which is not a domestic company.
- Company in which the public is not substantially interested is known as a **closely held company**.
- According to Section 6(3) of the Act, a company is said to be resident in India (resident company) in any previous year, if It is an Indian company; or Its place of effective management, (POEM), in that year, is in India.
- The provision related to tax incidence on Companies as well as Tax Rates.
- **Minimum Alternate Tax** will be applicable If the income tax payable by a company on its total income as computed under the normal provisions of the Income Tax Act in respect of any previous year relevant to the assessment year, is less than 15% of such book profit plus surcharge plus health and education cess, then such book profit shall be treated as total income of the company and the tax payable for the relevant previous year shall be deemed to be 15% (add surcharge and cess) of such book profit. This non-absolute provision will override any other provision of the Income-tax Act.
- **Credit of MAT** in respect of tax excess paid under Section 115JB will be available and it can be carried forward for 15 Assessment Years succeeding the assessment year in which the credit became allowable.
- **Specific provisions related to:**
    - Buyback of Shares
    - Tax on Income distributed by specified company or Mutual Fund
    - Tax liability of Company in the event of liquidation
    - Taxation aspects of Share Premium
    - Taxation aspects of Amalgamation, Mergers and De-mergers

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions "MCQs"

1. Tax credit in respect of MAT paid as per section 115JB will be allowed only in the previous year in which the tax payable on the total income at the normal rate is –

   (a) More than the tax payable under section 115JB

   (b) Less than the tax payable under section 115JB

   (c) Equal to the tax payable under section 115JB

   (d) All of the above.

   Answer: (a) More than the tax payable under section 115JB

2. Metro Ltd., a domestic company, is assessed with a total income of Rs. 11.25 crore. The surcharge payable by the company shall be at the rate of –

   (a) 2% (b) 5%

   (c) 10% (d) 12%.

   Answer: (d) 12%

3. Dividend received from domestic company will be included in the total income of the shareholder and will be charged to tax at –

   (a) 15 % (b) 18.5 %

   (c) 30% (d) Normal slab rate of tax as applicable to assessee.

   Answer: (d) Normal slab rate of tax as applicable to assessee

4. Provisions of Section 115JB are applicable in case of –

   (a) Domestic companies only (b) Foreign companies only

   (c) All companies (d) Closely held companies.

   Answer: (c) All companies.

5. For computing the Book Profit under section 115JB, which of the following is not added back to the profits?

   (a) Income-Tax

   (b) Provision for Tax

   (c) Dividend Distribution Tax U/S 115-O

   (d) Securities Transaction Tax

   Answer: (d) Securities Transaction Tax

6. Mr. Ganapathy a resident individual received Rs. 12 lakhs during the financial year 2021-22 by way of dividend from domestic companies. The applicable rate of dividend distribution tax under Section 115-O on the dividend declared shall be:

   (a) 10.4% (b) 31.2%

   (c) Nil (d) 15.60%

   Answer: (c) Nil

7. A domestic company whose turnover for the previous year 2019-20 Rs. 420 crores; for previous year 2020-21 Rs. 380 crore and for previous year 2021-22 Rs. 120 crores. Its total income (computed) for the assessment year 2022-23 is Rs. 30 crores. The rate of income tax applicable for such company (without cess) is:

   (a) 30% (b) 22%

   (c) 15% (d) 25%

   Answer: (d) 25%

8. ABC Pvt. Ltd. has a business loss of Rs. 10 lakh. There is unexplained share application money to the tune of Rs. 25 lakh. The total income of the company will be :

   (a) Rs. 15 lakh (b) Rs. 35 lakh

   (c) Rs. 25 lakh (d) None of the above

   Answer: (c)

9. Provisions of Minimum Alternate Tax (MAT) are applicable to the companies which are :

   (a) Indian companies

   (b) Foreign companies in certain situations

   (c) LLP

   (a) (i) and (iii) (b) (i) and (ii)

   (c) All the three (d) None of the above

   Answer: (b)

10. In order to be entitled to concessional rate of tax for dividend received from a foreign company, the Indian company should have the following minimum shareholding in such foreign company –

    (a) 10% (b) 25%

    (c) 26% (d) 51%.

    Answer: (c) 26%

11. An Indian company having 30% voting power in a foreign company received dividend of Rs. 10 lakh from the foreign company. The dividend so received by the Indian company is –

    (a) Exempt (b) Taxable @ 15%

    (c) Taxable at the regular rates (d) Taxable @ 20%

    Answer: (b) Taxable @ 15%

12. At present, MAT Provisions are given in section _____ of Income Tax Act,1961

    (a) 115J (b) 115A

    (c) 115JA (d) 115JB

    Answer: (d)

13. MAT provisions are applicable to

    (a) Public Co (b) Private company

    (c) Domestic Co (d) All companies

    Answer: (d)

14. As per Explanation 1 to section 115JB(2) "book profit" for the purposes of section 115JB means net profit as shown in the statement of profit and loss prepared in accordance with _____ of the Companies Act as increased and decreased by certain items prescribed in this regards

    (a) Schedule V (b) Schedule III

    (c) Schedule II (d) Schedule I

    Answer: (c)

15. Every company to which this section applies, shall furnish a report in the prescribed form from a Chartered Accountant as defined in the Explanation below Section 288(2), certifying that the book profit has been computed in accordance with the provisions of this section

    (a) CA (b) CS

    (c) CMA (d) ACCA

    Answer: (a)

16. Rate of MAT in case of a unit located in International Financial Service Centre

    (a) 15% (b) 9.5%

    (c) 15.5% (d) 9%

    Answer: (d)

17. MAT Credit to be set off _____

    (a) Regular Income tax - Minimum alternate tax

    (b) Regular Income tax + Minimum alternate tax

    (c) Regular Income tax /Minimum alternate tax

    (c) Zero

    Answer: (a)

18. Credit of MAT in respect of tax excess paid under Section 115JB will be available and it can be carried forward for _____

    (a) 15 Financial Year (b) 15 Assessment Year

    (c) 15 Calendar Year (d) 15 Year of Receipt

    Answer: (b)

True and False

1. As per section 115JB(5A) MAT shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B. **(True)**
2. As per section 115JB(5A) MAT shall apply to any income accruing or arising to a company from life insurance business referred to in section 115B. **(False)**
3. If in any year the company pays liability as per MAT, then it is entitled to claim credit of MAT paid over and above the normal tax liability in the subsequent year(s). **(True)**

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**
  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania
  Publisher : Taxmann
- **Direct Taxes Ready Reckoner with Tax Planning**
  Author : Dr. Girish Ahuja & Dr. Ravi Gupta
  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962 aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Procedural Compliance

Lesson 13

KEY CONCEPTS

■ TDS ■ TCS ■ Advance Tax ■ Self Assessment Tax ■ Revised Return ■ Belated Return ■ Updated Return ■ Defective Return

Learning Objectives

To understand the :

- What is tax deducted at source and tax collected at source?
- What are the rates of TDS and TCS under various provision of the Income Tax Act, 1961?
- The due dates for payment of TDS
- What is Advance Tax and Self Assessment Tax?
- The due dates for payment of Advance Tax and Self Assessment Tax
- The provisions related to Returns, Signature & E-Filing
- The provision related to Fee and Interest for default in furnishing return of Income

Lesson Outline

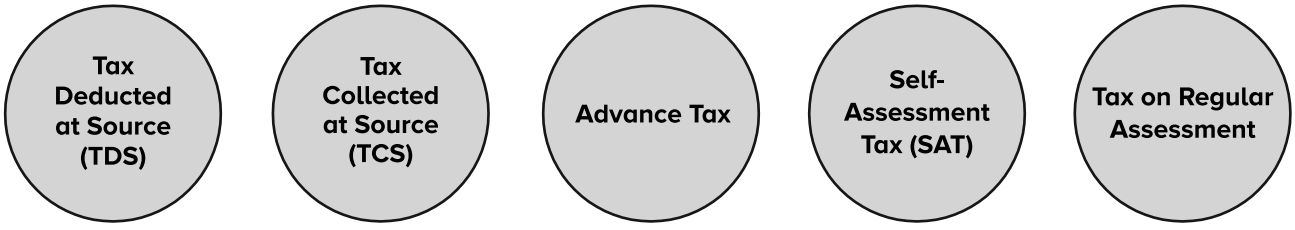
REGULATORY FRAMEWORK

Sections	*Income Tax Act, 1961*
Section 192	TDS on Salary
Section 192A	TDS on Premature Withdrawal from Employees' Provident Fund Scheme (EPFS)
Section 193	TDS on Interest on Securities
Section 194	TDS on Dividend
Section 194A	TDS on Interest other than Interest on Securities
Section 194B	TDS on Winnings from Lotteries or Crossword Puzzles
Section 194BB	TDS on Winnings from Horse Races
Section 194C	TDS on Payment to Resident Contractor or Sub-contractor
Section 194D	TDS on Insurance Commission
Section 194DA	TDS on Payment in respect of Life Insurance policy
Section 194E	TDS on Payment to a non-resident sportsmen / sports association
Section 194EE	TDS on Payment in respect of Deposits under National Savings Scheme etc.
Section 194G	TDS on Commission on sale of lottery tickets
Section 194H	TDS on Commission or Brokerage
Section 194I	TDS on Rent
Section 194-IA	TDS on Payment on transfer of certain immovable property other than agricultural land
Section 194IB	TDS on payment of Rent by certain Individuals/HUF
Section 194-IC	TDS on Joint Development Project
Section 194J	TDS on Professional and Technical Fees
Section 194LA	TDS on Payment of Compensation on acquisition of Capital Asset
Section 194LB	TDS on Income by way of interest from infrastructure debt fund
Section 194L	TDS on Income by way of interest from Indian company engaged in certain Business
Section 194LD	TDS on Income by way of interest on certain bonds and Government securities
Section 194M	TDS on Payment by Individual/HUF to contractors and professionals
Section 194N	TDS on cash withdrawal to discourage cash transactions
Section 194O	TDS on Payments of certain sums by e-commerce operator to e-commerce participant

Sections	*Income Tax Act, 1961*
Section 194P	Deduction of Tax in case of Specified Senior Citizen
Section 194Q	TDS on payment of certain sum for purchase of Goods
Section 194R	TDS on Perquisites
Section 194S	TDS on transfer of Virtual Digital Asset
Section 195	TDS on Payments of other sums to Non-Residents
Section 196	Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations
Section 196B	TDS on Income from units to offshore fund
Section 196C	TDS on Income from foreign currency bonds or shares of Indian Company
Section 196D	TDS on Income of Foreign Institutional Investors from securities
Section 206C	Tax Collection at Source (TCS)
Section 206AA	Exemption to Non-Residents from requirement of furnishing PAN
Section 206AB / 206CCA	TDS / TCS for non-filers of Income Tax Return
Section 139(1)	Return of Income
Section 139(3)	Return of Loss
Section 139(4)	Belated Return
Section 139(4A)	Return of Income of charitable trust and institutions
Section 139(4B)	Return of Income of Political Party
Section 139(4C)	Return of Income of Specified Association/Institutions
Section 139(5)	Revised Return
Section 139(8)	Updated Return
Section 139(9)	Defective Return
Section 140	Signing of Return
Section 234A	Interest for default in furnishing Return of Income
Section 234B	Interest for default in payment of Advance Tax
Section 234C	Interest for deferment of Advance Tax
Section 234F	Fees for Delay in Furnishing Return of Income

INTRODUCTION

Income Tax Act provides for scope of the total income of a person chargeable to tax on an annual basis. The tax liability is determined as per the provisions of the Income-tax Act and such tax liability is discharged vide any of the following modes:



TAX DEDUCTED AT SOURCE (TDS)

Tax Deducted at Source (TDS) is a one of the mode or mechanism of collecting income tax under the Indian Income Tax Act of 1961 i.e. 'the Act'. As per the provision of section 191 of the Act, notwithstanding the regular assessment in respect of any income take place in a subsequent year called as assessment year, but in case of certain specified income, tax is deducted at source by the payer at the prescribed rate at the time of accrual or payment of such incomes to the payee. The tax so deducted is required to be deposited with the government within the specified time limit.

The concept of TDS was introduced with an aim to collect tax from the very source of income as per which, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income, tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor.

Tax deducted at source (TDS) is an indirect mechanism of collecting tax which combines twin concepts of "pay as you earn" and "collect as it is being earned." Its value lies in the fact that it provides the Government with a continuous flow of funds and at the same time eases the burden on the taxpayer.

It is managed by the Central Board for Direct Taxes (CBDT) and is part of the Department of Revenue managed by Indian Revenue Service (IRS).

Scheme of Tax Deduction at Source

The obligation to deduct/collect tax at source is upon the person responsible for paying the income/amount which is subject to TDS. Therefore such person, i.e., the payer is required to follow the procedure for deducting/ collecting tax at source mentioned as under :

Step – 1

The payer has to apply for tax deduction account number (TAN) in Form No-49B.

Step – 2

He is to deduct tax from the income/payment mentioned in the various sections, i.e., Section 192 to 196D.

Step – 3

The amount so deducted/collected should be deposited within the requisite stipulated time to the credit of central government.

Step – 4

The payer should prepare TDS Return statements for every quarter and file the same with the authority designated by the Income-Tax department (NSDL in this case) in such form and verified in such manner as may be prescribed.

Step – 5

Lastly, the payee should be issued certificate of tax deduction/collected at source within the specified date. The TDS certificate to be downloaded from tax portal.

TDS CHART FY 2022-23 "AY 2023-24"

CATEGORY A – IN CASE OF PERSON OTHER THAN COMPANY

WHEN RECIPIENT IS RESIDENT

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 192 - Payment of salary : Normal slab rates are applicable + Surcharge as applicable+ HEC @ 4%	
Section 192A - Payment of taxable accumulated balance of provident fund	10%
Section 193 - Interest on securities : a) Any debentures/securities for money issued by or on behalf of any local authority/ statutory corporation b) listed debentures of a company c) any security of the Central or State Government d) any other interest on securities (including interest on non-listed debentures)	10%
Section 194 - Dividend	10%
Section 194A - Interest other than interest on securities	10%
Section 194B - Winnings from lottery or crossword puzzle or card game or other game of any sort	30%
Section 194BB - Winnings from horse races	30%
Section 194C - Payment or credit to a resident contractor/sub- contractor a) payment/credit to an individual or a Hindu undivided family b) payment/credit to any person other than an individual or a Hindu undivided family	 1% 2%
Section 194D - Insurance commission	5%

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 194DA - Payment in respect of life insurance policy	5%
Section 194EE - Payment in respect of deposits under National Savings Scheme, 1987	10%
Section 194F - Payment on account of repurchase of units of MF or UTI	20%
Section 194G - Commission on sale of lottery tickets	5%
Section 194H - Commission or brokerage	5%
Section 194-I – Rent	
a) rent of plant and machinery	2%
b) rent of land or building or furniture or fitting.	10%
Section 194IA - Payment/credit of consideration to a resident transferor for transfer of any immovable property (other than rural agricultural land) -	1%
Section 194IB - Payment of rent by an individual or HUF not subjected to tax audit under Section 44AB	5%
Section 194IC - Payment under Joint Development Agreement to a resident individual or HUF who transfers land or building as per such agreement	10%
Section 194J - Professional fees, royalty or remuneration to a director (2% if payee is engaged in the business of call center)	10%
i) sum paid or payable towards fees for technical services	2%
ii) sum paid or payable towards royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films;	2%
Section 194K – Income on units other than Capital Gains	10%
Section 194LA - Payment of compensation on acquisition of certain immovable property	10%
Section 194LBA(1) - Payment of the nature referred to in section 10(23FC) or section 10(23FC)(a) (with effect from June 1, 2016) or section 10(23FCA) by business trust to resident unit holders	10%
Section 194LBB - Payment in respect of units of investment fund specified in section 115UB	10%
Section 194LBC(1) - Payment in respect of an investment in a securitisation trust specified in clause (d) of the Explanation occurring after section 115TCA (with effect from June 1, 2016) -	
• if recipient is an individual or a Hindu undivided family	25%
• if recipient is any other person	30%
Section 194 LC – Interest to Non Resident	5%
Section 194 LD – Interest on RDB and Government securities	5%

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 194 M – Payment to Contractorby Individual / HUF (Non TAN based)	5%
Section 194 N – Cash withdrawal from bank/Post office	2% or 5%
Section 194 O – Payment to e- commerce Participant by e-commerce operator	1%
Section 194 P – Deduction of tax by specified bank in case of Senior Citizen having age of 75 or more	Tax on Total income @ in force
Section 194 Q – Payment of certain sum for Purchase of Goods aggregate value exceeding Rs. 50 lakhs Note: TDS is deductible on sum exceeding Rs. 50 lakhs	0.1%
Section 194 R - Deduction of tax in case any benefit or perquisite is provided and aggregate value of such benefit/perquisite exceeds Rs. 20,000 Note: Benefit or perquisite should be arising from business or the exercise of a profession by such resident.	10%
Section 194 S- Payment on transfer of Virtual Digital Asset Note: No tax shall be deducted under this provision in the following circumstance: ● If the consideration is payable by any person (other than a specified person) and its aggregate value does not exceed Rs. 10,000 during the financial year ● if the consideration is payable by a specified person and its aggregate value does not exceed Rs. 50,000 during the financial year **Specified person means:** a) An individual or a HUF, whose total sales, gross receipts or turnover does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in case of a profession, during the financial year immediately preceding the financial year in which virtual digital asset is transferred b) An individual or a HUF who does not have any income under the head profits and gains of business or profession	1%
Any Other Income	**10%**

WHEN RECIPIENT IS NON-RESIDENT

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 192 - Payment of salary : Normal slab rates are applicable + Surcharge as applicable+ HEC @ 4%	
Section 192A - Payment of taxable accumulated balance of provident fund	10%
Section 194B - Winnings from lottery or crossword puzzle or card game or other game of any sort	30%

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 194BB - Winnings from horse races	30%
Section 194E - Payment to non-resident sportsmen/sports association	20%
Section 194EE - Payment in respect of deposits under National Savings Scheme, 1987	10%
Section 194F - Payment on account of repurchase of units of MF or UTI	20%
Section 194G - Commission on sale of lottery tickets	5%
Section 194LB - Payment of interest on infrastructure debt fund	5%
Section 194LBA(2) - Payment of the nature referred to in Section 10(23FC)(a)	5%
Section 194LBA(2)- Payment of the nature referred to in Section 10(23FC)(b)	10%
Section 194LBA(3)- Payment of the nature referred to in section 10(23FCA) by business trust to unit holders	30%
Section 194LBB - Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)].	30%
Section 194LBC- Income in respect of investment made in a securitisation trust (specified in Explanation of section 115TCA)	30%
Section 194 LC – Payment of interest by an Indian Company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond) In case where interest is payable in respect of Long-term Bond or Rupee Denominated Bond listed on recognised stock exchange located in IFSC	5% 4%
Section 194 LD – Payment of interest on rupee denominated bond of an Indian Company or Government securities to a Foreign Institutional Investor or a Qualified Foreign Investor	5%
Section 195- Payment of any other sum to a Non-resident	
a) Income in respect of investment made by a Non-resident Indian Citizen	20%
b) Income by way of long-term capital gains referred to in Section 115E in case of a Non-resident Indian Citizen	10%
c) Income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-Section (1) of Section 112	10%
d) Income by way of long-term capital gains as referred to in Section 112A	10%
e) Income by way of short-term capital gains referred to in Section 111A	15%

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
f) Any other income by way of long-term capital gains [not being long-term capital gains referred to in clauses 10(33), 10(36) and 112A	20%
g) Income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in Section 194LB or Section 194LC)	20%
h) Income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of Section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of Section 115A of the Income-tax Act, to a person resident in India	10%
i) Income by way of royalty [not being royalty of the nature referred to point h) above] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy	10%
j) Income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy	10%
k) Any other income	30%
Section 196B- Income from units (including long-term capital gain on transfer of such units) to an offshore fund	10%
Section 196C- Income from foreign currency bonds or GDR of an Indian company (including long-term capital gain on transfer of such bonds or GDR)	10%
Section 196D- Income of foreign Institutional Investors from securities (not being dividend or capital gain arising from such securities) Note: Tax shall be deducted at the rate provided under DTAA if same is lower than the existing TDS rate of 20%.	20%

CATEGORY B – IN CASE OF A DOMESTIC COMPANY

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 193 - Interest on securities : a) Any debentures/securities for money issued by or on behalf of any local authority/ statutory corporation b) listed debentures of a company c) any security of the Central or State Government d) any other interest on securities (including interest on non-listed debentures)	10%
Section 194 - Dividend	10%
Section 194A - Interest other than interest on securities	10%
Section 194B - Winnings from lottery or crossword puzzle or card game or other game of any sort	30%
Section 194BB - Winnings from horse races	30%
Section 194C - Payment or credit to a resident contractor/sub- contractor a) payment/credit to an individual or a Hindu undivided family b) payment/credit to any person other than an individual or a Hindu undivided family	 1% 2%
Section 194D - Insurance commission	10%
Section 194DA - Payment in respect of life insurance policy	5%
Section 194EE - Payment in respect of deposits under National Savings Scheme, 1987	10%
Section 194F - Payment on account of repurchase of units of MF or UTI	20%
Section 194G - Commission on sale of lottery tickets	5%
Section 194H - Commission or brokerage	5%
Section 194-I – Rent a) rent of plant and machinery b) rent of land or building or furniture or fitting	 2% 10%
Section 194IA - Payment/credit of consideration to a resident transferor for transfer of any immovable property (other than rural agricultural land)	1%
Section 194IC - Payment under Joint Development Agreement to a resident individual or HUF who transfers land or building as per such agreement	10%

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 194J - Professional fees, royalty or remuneration to a director (2% if payee is engaged in the business of call center)	10%
i) sum paid or payable towards fees for technical services	2%
ii) sum paid or payable towards royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films	2%
iii) Any Other sum	10%
Section 194K – Income in respect of units payable to resident person	10%
Section 194LA - Payment of compensation on acquisition of certain immovable property	10%
Section 194LBA(1) - Business trust shall deduct tax while distributing, any interest received or receivable by it from a SPV or any income received from renting or leasing or letting out any real estate asset owned directly by it, to its unit holders	10%
Section 194LBB - Payment in respect of units of investment fund specified in section 115UB	10%
Section 194LBC(1) - Payment in respect of an investment in a securitisation trust specified in clause (d) of the Explanation occurring after section 115TCA (with effect from June 1, 2016) -	
• if recipient is an individual or a Hindu undivided family	25%
• if recipient is any other person	30%
Section 194 M – Payment of commission (not being insurance commission), brokerage, contractual fee, professional fee to a resident person by an Individual or a HUF who are not liable to deduct TDS under section 194C, 194H, or 194J Tax shall be deducted under Section 194M with effect from 1/09/2019 when aggregate of sum credited or paid during a financial year exceeds Rs. 50 lakh	5%
Section 194 N – Cash withdrawal from bank/Post office	2% or 5%
Section 194 O – Payment to e- commerce Participant by e-commerce operator	1%
Section 194 P – Deduction of tax by specified bank in case of Senior Citizen having age of 75 or more	Tax on Total income @ in force
Section 194 Q – Payment of certain sum for Purchase of Goods aggregate value exceeding Rs. 50 lakhs Note: TDS is deductible on sum exceeding Rs. 50 lakhs	0.1%
Section 194 R - Deduction of tax in case any benefit or perquisite is provided and aggregate value of such benefit/perquisite exceeds Rs. 20,000 Note: Benefit or perquisite should be arising from business or the exercise of a profession by such resident	10%

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 194 S- Payment on transfer of Virtual Digital Asset Note: No tax shall be deducted under this provision in the following circumstance: ● If the consideration is payable by any person (other than a specified person) and its aggregate value does not exceed Rs. 10,000 during the financial year ● if the consideration is payable by a specified person and its aggregate value does not exceed Rs. 50,000 during the financial year **Specified person means:** c) An individual or a HUF, whose total sales, gross receipts or turnover does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in case of a profession, during the financial year immediately preceding the financial year in which virtual digital asset is transferred d) An individual or a HUF who does not have any income under the head profits and gains of business or profession	1%
Any Other Income	**10%**

CATEGORY C – IN CASE OF A NON-DOMESTIC COMPANY

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 194B - Winnings from lottery or crossword puzzle or card game or other game of any sort	30%
Section 194E - Payment to non-resident sports association	20%
Section 194G - Commission on sale of lottery tickets	5%
Section 194LB- Payment of interest on infrastructure debt fund	5%
Section 194LBA(2): - Payment of the nature referred to in Section 10(23FC)(a)	5%
Section 194LBA(2): Payment of the nature referred to in Section 10(23FC)(b)	10%
Section 194LBA(3): Business trust shall deduct tax while distributing any income received from renting or leasing or letting out any real estate asset owned directly by it to its unit holders.	40%
Section 194LBB: Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)].	40%
Section 194LBC: Income in respect of investment made in a securitisation trust (specified in Explanation of section115TCA)	40%

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
Section 194LC: Payment of interest by an Indian Company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond) * In case where interest is payable in respect of Long-term Bond or Rupee Denominated Bond listed on recognised stock exchange located in IFSC [rate will be 4%]	5%
Section 194LD: Payment of interest on rupee denominated bond of an Indian Company or Government securities to a Foreign Institutional Investor or a Qualified Foreign Investor	5%
Section 195- Payment of any other sum to a Non-resident	
a) Income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-section (1) of Section 112	10%
b) Income by way of long-term capital gains as referred to in Section 112A	10%
c) Income by way of short-term capital gains referred to in Section 111A	15%
d) Any other income by way of long-term capital gains [not being long-term capital gains referred to in clauses 10(33) , 10(36) and 112A	20%
e) Income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in Section 194LB or Section 194LC)	20%
f) Income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976 where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of Section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of Section 115A of the Income-tax Act, to a person resident in India	10%
g) Income by way of royalty [not being royalty of the nature referred to in point f) above] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy – A. where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976 B. where the agreement is made after the 31st day of March, 1976	 50% 10%

Nature of payment	*TDS (SC : Nil, EC : Nil, SHEC : Nil)*
h) Income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
A. where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976	50%
B. where the agreement is made after the 31st day of March, 1976	10%
k) Any other income	40%
Section 196B: Income from units (including long-term capital gain on transfer of such units) to an offshore fund	10%
Section 196C: Income from foreign currency bonds or GDR of an Indian company (including long-term capital gain on transfer of such bonds or GDR)	10%
Section 196D: Income of foreign Institutional Investors from securities (not being dividend or capital gain arising from such securities) *Note:* Tax shall be deducted at the rate provided under DTAA if same is lower than the existing TDS rate of 20%.	20%

*** The rate of TDS shall be increased by applicable surcharge and Health & Education cess.**

MINIMUM THRESHOLD LIMIT UPTO WHICH TDS NOT APPLICABLE

Sr. No.	*Particular*	*Section*	*Threshold limit*
1.	No deduction of tax at source from salaries	192	If net taxable income is less than maximum amount which is not chargeable to tax (Rs. 2,50,000 for an Individual/HUF/ AOP/ BOI/ Artificial Juridical Person, Rs. 3,00,000 for Resident Senior Citizens and Rs. 5,00,000 for Resident Super Senior Citizens) Or as per New Tax Regime Slab Rate if the assessee has opted for Section 115BAC
2.	No TDS from payment of provident fund account of an employee	192A	If amount paid is less than Rs. 50,000

Sr. No.	Particular	Section	Threshold limit
3.	No TDS from interest paid on debentures issued by a company in which public are substantially interested. Provided interest is paid by account payee cheque to resident individual or HUF	193	If amount paid or payable during the financial year does not exceed Rs. 5,000
4.	No TDS from interest on 8% Saving (Taxable) Bonds 2003 and 7.75% Savings (Taxable) Bonds, 2018 paid to a resident persons	193	If amount paid or payable during the financial year does not exceed Rs. 10,000
5.	No TDS from interest on 6.5% Gold bonds, 1977 or 7% Gold bonds, 1980 paid to resident individual	193	If a declaration is made that the nominal value of such bonds did not exceed Rs. 10,000 at any time during the previous year
6.	No TDS from dividend paid by account payee cheque to resident persons	194	If amount paid or payable during the financial year does not exceed Rs. 5,000
7.	No TDS from interest other than on securities paid by a banking company or co-operative bank on time deposits With effect from 01.06.2015, tax shall be deducted from interest credited or paid by a co-operative bank to its member	194A	If amount paid or payable during the financial year does not exceed Rs. 40,000. Rs. 50,000 in case of Senior Citizen
8.	No TDS from interest on deposit with a post office under Senior Citizens Saving Scheme Rules, 2004	194A	If amount paid or payable during the financial year does not exceed Rs. 50,000
9.	No TDS from interest other than on securities (in any other case)	194A	If amount paid or payable during the financial year does not exceed Rs. 5,000
10.	No TDS from intereston compensation awarded by Motor Accident Claims Tribunal	194A	If amount paid or payable during the financial year does not exceed Rs. 50,000
11.	No TDS from Lottery / Cross Word Puzzles	194B	If amount paid or payable during the financial year does not exceed Rs. 10,000
12.	No TDS from winnings from horse races	194BB	If amount paid or payable during the financial year does not exceed Rs. 10,000
13.	No TDS from sum paid or payable to contractor	194C	If sum paid or payable to a contractor in a single payment does not exceed Rs. 30,000 If sum paid or payable to contractor in aggregate does not exceed Rs. 1,00,000 during the financial year

Sr. No.	*Particular*	*Section*	*Threshold limit*
14.	No TDS from insurance commission paid or payable during the financial year	194D	If amount paid or payable during the financial year does not exceed Rs. 15,000
15.	No TDS from sum payable under a life insurance policy (including bonus) to a resident person	194DA	If amount paid or payable during the financial year does not exceed Rs. 1 lakh
16.	No TDS from payments made out of deposits under NSS	194EE	If amount paid or payable during the financial year does not exceed Rs. 2,500
17.	No TDS from commission paid on lottery tickets	194G	If amount paid or payable during the financial year does not exceed Rs. 15,000
18.	No TDS from payment of commission or brokerage	194H	If amount paid or payable during the financial year does not exceed Rs. 15,000. Further no tax to be deducted from commission payable by BSNL/ MTNL to their PCO Franchisees
19.	No TDS from payment of rent in respect of land & building, furniture or fittings or plant and machinery	194-I	If amount paid or payable during the financial year does not exceed Rs. 2,40,000
20.	No TDS from payment of consideration for purchase of an immovable property (other than agriculture land)	194-IA	If amount paid or payable during the financial year does not exceed Rs. 50 Lakhs
21.	No TDS from payment of rent in respect of any land or building. *Note:* Other than the rent covered by section 194-I	194-IB	If amount of rent does not exceed Rs. 50,000 for a month or part of a month
22.	No TDS from payment of professional fees, technical fees, royalty and directors' remuneration	194J	If amount paid or payable during the financial year does not exceed Rs. 30,000
23.	No TDS from payment of compensation on compulsory acquisition of immovable property (other than Agricultural Land)	194LA	If amount paid or payable during the financial year does not exceed Rs. 2,50,000
24.	No obligation to deduct tax by an Individual or HUF (other than those who are required to deduct income-tax as per the provisions of section 194C, section 194H or section 194J) responsible for paying any sum to any resident for carrying out any work (including	194M	If aggregate of sum paid or credited during a financial year does not exceed Rs. 50 lakh

Sr. No.	Particular	Section	Threshold limit
	supply of labour for carrying out any work) in pursuance of a contract, by way of commission (not being insurance commission referred to in section 194D) or brokerage or by way of fees for professional services		
25.	No obligation to deduct tax by a banking company, co-operative bank or a post office on cash withdrawal made by a person	194N	If aggregate of amount of cash withdrawal during the financial year from one or more account does not exceed Rs. 1 crore/20 lakhs (as the case may be)
26.	No TDS from payment to participants of e-commerce	194O	If amount paid or payable to resident Individual or HUF during the financial year does not exceed Rs. 5 Lakhs
27.	No TDS from payment made to resident seller	194Q	If amount paid or payable to resident seller for purchase of goods during the Financial Year if aggregate value of goods doesn't exceed Rs. 50 lakhs
28.	No TDS in case any benefit or perquisite is provided to a resident	194R	If aggregate value of benefit/perquisite provided during the Financial Year doesn't exceed Rs. 20,000
29.	No TDS from payment on transfer of Virtual Digital Asset	194S	If the consideration is payable by a specified person and its aggregate value does not exceed Rs. 50,000 during the financial year. Specified person means: (a) An individual or a HUF, whose total sales, gross receipts or turnover does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in case of a profession, during the financial year immediately preceding the financial year in which virtual digital asset is transferred (b) An individual or a HUF who does not have any income under the head profits and gains of business or profession.

Clarification regarding TDS on Goods and Services Tax (GST) component comprised in payments made to residents [Circular No. 23/2017 dated 19.07.2017]

With the new system for taxation of services under the GST regime w.e.f. 01.07.2017, the CBDT has clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component.

GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

TIME LIMIT FOR DEPOSITING OF TDS

Sr. No.	*Month*	*Non-Govt. Deductors*	*Government Deductors*
1.	April to February	7th of the next month in which TDS is deducted	• Same day in cases TDS deposited without challan no. ITNS 281. • 7th of the next month in which TDS is deducted in cases TDS deposited with challan
2.	March	30th April of next financial year	• Same day in cases TDS deposited without challan no. ITNS 281. • 7th of the next month in which TDS is deducted in cases TDS deposited with challan

Note: Any sum deducted u/s 194IA shall be paid to the credit of the central government within a period of 30 days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB.

The Due date to submit Form 24G extended from 10 days of the end of the relevant month to

- 30th day of April where the statement relates to the month of March; and
- 15 days from the end of relevant month.

It is furnished electronically under digital signature or electronically along with the verification of the statement.

TDS CERTIFICATE

Every person deducting tax at source is required as per Section 203 to furnish a certificate to the payee to the effect that tax has been deducted along with certain other particulars. This certificate is usually called the TDS certificate. Even the banks deducting tax at the time of payment of pension are required to issue such certificates. In case of employees receiving salary income including pension, the certificate has to be issued in Form No.16. In all other cases, the TDS certificate is to be issued in Form 16B. The certificate is to be issued in the deductor's own stationery. However, there is no obligation to issue TDS certificate in case of tax at source is not deducted /deductible by virtue of claims of exemptions/ deductions.

The following table will give the list of forms of certificates to be issued and necessary form to be filed with Assessing Officer by the persons deducting the tax at source.

Categories of payment		*Form No. of Certificate*	*Form No. of return to be filed with Assessing Officer*
(1)		*(2)*	*(3)*
(a)	Salaries	12BA, 16, 16AA	24Q
(b)	Interest on Securities (Government)	16A	26Q
(c)	Interest on Securities (others)	16A	26Q
(d)	Interest other than Interest on Securities	16A	26Q

Categories of payment		*Form No. of Certificate*	*Form No. of return to be filed with Assessing Officer*
(1)		*(2)*	*(3)*
(e)	Dividends	16A	26Q
(f)	Winnings from Lotteries/Crossword puzzles	16A	26Q
(g)	Winnings from Horse Races	16A	26Q
(h)	Payments to contractors/Sub-contractors	16A	26Q
(i)	Insurance commission	16A	26Q
(j)	Non-resident sportsmen or sports association	16A	26Q
(k)	National Savings Scheme etc.	16A	26Q
(l)	Income on repurchase of units by mutual funds or UTI	16A	26Q
(m)	Commission, Remuneration or Reward on sale of lottery tickets	16A	26Q
(n)	Payment to non-resident	16A	27Q
(o)	Foreign company being unit holders of mutual fund	16A	27Q
(p)	Units held by off shore fund and income from foreign currency bonds	16A	27Q
(q)	Rent	16A	26Q
(r)	Commission (not being insurance commission) or brokerage	16A	26Q
(s)	Fee for professional or technical services	16A	26Q
(g)	TDS on Sale of Property	16B	26QB
(h)	TDS on Rent	16C	26QC

Due Date for Issue of TDS Certificate

Form 16 : 31st May of the Next Financial year in which tax is deducted.

Form 16A : Within 15 days from due date for furnishing the statement of tax deducted under rule 31A

Quarter ended	*Due date of Form 16A*
30th June	15th August
30th September	15th November
31st December	15th February
31st March	15th June

Form 16B : Within 15 days from due date for furnishing the challan cum statement in Form 26QB.

Form 16C : Within 15 days from due date for furnishing the challan cum statement in Form 26QC.

Issue of Duplicate Certificate

Where the original TDS certificate is lost, the deductee can approach the deductor for issue of a duplicate TDS certificate. The deductor may issue a duplicate certificate however such a certificate has to be certified as duplicate by the deductor. Further, the deductor may, at his option, use digital signatures to authenticate such certificates. In case of issue of such certificates the deductor shall ensure that

a) The provisions of sub-rule (2) of Rule 31 regarding specification of TAN, PAN of deducteee book identification number; Challan identification number; receipt number of relevant quarterly statements etc. are complied with;

b) Once the certificate is digitally signed, the contents of the certificates are not amendable to change; and

c) The certificates have a control number and a log of such certificates is maintained by the deductor.

TDS FORMS & RETURNS

Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs. Further, quarterly TDS Return is required to be filed by the assessee who has deducted the TDS. TDS Returns include fields like TAN No., TDS Payment, amount deducted, type of payment, PAN No. etc.

Form No.	*Particulars*
Form 24Q	Statement for tax deducted at source from salaries
Form 26Q	Statement for tax deducted at source on all payments except salaries
Form 27Q	Statement for deduction of tax from interest, dividend, or any other sum payable to non- residents
Form 26QB	For section 194IA separate return is not required, challan cum return to be filed on Form 26QB to be deposited within a period of 30 days from the end of the month in which the deduction is made
Form 26QC	TDS on Rent

The quarterly return statements should be accompanied by a signed verification in Form No. 27A. Form 27A is a control chart of quarterly TDS statements to be filed by deductors / collectors alongwith quarterly statements. It is a summary of TDS returns which contains control totals of 'amount paid' and 'income tax deducted at source'.

TDS Return

A return of TDS is a comprehensive statement containing details of payment made and taxes deducted thereon along with other prescribed details. As per section 200(3) of the Act, the Due Date for filing TDS Return (both online as well as physical) is as follows :

Quarter ended	*Due Date for Form 24Q & Form 26Q*	*Form 27Q*	*Form 26QB / 26 QC*
April to June	31st July	31st July	30 days from the end of the month in which TDS is deducted
July to Sept	31st Oct	31st Oct	
Oct to Dec	31st Jan	31st Jan	
Jan to March	31st May	31st May	

Note : 'Nil' TDS return is not mandatory, however to facilitate the deductors and update data government has provided a facility for declaring nil TDS return.

The statement is to be furnished in the following manner:

a) Paper form

b) Electronically, under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5) of Rule 31A

c) Electronically, along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5) of Rule 31A.

It is to be noted that in case of the following, quarterly statements are to be delivered electronically;

a) Every Government deductor;

b) Corporate deductor;

c) The deductor is a person required to get his accounts audited under section 44 AB in the immediately preceding financial year; or

d) The number of deductee's records in a statement for any quarter of the financial year is twenty or more.

Such quarterly statements are to be delivered electronically under digital signature or electronically with verification of statement in form 27A or verified through an electronic process in accordance with format and procedure specified in rule 31A(5). Further, a declaration in Form 27A is also to be submitted in paper format. Quarterly statements are also to be filed by such deductors in electronic format with the e-TDS Intermediary at any of the TIN Facilitation Centres, particulars of which are available at *www.incometaxindia.gov.in and at http://tin.nsdl.com*

A person other than a deductor specified above may at his option deliver the quarterly statements electronically in computer media as provided above. However, it is not mandatory for it to do so.

It is mandatory for the deductor to quote the following in quarterly statements:

- TAN
- PAN of the deductor (except where deductor is an office of the government)
- PAN of all the deductees
- Particulars of tax paid to the Central Government including Book Identification Number or Challan Identification Number as the case may be
- Particulars of amount paid or credited on which tax was not deducted in view of issue of certificate of no deduction of tax u/s 197 by the assessing officer to the payee.

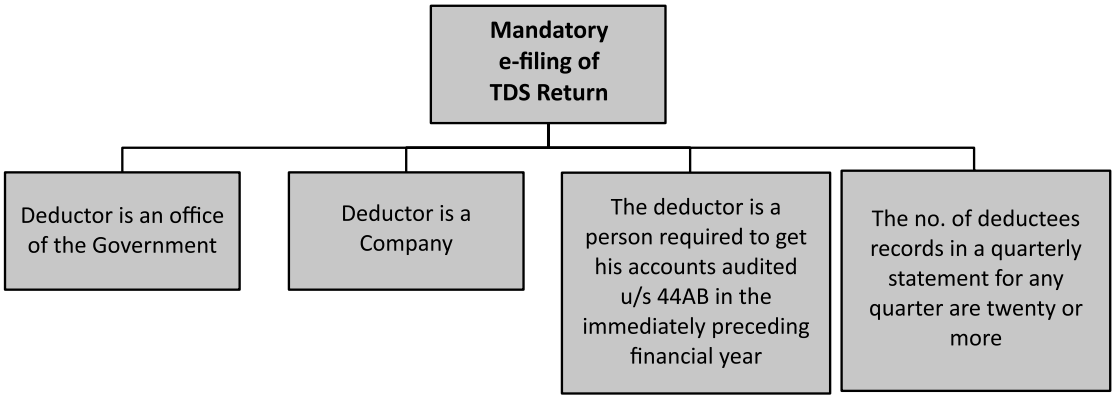
REFUND OF TDS

In case of excess deduction of tax at source, claim of refund of such excess TDS can be made by the deductor. The excess amount is refundable as per procedure laid down for refund of TDS wherein the difference between the actual payment made by the deductor and the tax deductible at source, will be treated as the excess payment made.

In case such excess payment is discovered by the deductor during the financial year concerned, the present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year. In case, the deduction of such excess amount is made beyond the financial year concerned, such claim can be made to the Assessing Officer (TDS) concerned. However, no claim of refund can be made after two years from the end of financial year in which tax was deductible at source.

E-TDS RETURN

As per Section 206 of the Income Tax Act, Corporate and Government deductors are compulsorily required to file their TDS return through electronic media. However, for other deductros filing of e-TDS return is optional and e-TDS return should be filed under Section 206 of the Income Tax Act in accordance with a scheme for electronic filing of TDS return. The CBDT has appointed the Director General of Income Tax (Systems) as e-filing administrator for the purpose of electronic filing of returns. CBDT has also appointed National Securities Depository Limited (NSDL) as e-TDS inter-mediatory. E-TDS return can be filed at any of the TIN-FC opened by the e-TDS inter-mediatory for this purpose. The due date for filing quarterly TDS return both electronic and conventional form remains the same.



Other than the above, any deductor may also opt to file their TDS Return electronically.

TAX COLLECTION AT SOURCE (TCS) [SECTION 206C]

Tax collected at source (TCS) is the tax collected by a seller which he collects from the buyer at the time of sale. Tax is to be collected at source in the following cases:

	Particulars	***Rate of TCS***
Case 1 - Sale of :		
I.	Alcoholic liquor for human consumption (other than Indian made foreign liquor)	1%.
II.	Indian made foreign liquor	1%

III.	Tendu leaves	5%
IV.	Timber obtained under the forest lease	2.5%
V.	Timber obtained by any mode other than under forest lease	2.5%
VI.	Any other forest produce not being timber or tendu leaves	2.5%
VII.	Scrap	1%
VIII.	Minerals, being coal or lignite or iron ore	1%
Case 2 - Grant of lease/license of :		
I.	Parking lot, toll plaza, mining and quarrying (other than mining and quarrying of miner oil, petroleum and natural Gas.	2%
Case 3 - Sale of :		
I.	Motor vehicle of the value exceeding Rs 10,00,000 whether payment is received in cheque or by any other mode.	1%

Case 4:

Authorised dealer receiving from a buyer for remittance out of India and seller of an overseas tour program package from a buyer shall, at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier, collect from the buyer **(As amended by Finance Act, 2020 this** will be effective from 1st October, 2020)**:**

a. TCS @ 5% for amount exceeding Rs. 7 Lacs in a financial year and is for a purpose other than purchase of overseas tour program package. The tour operator shall collect TCS on the entire sum as there is no threshold limit for him.

b. @ 0.5% if the amount exceeding Rs. 7 Lacs being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education.

c. TCS@ 10% if no PAN or Aadhaar is furnished.

Case 5:

A seller, who receives consideration for sale of any goods of the aggregate value exceeding Rs. 50 Lacs in any previous year, other than the goods being exported out of India or goods covered elsewhere under this section, at the time of receipt of such amount, collect from the buyer TCS @ 0.1 % of the sale consideration exceeding Rs 50 Lacs. **(As amended by Finance Act, 2020)**

TCS @ 10% if no PAN or Aadhaar is furnished by the buyer.

Notes:

1. In case 1, Tax is to be collected by seller from buyer. Seller includes every person but does not include an individual or HUF (whose accounts are not required to be audited under section 44AB(a)/(b) during the financial year preceding the financial year in which sale is made).

   Buyer does not include:

   a. A public sector company, the Central Govt., a State Govt., and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign state and a club; or

b. A buyer in the retail sale of such goods purchased by him for personal consumption.

2. In case 1, tax has to be collected by the seller at the time of debiting the amount payable by the buyer to the account of buyer or at the time of receipt of such amount from the buyer in cash or issue of cheque/ draft, or any other mode, whichever is earlier.

3. In case 1, Goods purchased for being used in manufacturing/processing is not subject to TCS. For this purpose buyer has to give declaration in duplicate to seller in form No. 27C. Declaration without PAN is not Valid.

4. In case 2, if licensee or lessee is a public sector company then TCS is not applicable.

5. In case 3, following points should be noted :

   a) This case is applicable in case of sale of motor vehicles in retail sales and not in case of sales by manufacturers to dealers/distributors.

   b) This case is not applicable where buyer is the Central/State Govt., an Embassy/High Commission/ Consulate/Trade representation of foreign Govt., local authority or a public sector company which is engaged in the business of carrying of passengers.

6. In case 4, the authorised dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller. Provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act and has deducted such amount.

7. In case 5, following points should be noted :

   a) The provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

   b) Buyer does not include Central Government, a State Government, a local authority a person importing goods into India.

   c) Seller means a person whose total sales, gross receipts or turnover from the business carried on by him exceed 10 Crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out.

Requirement to Furnish PAN by Collectee [Section 206CC]

Collectee shall furnish his PAN to the person responsible for collecting such tax at source. If PAN is not intimated, tax shall be collected at twice the normal rate or at the rate of 10%, whichever is higher.

(i) Declaration filed under section 206(1A) shall not be valid unless the person filing the declaration furnishes his PAN in such declaration.

(ii) Lower tax collection certificate shall not be granted unless application in Form No. 13 by the collectee contains his PAN.

(iii) The collectee shall furnish his PAN to the collector and both shall indicate the same in all correspondence, bills and vouchers exchanged between them.

(iv) Where the PAN provided by the collectee is invalid or it does not belong to the collectee, it shall be deemed that PAN has not been furnished to the collector.

These provisions are not applicable to a non-resident who does not have any permanent establishment in India.

TDS / TCS for non-filers of Income Tax Return [Section 206AB / 206CCA]

Section 206AB and Section 206CCA has been inserted to provide for a higher rate of withholding tax / collection of tax for taxpayers not furnishing / filing return of income.

Section 206AB is apply on any sum paid or payable or credited by a deductee to a specified person (other than any sum where tax is required to be withheld under Section 192, Section 192A, Section 194B, Section 194BB, Section 194LBC or Section 194N of the Act). The withholding tax rate shall be higher of the below:

- at twice the rate specified in the relevant provision of the Act; or
- at twice the rate or rates in force;
- or at the rate of 5%.

Section 206CCA will be applied on any sum or amount received by a collectee from a specified person. The tax collection rate in the said Section shall be higher of the following:

- twice the rate specified in the relevant provision of the Act; or
- the rate of 5%.

Further, if the provisions of Section 206AA [requirement to furnish Permanent Account Number (PAN] or Section 206CC (requirement to furnish PAN by collectee) are applicable to a 'specified person' in addition to the said Sections, that is, Section 206AB and Section 206CCA, the tax shall be deducted / collected at higher of the two rates provided in the above Sections (206AB / 206CCA) and in Section 206AA or Section 206CC of the Act.

The term 'specified person' means a person:

- who has not filed the returns of income for preceding two assessment years immediately prior to the previous year in which tax is required to be deducted and for which the time limit of filing return of income under Section 139(1) has expired; and
- the aggregate of tax deducted at source and tax collected at source is INR 50,000 or more in each of these two previous years.

*The term 'specified person' shall not include a non-resident who does not have a permanent establishment in India.

ADVANCE TAX

Section 207-219 of the Income Tax Act deals with the provsions relating to advance payment of tax. As per the provision, the assessee has to pay tax in a financial year on estimated income which is to be assessed in the subsequent assessment year. It follows the doctrine known as pay as you earn scheme. It is obligatory for an assessee to pay advance tax where the advance tax payable is Rs. 10,000 or more (Section 208).

In order to reduce the compliance burden on senior citizens, an exemption from payment of advance tax has been provided as per which resident individual not having any income chargeable under the head "Profits and gains of business or profession" and of age 60 years or more need not pay advance tax and are allowed to discharge their tax liability (other than TDS) by payment of self-assessment tax.

Due Dates for Payment of Advance Tax

Particulars	In case of all assessee
On or before June 15 of the Previous year	Upto 15% of the Advance Tax due

On or before September 15 of the previous year	Upto 45% of the Advance Tax due as reduced by amount paid in earlier instalments
On or before December 15 of the previous year	Upto 75% of the Advance Tax due as reduced by amount paid in earlier instalments
On or before March 15 of the previous year	Upto 100% of the Advance Tax due as reduced by amount paid in earlier instalments

Important Points:

- Any payment of advance tax payable made before March 31 shall be treated as advance tax paid during the financial year.
- An assessee (who declares his income in accordance with presumptive taxation regime under section 44ADA) shall also be liable to pay advance tax on or before March 15 of the financial Year.
- The above provision also applies for advance tax in respect of presumptive income u/s 44AD.
- In case of public holiday or bank holiday, date of payment automatically falls in the next working day and for that delay, interest is not charged under Sections 234B and 234C.
- Tax to be computed at the prevailing rate on the current income of the assessee, in a financial year.
- The total advance tax paid by an assessee other than for interest be adjusted against the total tax liability computed under regular assessment. **[Section 209]**
- Where an assessee, who is liable to pay advance tax, under Section 208 has failed to pay such tax or where the advance tax paid under Section 210 is less than 90% of the assessed tax, he shall be liable to pay interest @ 1% for every month or part of the month. **[Section 234B]**
- Assessee has to pay advance tax even in respect of book profit tax under Section 115JB otherwise it is liable for interest under Sections 234B and 234C.

Payment of advance tax in case of capital gains/casual income/ dividend income (other than deemed dividend as per Section 2(22)(e) [Proviso to section 234C]

- Advance tax is payable by an assessee on his/its total income, which includes capital gains and casual income like income from lotteries, crossword puzzles etc. or Dividend Income (dividend income (other than deemed dividend as per Section 2(22)(e).
- Since it is not possible for the assessee to estimate his capital gains, income from lotteries, etc, and dividend income (other than deemed dividend as per Section 2(22)(e), it has been provided that if any such income arises after the due date for any installment, then, the entire amount of tax payable (after considering tax deducted at source) on such capital gains or casual income should be paid in the remaining installments of advance tax which are due.
- Where no such installment is due, the entire tax should be paid by 31st March of the relevant financial year.
- No interest liability under section 234C would arise if the entire tax liability is so paid.

Illustration 1 :

Calculate Advance Tax Payable by Mr. Arun from the following estimated incomes for the previous year 2022-23 :

- Business Income : Rs. 4,75,000;
- Rent from house property : Rs. 36,000 per month;
- Municipal taxes : Rs. 27,000;
- Winning from games : Rs. 70,000 (net of TDS);
- Life insurance premium paid for himself (sum assured : Rs. 5,00,000) : Rs. 30,000.

Solution:

Computation of Advance Tax payable by Mr. Arun - Previous Year 2022-23 (Assessment Year 2023-24)

Step 1 : Compute Estimated Total Income for the year :

Particulars	***Rs.***	***Rs.***
Income from house property :		
Gross Annual Value [Rental Income (36,000 x 12)]	4,32,000	
***Less* :** Municipal taxes paid by owner	(27,000)	
Net Annual Value (NAV)	4,05,000	
***Less* :** Standard Deduction @ 30% of NAV	(1,21,500)	2,83,500
Profits and gains of Business or Profession		4,75,000
Income from other sources :		
Winning from games (gross) [70000 x 100(100% - 30%]		1,00,000
Gross Total Income (GTI)		8,58,500
Less : Deductions under Section 80C		(30,000)
Total Income		**8,28,500**

Step 2 : Computation Estimated of Tax Liability and Advance Tax Payable

Particulars	***Rs.***	***Rs.***
Tax on :		
Winning from Games @ 30% [1,00,000 x 30%]	30,000	
Balance Income @ Slab Rate [12,500 + 20% of (7,28,500 - 5,00,000)]	58,200	

Tax Payable		88,200
Add : Surcharge, if any		Nil
Add : Cess @ 4%		3,528
Tax Liability		91,728
Less : TDS		(30,000)
Advance Tax Liability		61,728
Advance Tax (Rounded off)		**61,730**

Step 3 : Advance Tax Instalments - Advance tax is payable as follows :

Upto	***% (Rate)***	***Cumulative (Rs.)***	***Each Instalment (Rs.)***
15.06.2022	15	9,259 [61,730x15%]	9,259
15.09.2022	45	27,778 [61,730x45%]	18,519
15.12.2022	75	46,297 [61,730x75%]	18,519
15.03.2023	100	61,730 [61,730x100%]	15,433

Note: Assuming assessee has opted for section 115BAC of the Income Tax Act, 1961.

Illustration 2 :

Red Ltd. (an Indian company) has estimated its income for previous year 2022-23. Calculate advance tax payable by it from the following :

- Business Income : Rs. 10,80,000;
- Income from house property (after deduction under section 24) : Rs. 7,20,000;
- Long term capital gain (LTCG) on transfer of immovable property on 1st November, 2021 : Rs. 3,60,000;
- Interest on bank deposits (other than saving bank account) : Rs. 45,000;
- TDS on business income and interest was Rs. 60,000;
- Deduction under section 80G is Rs.1,00,000.

Solution:

Computation of advance tax payable by Red Ltd. for Previous Year 2022-23 (Assessment Year 2023-24) :

Step 1 : Compute Estimated total income for the year :

Particulars	***Rs.***
Profits and gains of Business or Profession	10,80,000
Income from house property	7,20,000

LTCG	3,60,000
Income from other sources :	
Interest on bank deposits	45,000
Gross Total Income (GTI)	22,05,000
Less : Deductions under Section 80G	(1,00,000)
Total Income	**21,05,000**

Step 2: Computation of Estimated Tax Liability and Advance Tax Payable (It is presumed that Red Ltd is a regular company which is not satisfying the conditions of 115BA, 115BAA and 115BAB and its turnover/ Gross receipts during P.Yr. 2020-21 exceeds Rs 400 Crores, hence rate of tax is taken as 30%)

Particulars	***Rs.***	***Rs.***
Tax on :		
LTCG @ 20% (3,60,000 x 20%)	72,000	
Balance Income @ 30% [(21,05,000 - 3,60,000) x 30%]	5,23,500	5,95,500
Add : Surcharge, if any		Nil
Add : Cess @ 4%		23,820
Tax Liability		6,19,320
Less : TDS		(60,000)
Advance Tax Liability		5,59,320
Advance Tax (rounded off)		5,59,320

Step 3: Advance Tax Instalments - Advance Tax is payable as follows:

Note: Advance Tax is payable by all Assessee in four installments during the previous year, i.e., by 15th June (15%), 15th September (45%), 15th December (75%) and 15th March (100%). However, in case of LTCG arising after one or more installments, advance tax on installments prior to date of LTCG can be paid without including tax on LTCG and advance tax on installments after LTCG must be paid in the remaining installments on the amount of total tax liability including that on LTCG.

Therefore, in this case, advance tax payable by 1st and 2nd installment would be based on Tax excluding Tax on LTCG and advance tax payable by 3rd and 4th installment would be based on tax including tax on LTCG.

Tax excluding tax on LTCG : Rs. 5,23,500 + Cess @ 4% =Rs. 5,44,440 -TDS Rs. 60,000 = Rs.4,84,440

Upto	***Cumulative %***	***Cumulative (Rs.)***	***Each installment (Rs.)***
15.06.2022	15	72,666 [4,84,440x15%]	72,666
15.09.2022	45	2,17,998 [4,84,440x45%]	1,45,332

15.12.2022	75	4,19,490 [5,59,320x75%]	2,01,492
15.03.2023	100	5,59,320 [5,59,320x100%]	1,39,830

SELF-ASSESSMENT TAX (SAT)

Self assessment tax means tax paid by the assessee on the basis of self assessment before filing of return of Income. Self Assessment is simply a process where a person himself assesses his tax liability himself on the income earned during the particular previous year and submits Income Tax Return to the department. Every person, before furnishing return under sections 139 (return of income), 142(1), 148 (issue of notice where income has escaped assessment) and 153A (Assessment in case of search or requisition) shall make self assessment of his income and pay the tax, if due on the basis of such assessment. The total tax payable is calculated on the total income of the assessee after considering the following amount :

(i) the amount of tax already paid under any provision of this Act;

(ii) any tax deducted or collected at source;

(iii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;

(iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

(v) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.

In case of delay in furnishing of return of income self assessment tax shall also include interest for delay and fee for delay under section 234F.

Such determined value of tax along with the interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax is paid before furnishing the return and the proof of payment of such tax is attached with the return. Such amount paid before furnishing of return is Known as Self Assessment Tax.

FILING OF RETURNS

It is mandatory for every taxpayer to communicate the details of his income to the Income-tax Department. These details are to be furnished in the prescribed form known as return of income.

Person required to file the return of income [Section 139 (1)]

The procedure under the Income-tax Act for making an assessment of income begins with the filing of a return of income. Section 139 of the Act contains the relevant provisions relating to the furnishing of a return of income.

According to that section, it is statutorily obligatory for

(a) Every person being a company or a firm or

(b) being a person other than a company or firm to furnish a return of his total income or the total income of any other person in respect of which he is assessable under the Income-tax Act, in all cases where his total income or the total income of any other person for which he is liable to be assessed before claiming any deduction under chapter VI-A exceeds and before claiming exemption benefits under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB, in any relevant previous year, the maximum amount which is not chargeable to income-tax.

Analysis: It should be obligatory for the firm or Company to file return of income in every case. Further, in respect of individual, HUF, AOP, BOI, Artificial juridical Person, filing of return of income shall be compulsory if their total income before allowing deductions under sections 10A, 10B,10BA or chapter VI-A exceeds the maximum amount which is not chargeable to income tax.

Compulsory filing of Income Tax return in relation to Assets located outside India

It is mandatory to file a return of income where a person, being a resident other than not ordinarily resident in India and who during the previous year has any asset or is a beneficial owner of any asset or is a beneficiary of any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India. In such a case, it is immaterial that the taxable income is less than the maximum amount not chargeable to tax.

The difference between beneficial ownership and beneficiary has been clarified by way of an explanation which suggests that "beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person and "beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

Further, in the following situation, a person shall be mandatorily required to file his return of income, –

(i) if during the previous year has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank; or

(ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or

(iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or

(iv) fulfils such other prescribed conditions, as may be prescribed.

The CBDT vide notification No. 37/2022, dated 21-04-2022, has notified additional conditions under the seventh proviso to section 139(1) whereby return filing is made mandatory. These additional conditions are as follows:

i. If total sales, turnover or gross receipt of the business exceeds Rs. 60 lakh during the previous year; or

ii. If total gross receipt of profession exceeds Rs. 10 lakh during the previous year; or

iii. If the total of tax deducted and collected in case of a person during the previous year is Rs. 25,000 or more. The threshold limit shall be Rs. 50,000 in case of a resident individual of the age of 60 years or more; or

iv. If the aggregate deposit in one or more savings bank accounts of the person is Rs. 50 lakhs or more during the previous year.

Due date for filing return of Income

Status of the Tax Payer	*Due Date*
Any company other than a company who is required to furnish a report in Form No. 3CEB under section 92E (i.e. other than covered in 2 below)	31st October of the assessment year

Any person [including the partners of the firm or the spouse of such partner (if the provisions of section 5A applies to such spouse], being such assessee who is required to furnish a report in Form No. 3CEB under section 92E[See Point 2]	30th November of the assessment year
Any person (other than a company) whose accounts are to be audited under the Income-tax Law or under any other law	31st October of the assessment year
A working partner of a firm whose accounts are required to be audited under this Act or under any other law or the spouse of such partner if the provisions of section 5A applies to such spouse [See Point 1]	31st October of the assessment year
Any other assessee	31st July of the assessment year

Important Points:

- **Individual and spouse governed by Portuguese Civil Code of 1860 and Tax Audit applicability:** Section 139 has been amended so as to align the due dates of filing of return of income for the assessee with his / her spouse, in case the provisions of tax audit are applicable, and they are governed by the Portuguese Civil Code of 1860 and Section 5A is applicable. In the erstwhile provisions there was a mismatch whereby the spouse had to file his / her return earlier by 31 July and the assessee was required to do so by 31 October, if the provisions of Section 44AB were applicable. Thus, the due date of 31st October would now be applicable to both the said assessee as well as his / her spouse, if either one of them is required to get his / her books audited.
- **Firm (cases where 92E applicable) & Partner:** The earlier provisions for filing of return of income had a mismatch in case the provisions of Section 92E were applicable to the firm as the due date of filing return of income was 31st October for the partners but 30th November for the firm. It is proposed to align the due date of filing Return of income under Section 139 to 30th November, for the partners of the firm to whom the provisions of Section 92E are applicable.

Practice Questions:

1. **Miss Saroj is a salaried employee. Her taxable salary income for the year 2021-22 is Rs. 8,40,000 (she does not have any other income). What will be the due date of filing the return of income for the financial year 2021-22?**

   Answer: 31st July, 2022

2. **Mr. Rupen is a doctor. Gross receipts for the year 2021-22 came to Rs. 18,40,000. He opts for the presumptive taxation scheme of section 44ADA. What will be the due date for filing of return of income by Mr. Rupen for the financial year 2021-22?**

   Answer: The gross receipts for the year are less than Rs. 50,00,000 and Mr. Rupen has opted for the presumptive taxation scheme of section 44ADA. Hence Mr. Rupen will not be liable to get his accounts audited i.e. he is not covered by audit. Hence, the due date for filing the return of income of the year 2021-22 will be 31st July, 2022.

3. **Mr. Rahul is running a garments factory. Turnover of his business for the year 2021-22 amounted to Rs. 1,84,00,000. He opts for the presumptive taxation scheme of section 44AD. What will be the due date for filing of return of income by Mr. Rahul for the financial year 2021-22?**

Answer: The turnover for the year is less than Rs. 2,00,00,000 and hence Mr. Rahul will not be liable to get his accounts audited i.e. he is not covered by audit as he opts for the presumptive taxation scheme of section 44AD. Hence, the due date of filing the return of income of the year 2021-22 will be 31st July, 2022.

4. **Mr. Kaushal is a partner in Essem Trading Company. The turnover of the firm for the financial year 2021-22 amounted to Rs. 2,84,00,000. Apart from remuneration, interest and share of profit from the firm, Mr. Kaushal is not having any other source of income. What will be the due date for filing the return of income by the partnership firm and by Mr. Kaushal for the financial year 2021-22?**

   Answer: The turnover of the firm exceeds Rs. 2,00,00,000 and, hence, the firm will not be eligible for presumptive taxation scheme under section 44AD. Further, the firm shall be liable to get its accounts audited under section 44AB. Hence, the due date for filing the return of income of the year 2021-22 (in case of the firm as well as Mr. Kaushal) will be 31th October, 2022.

5. **Mr. Kiran is a partner in SM Enterprises. The turnover of the firm for the financial year 2021- 22 amounted to Rs. 1,84,00,000. The firm has declared income @ 8% on presumptive basis under section 44AD of the Act. Apart from remuneration, interest and share of profit from the firm, Mr. Kiran is not having any other source of income. What will be the due date of filing of return of income by the partnership firm and by Mr. Kiranfor the financial year 2021-22?**

   Answer: The turnover of the firm is below Rs. 2,00,00,000 and, hence, it will not be liable to get its accounts audited. Hence, the due date for filing the return of income of the year 2021-22 (in case of firm as well as Mr. Kiran) will be 31st July, 2022.

6. **Essem Minerals Pvt. Ltd. is a company engaged in trading of minerals. What will be the due date for filing the return of income for the financial year 2021-22?**

   Answer: The due date for filing the return of income of the year 2021-22 will be 31st October, 2022.

7. **Essem Minerals Pvt. Ltd. is a company engaged in trading of minerals and liable to furnish a report in Form No. 3CEB under section 92E.What will be the due date for filingthe return of income for the financial year 2021-22?**

   Answer: The due date for filing the return of income of the year 2021-22 will be 30th November, 2022.

8. **Mrs. Gupta is house wife and has no source of income. During the financial year 2021- 22, she made payment towards electricity bills of her house. Total payment of Rs. 1,50,000 lakhs were made through bank account. Whether Mrs. Gupta will be liable to file return of income?**

   Answer: W.e.f., Assessment Year 2020-21, a person shall be liable to file return of income if he has incurred aggregate expenditure in excess of Rs. 1 lakh towards payment of electricity bill. In this case, Mrs. Gupta has made payment of Rs. 1,50,000 towards electricity bills. Thus, she will be liable to file return of income for the financial year 2021-22 by 31st July, 2022.

9. **Mr. Raghav is a salaried employee. He gifted a holiday package of Dubai to his brother. Mr. Raghav paid total amount of Rs. 2.5 lakhs to tour operator for the holiday package. His salary income for the financial year 2021-22 is Rs. 2,00,000 and has no other income. Whether Mr. Raghav is liable to file return of income?**

   Answer: W.e.f Assessment Year 2020-21, a person shall be liable to file return of income if he has incurred aggregate expenditure in excess of Rs. 2 lakh for himself or any other person for travel to a foreign country. So whether a person incurred expense for self or for any other person, filing of return is mandatory if expenses on foreign travel is in excess of Rs. 2 Lakh.

In this case, Mr. Raghav has purchased holiday package worth Rs. 2.5 lakhs. Thus, he will be liable to file return of income for the financial year 2021-22 by 31st July, 2022 even though his total income doesn't exceed the maximum amount not chargeable to tax.

Return of Loss [Section 139(3)]

Section 80 requires mandatory filing of return of loss u/s 139(3) on or before the due date specified u/s 139(1) for carry forward of loss under the head 'profits and gains from business or profession' or loss from maintenance of race horses or under the head 'Capital gains'. However, loss under the head "Income from house property" as under section 71B and unabsorbed depreciation under section 32 can be carried forward for set-off even though return of loss has been filed after the due date. Unless the assessee files a return of loss in the manner and within the same time limits as required for a return of income, the assessee would not be entitled to carry forward the loss for being set off against income in the subsequent year.

Belated Return [Section 139(4)]

Any person who has not filed the return within the time allowed under section 139(1) may file a belated return for any previous year at any time before three months prior to the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Following are the consequences of delay in filing the return of income :

a. Loss (other than house property loss/unabsorbed Depreciation) cannot be carried forward.

b. Levy of interest for late filing under section 234A.

c. Levy of fee under section 234F.

d. Exemptions under sections 10A, 10B, are not available.

e. Deduction under Part-C of Chapter VI-A shall not be available.

Practice Questions:

1. **For the previous year 2021-22, Mr. X did not file the return of income on the due date. Can Mr. X file the return of income after the due date?**

   Answer: Yes, as per section 139(4), Mr. X can filed a belated return. Mr. X may file the return of income at any time on or before 31st of December, 2022.

2. **Mr. Raja is a trader of agricultural products. Turnover of his business for the previous year 2021-22 amounted to Rs. 84,00,000. He has not opted for the presumptive taxation scheme of section 44AD i.e. not declaring income at 8% of sales. He declared income at less than 8% of sales. What will be the 'due date' for filing his return of income for the financial year 2021- 22? If he fails to file the return of income by the due date then by what date he can file a belated return?**

   Answer: In this case, as Mr. Raja had not opted for presumptive taxation scheme of section 44AD, and declared income at less than 8% of sales, he will be required to get his accounts audited under section 44AB and therefore the due date for filing the return of income of the year 2021-22 will be 31stOctober, 2022. If he cannot file the return of income by the due date, i.e., by 31st October, 2021, then he can file a belated return 3 months before end of the relevant assessment year or before completion of assessment, whichever is earlier. In other words, he can file a belated return upto 31-12-2022. If the assessment is completed before 31-12-2022, then he can file a belated return at any time before the completion of assessment.

Return of Income of charitable trust and institutions [Section 139(4A)]

Sub-section (4A) of Section 139 also makes it incumbent of "every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes or of income being voluntary contributions within the meaning of Section 2(24)(iia)" to furnish a return of income in case the total income exceeds the maximum amount not chargeable to tax.

Further, one who is assessable as a representative assessee for the receipt of income derived from property held under Trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes or of income being voluntary contributions shall furnish a return of income of the previous year in the prescribed form and get it verified in such manner as prescribed under Section 139(1), if the total income (without giving effect to the provisions of Sections 11 and 12) exceeds the amount not chargeable to tax.

Return of Income of Political Party [Section 139(4B)]

It is also incumbent on the political parties to file their return of income [if the income (without giving effect to the provisions of Section 13A) exceeds the maximum amount not chargeable to tax], duly signed by the Chief Executive Officer of the party.

Return of Income of Specified Association/Institutions [Section 139(4C)]

Following persons are required to file the return :

(a) Research association referred to in Section 10(21);

(b) news agency referred to in Section 10(22B);

(c) association or institution referred to in Section 10(23A);

(d) institution referred to in Section 10(23B);

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (iiiab) or sub-clause (iiiad) or sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (iiiac) or sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10;

(ea) Mutual Fund referred to in clause (23D) of section 10;

(eb) securitisation trust referred to in clause (23DA) of section 10;

(ec) venture capital company or venture capital fund referred to in clause (23FB) of section 10;

(f) trade union referred to in Section 10(24)(a) or 10(24)(b);

(g) body or authority or Board or Trust or Commission in section 10(46);

(h) infrastructure debt fund referred to in section 10(47) or Mutual Fund or Securitisation Trust or venture capital company or venture capital fund.

Scope of Section 139(4C) is expanded to include an assessee who qualifies to exemption under section 10(23AAA),(23EC),(23ED),(23EE), (29A).

The above persons shall, if the total income, without giving effect to the provisions of Section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under Section 139(1)".

Revised Return [Section 139(5)]

An assessee who is required to file a return of income is entitled to revise the return of income originally filed by him to make such amendments, additions or changes as may be found necessary by him. Such a revised return may be filed by the assessee at any time

- before the expiry of the 31st December of the relevant assessment year
- before the completion of assessment whichever is earlier.

Revised return can be further revised upto any number of times, within the prescribed period.

Updated Return [Section 139(8A)]

The Finance Act 2022, has inserted sub-section (8A) in section 139 to enable the filing of an updated return. The section provides that an updated return can be filed by any person irrespective of the fact whether such person has already filed the original, belated or revised return for the relevant assessment year or not. An updated return can be filed at any time within 24 months from the end of the relevant assessment year. However, an updated return cannot be filed in the following three situations:

Situation 1: An updated return cannot be filed if such updated return:

a) is a return of a loss; or

b) results in lower tax liability determined on the basis of original, revised or belated return filed by assessee; or

c) results in or increasing the refund due on the basis of original, revised or belated return filed by assessee.

Situation 2: A person cannot file updated return wherein:

a) A search has been initiated under section 132 or books of account or other documents or any assets are requisitioned under section 132A in the case of such person; or

b) A survey has been conducted under section 133A, other than section 133A(2A), in the case such person; or

c) A notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 132A in the case of any other person belongs to such person; or

d) A notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.

Situation 3: An updated return cannot be filed for the relevant assessment year wherein:

a) An updated return has been furnished by him;

b) Any proceeding for assessment or reassessment or recomputation or revision of income is pending or has been completed;

c) The Assessing Officer has information in respect of such person under:

- The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976;
- The Prohibition of Benami Property Transactions Act, 1988;
- The Prevention of Money-laundering Act, 2002; or

- The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

And the same has been communicated to him, prior to the date of furnishing of updated return

d) Information has been received under an agreement referred to in section 90 or section 90A in respect of such person and the same has been communicated to him, prior to the date of furnishing of return of updated return;

e) Any prosecution proceedings have been initiated in respect of such person, prior to the date of furnishing of updated return.

f) Assessee is such person or belongs to such class of persons, as may be notified by the Board

Defective Return [Section 139(9)]

If the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within 15 days from the date of such intimation or within such further period as may be allowed by the Assessing Officer on the request of the assessee. If the assessee fails to rectify the defect within the aforesaid period, the return shall be deemed to be invalid and further it shall be deemed that the assessee had failed to furnish the return. However, where the assessee rectifies the defect after the expiry of the aforesaid period but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

SIGNING OF RETURNS [SECTION 140]

The return of income must be verified :

Assessee	***Verified By***
An Individual	i. by the individual himself; ii. where he is absent from India, by the individual himself or by some person duly authorised by him in this behalf; iii. where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf; and iv. where, for any other reason, it is not possible for the individual to verify the return, by any person duly authorised by him in this behalf. Provided that in a case referred to in Sub-clause (ii) or (iv), the person verifying the return holds a valid power of attorney from the individual to do so, which shall be attached to the return :
HUF	by the Karta, and, where the karta is absent from India or mentally incapacitated from attending to his affairs, by any other adult member of such family
Local authority	the Principal Officer thereof
Firm	by managing partner thereof or where for any unavoidable circumstances such managing partner is not able to verify the return, or where there is no managing partner as such, by any partner thereof, not being a minor

Limited liability partnership 'LLP'	by the designated partner thereof, or where for any unavoidable reason such designated partner is not able to verify the return, or where there is no designated partner as such, by any partner
Any other association	by any member of the association or Principal Officer thereof
Any other person	by that person or some person competent to act on his behalf
Company	by the managing director thereof, or where for any unavoidable reason such managing director is not able to verify the return or where there is no managing director, by any director thereof. Provided that where the company is not resident in India, the return may be verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return
Insolvency professional to verify the return of income where application for Corporate Insolvency has been admitted. Provided further that – (a) where the company is being wound up, whether under the order of a court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be verified by the liquidator referred to in Sub-section (1) of Section 178; (b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be verified by the Principal Officer thereof; (i) in the case of a political party referred-to in Sub-section (4B) of Section 139, by the Chief Executive Officer of such party whether such Chief Executive Officer is known as secretary or by any other designation.	

Note: W.e.f., Assessment Year 2020-21, the Finance Act, 2020 has empowered the Central Board of Direct Taxes (CBDT) to enable any other person, as may be prescribed, to verify the return of income in the cases of a company and an LLP. In exercise of such power, the CBDT has inserted a new Rule 12AA to prescribe the other person who can verify a company's return and an LLP. This rule provides that any other person shall be the person, appointed by the National Company Law Tribunal (NCLT), for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder.

FEE AND INTEREST

Interest for default in furnishing Return of Income [Section 234A]

In cases where a return on income is furnished after the due date as specified u/s 139(1) or furnished belated return u/s 139(4) or furnished updated return u/s 139(8A) or furnished return in response to notice u/s 142(1) or is not furnished at all, the assessee has to pay simple interest at the rate of 1% per cent for every month or part of the month of default on the amount of tax on the total income as determined under sub-section (1) of Section 143, and where a regular assessment is made, on the amount of the tax or the total income determined under regular assessment or reduced by an amount of –

- advance tax if paid;

- any TDS/TCS;
- any relief under Sections 90, 90A;
- any deduction under Sections 91;
- any tax credit under the provisions of Section 115JAA;
- Relief U/s 89.

The period for which the interest is payable commences from the date immediately following the due date for filing the return and ending on the date of furnishing of the return. Where the return is not furnished, the interest will be payable from the due date for filing the return till the date of completion of assessment.

Note:

(i) "tax on total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 140B or section 143; and

(ii) tax on the total income determined under regular assessment shall not include the additional income-tax payable under section 140B.]

Interest for default in payment of Advance Tax [Section 234B]

Where the assessee, liable to pay advance tax, has not remitted the same or where the advance tax paid is less than 90% of assessed tax. The assessee has to pay simple interest on assessed tax means the tax on the total income determined under sub-section(1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of :

- advance tax, if any paid;
- any TDS/TCS;
- any relief under Sections 90, 90A;
- any deduction under Section 91;
- any tax credit under provision of Section 115JAA;
- Relief U/s 89.

@1% percent for every month or part of month from 1st day April next following such financial year to the date of determination of total income under section 143(1) and where a regular assessment is made, to the date of such regular assessment.

In cases where the assessee has paid tax on the basis of self assessment under Section 140A, before the date of completion of a regular assessment, the interest is calculated on above basis upto the date of payment of tax under Section 140A and, the thereafter, on the amount by which the advance tax and tax paid under Section 140A fall short of advance tax.

In the cases of enhancement or reduction of the amount on which interest was payable under Section 147 (income escaping assessment) or Section 153A; Section 154 (rectification of mistake); Section 155 (other amendments on completed assessment of a partner in a firm; member of an AOP or body of individuals etc.); Section 250 (appeal); Section 254 (orders of the Appellate Tribunal); Section 260 (Decision of High Court or Supreme Court on the case stated; Section 262 (hearing before Supreme Court); Section 263 (revision of orders prejudicial to revenue); Section 264 (Revision of orders); or 245D(4) [order of the Settlement Commission, the interest shall be increased or reduced correspondingly. Where the interest has already been paid to the assessee, a notice of demand, calling for payment of such amount, has to be served on the assessee by the Assessing Officer. Such notice of demand shall be deemed to be an order under Section 156 of the Act.

Note:

(i) "tax on total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 140B or section 143; and

(ii) tax on the total income determined under regular assessment shall not include the additional income-tax payable under section 140B.]

Interest for deferment of Advance Tax [Section 234C]

If the assessee who is liable to pay advance tax under Section 208 has failed to pay such tax or has under estimated the instalments of advance tax, he has to pay interest as follows :

(a) If advance tax paid on or before 15 June is less than 15% of tax due on total income declared in the return or If advance tax paid on or before 15 September is less than 45% of tax due on total income declared in the return filed by the assessee or If advance tax paid on or before 15 December is less than 75% of tax due on total income declared in the return the assessee shall pay simple interest @ 1% per month for a period of three months on the amount of the shortfall from 15%, 45%, and 75% of the tax due on the returned income.

(b) If advance tax paid on or before March 15 is less than 100% of tax due on total income declared in the return, as reduced by tax deducted at source, simple interest is payable @ 1% per month on the amount of shortfall from the tax due on the returned income declared.

Provided that if the advance tax paid by the assessee on the current income, on or before the 15th day of June or the 15th day of September, is not less than 15% or, as the case may be, 45% of the tax due on the returned income, then, the assessee shall not be liable to pay any interest on the amount of the shortfall on those dates.

An eligible assessee in respect of the eligible business referred to in section 44AD, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of 1% on the amount of the shortfall from the tax due on the returned income.

Amendment to Section 234C(1) : In respect of an assessee (who declares his income in accordance with presumptive taxation regime under section 44AD / 44ADA), interest under this section shall be levied, if the advance tax paid on or before March 15, is less than the tax due on the returned income.

Provided that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate

(a) the amount of capital gains; or

(b) income of the nature referred to in sub-clause (*ix*) of clause (*24*) of section 2; or

(c) income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time; or

(d) income of the nature referred to in sub-section (1) of section 115BBDA,

and the assessee has paid the whole of the amount of tax payable in respect of income referred to in clause (*a*) or clause (*b*) or clause (*c*) or clause (*d*), as the case may be, had such income been a part of the total income, as part of the remaining instalments of advance tax which are due or where no such instalments are due, by the 31st day of March of the financial year:

Fees for Delay in Furnishing Return of Income [Section 234F]

Situation	*Fees*
If return is furnished after due date specified under section 139(1)	Rs. 5,000
In cases where the total income does not exceed Rs 5,00,000 then the fees shall not exceed:	Rs. 1,000

CASE LAWS

1.	*09.06.2017*	*Binoy Viswam v. Union of India*	*Supreme Court*

Provision Mandating Quoting of Aadhaar for IT Returns & PAN is valid

Fact of the Case: Recently, Section 139AA was incorporated in the Income Tax Act vide Finance Act, 2017 requiring mandatory quoting of Aadhaar or enrolment ID of Aadhaar application form for filing of income tax returns and making application for allotment of PAN (Permanent Account Number) with effect from July 1 2017. as per the provision, non-enrolment of Aadhaar by July 2017 would render the PAN of the defaulting individual invalid, attracting serious consequences under the Income Tax Rules.

A number of petitions were filed before the Top-Court challenging the vires of the above provision. The petitioners contended that the new provision "compelling" tax payers to link their Aadhaar Card to PAN in 2015, the Aadhaar "was not mandatory" for all the citizens. It was held that Aadhaar should be voluntary and no benefits can be denied for want of it. The petitioner, therefore, contended that the scheme itself, was voluntary and the card is to be obtained only on the consent of the individual.

The bench concurred with the argument of the Government that the primary purpose of introducing this provision was to take care of the problem of multiple PAN cards obtained in fictitious names.

While accepting this contention, Justice A.K Sikri said that people who do not have Aadhaar Card are not bound to apply for it till the verdict of the Constitution Bench. It was clarified that "assesses who are not Aadhaar card holders and do not comply with the provision of Section 139(2), their PAN cards be not treated as invalid for the time being." However, people who have Aadhaar must link it with PAN Card since it is necessary to prevent fake PAN cards.

Judgement: In Binoy Viswam v. Union of India, a two-judge bench of the Supreme Court upheld the constitutional validity of the provisions of Section 139AA of the Income Tax Act which mandates quoting of Aadhaar for IT Returns.

2	*March 2, 2021*	*Engineering Analysis Centre of Excellence Private Limited (Appellant) vs. CIT (Respondent)*	*Supreme Court*

Amount paid by resident Indian end-users/distributors to non-resident computer software manufacturers/ suppliers, as consideration for the resale/use of computer software through EULAs distribution agreements, is not payment of royalty for the use of copyright in computer software, and that the same does not give rise to any income taxable in India; as a result of which the persons are not liable to deduct any TDS under section 195 of the Income Tax Act.

Fact of the Case: The appellant, Engineering Analysis Centre of Excellence Pvt. Ltd. (EAC), is a resident Indian end-user of shrink-wrapped computer software, directly imported from the United States of America.

The Assessing Officer by an order dated 15.05.2002, after applying Article 12(3) of the Double Taxation Avoidance Agreement (DTAA), between India and USA, and upon applying section 9(1)(vi) of the Income Tax Act, 1961 (Act), found that what was in fact transferred in the transaction between the parties was copyright which attracted the payment of royalty and thus, it was required that tax be deducted at source by the Indian importer and end-user, EAC. Since this was not done for both the assessment years, EAC was held liable to pay the amount of Rs. 1,03,54,784 that it had not deducted as TDS, along with interest under section 201(1A) of the Act amounting to Rs. 15,76,567. The appeal before the Commissioner of Income Tax (CIT) was dismissed by an order dated 23.01.2004. However, the appeal before the Income Tax Appellate Tribunal (ITAT) succeeded vide an order dated 25.11.2005.

An appeal was made from the order of the ITAT to the High Court of Karnataka by the Revenue. The High Court held that since no application under section 195(2) of the Act had been made, the resident Indian importers became liable to deduct tax at source, without more, under section 195(1) of the Act.

Order/ Judgment: The "license" that is granted vide the end user license agreement 'EULA', is not a license in terms of section 30 of the Copyright Act, which transfers an interest in all or any of the rights contained in sections 14(a) and 14(b) of the Copyright Act, but is a "license" which imposes restrictions or conditions for the use of computer software. The EULAs do not grant any such right or interest to reproduce the computer software. In point of fact, such reproduction is expressly interdicted, and it is also expressly stated that no vestige of copyright is at all transferred, either to the distributor or to the end-user.

Further, what is "licensed" by the foreign, non-resident supplier to the distributor and resold to the resident end-user, or directly supplied to the resident end-user, is in fact the sale of a physical object which contains an embedded computer programme, and is therefore, a sale of goods.

Further, given the definition of royalties contained in Article 12 of the DTAAs, it is clear that there is no obligation on the persons mentioned in section 195 of the Income Tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions contained in the Income Tax Act (section 9(1)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases.

The amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/ suppliers, as consideration for the resale/use of the computer software through EULAs/ distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Act were not liable to deduct any TDS under section 195 of the Act.

LESSON ROUND-UP

- The Income-tax Act provides for collection and recovery of income-tax in the following ways, namely,
  - (i) Deduction of tax at source in respect of income by way of salaries, interest on securities, interest other than interest on securities, winnings from lotteries and crossword puzzles, winnings from horse-race, insurance commission, dividends, payment to contractors or subcontractors and payments to non- residents;
  - (ii) advance payment of income-tax before the assessment by the assessee himself;
  - (iii) direct payment of income-tax by the assessee on self-assessment; and
  - (iv) after the assessment is made by the Assessing Officer.

- Sections 192 to 206 of the Income-tax Act lay down the provisions relating to deduction of tax at source.
- The provision related to Tax Collection at Source.
- Section 207-219 of the Income Tax Act deals with the provisions relating to advance payment of tax. In advance payment of tax, the assessee has to pay tax in a financial year under estimated income which is to be taxed in the subsequent assessment year. It follows the doctrine known as pay as you earn scheme. It is obligatory for an assessee to pay advance tax where the advance tax payable is Rs. 10,000 or more [(Section 208)].
- Filing of Return: The procedure under the Income-tax Act for making an assessment of income begins with the filing of a return of income. Section 139 of the Act contains the relevant provisions relating to the furnishing of a return of income.
- The provisions related to filing of Revised Return, Belated Return, Updated Return.
- The provision related to defective return.
- The fees and Interest for default in furnishing return of Income.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions "MCQs"

1. Mr. Anil who is a non-resident in India during the previous year has paid consultancy fees of Rs. 50 lakhs to X Ltd, a non-resident foreign company in connection to a project / liaison office in India. Under which section Mr. Anil is required to deduct tax at source on the above payment?

    a) Section 194J of the Income tax Act, 1961

    b) Section 195 of the Income tax Act, 1961

    c) No TDS is required to be deducted

    d) None of the above

    Answer: (b)

2. Interest on deferment of advance tax is levied under section:

    a) Section 234A of the Income -tax Act, 1961

    b) Section 234B of the Income-tax Act, 1961

    c) Section 234C of the Income-tax Act, 1961

    d) Section 201A of the Income-tax Act, 1961

    Answer: (c)

3. The TDS Certificate issued by an employer to his employees in case of salary income is

    a) Form 16

    b) Form 26

    c) Form 26A

    d) Form 26Q

    Answer: (a)

4. For making a TAN Application online, a person shall file his application in Form No.

    a) 49A

    b) 49C

    c) 49B

    d) 49D

    Answer: (c)

5. Every individual/HUF/AOP/BOI/artificial juridical person has to file the return of income if his total income (including income of any other person in respect of which he is assessable) without giving effect to the provisions of section 10(38), 10A, 10B 10BA, 54, 54B, 54D, 54EC, 54F, 54G, 54GA or 54GB or Chapter VIA (i.e., deduction under section80C to 80U), exceeds .....

    (a) Rs. 2,00,000

    (b) Rs. 2,50,000

    (c) Rs. 5,00,000

    (d) The maximum amount not chargeable to tax

    Answer: (d)

6. What is the due date of filing the return of income in case of a company other than a company who is required to furnish a report in Form No. 3CEB under section 92E?

    (a) October 31 of the assessment year

    (b) November 30 of the assessment the year

    (c) July 31 of the assessment year

    (d) June 30 of relevant assessment the year

    Answer: (d)

Justify with reason the correctness / incorrectness of the statement

1. "Every person, being a company, has to file its return of income only if it has any positive income or if it wants to carry forward the loss (if any).

2. Every person, being a company, has to file its return of income compulsorily, irrespective of its income being profit or loss. In other words, it is mandatory for every company to file the return of income irrespective of its income or loss.

3. Every person, being a partnership firm (including Limited Liability Partnership), has to file its return of income compulsorily, irrespective of its income being profit or loss.

4. If a person fails to file the return of income within the time-limit prescribed in this regard, then as per section 139(4) he can file a belated return. A belated return can be filed before the end of the relevant assessment year or before completion of assessment, whichever is earlier.

Descriptive Questions:

1. Mr. A is an employee earning salary of Rs. 30,000 per month. He filed return of income and his tax liability was nil after claiming rebate under section 87A. Later he found that he didn't disclose interest income of Rs. 60,000 on which tax was deducted by bank. The time limit to file belated return has expired. Can assessee file updated return and claim refund of tax deducted on interest?
2. What are the implications If a person fails to file the return of income within the time-limit prescribed under the Income tax Act, 1961.
3. What is Tax Deducted at Source and Tax Collected at Source.

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**
  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania
  Publisher : Taxmann
- **Direct Taxes Ready Reckoner with Tax Planning**
  Author : Dr. Girish Ahuja & Dr. Ravi Gupta
  Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962 aspx*
- **Circulars***: https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx*

Concept of Indirect Taxes at a Glance

Lesson 14

KEY CONCEPTS

■ Direct Tax ■ Indirect Tax ■ Tax Structure ■ GST

Learning Objectives

To understand:

- Overview of Indirect Taxation
- Pre & Post GST Tax Structure
- Administration under Indirect Taxation Regime

Lesson Outline

BACKGROUND

Taxation is one of the essential and decisive elements in the working of machinery of a Nation. The revenue that is collected in the form of taxes is used for providing goods and services for public utility such as infrastructure, transportation, facilities like rain shelters and common areas, sanitation and all other such amenities which are provided by the government of the country.

A tax can be said to be a non-penal, yet compulsory transfer of resources from the private to the public sector levied on the basis of a predetermined criteria. Taxes are collected for serving the primary purpose of providing sufficient revenues to the State and have become a mechanism through which the social and economic objectives of a welfare state could be achieved. Every amount that is collected is contributed towards providing better infrastructure facilities for public at large. The same is also utilized towards rural revival and social well- being of general public. Taxation system is instrumental in removing poverty and inequality from the society. On the other hand, tax reform is fundamental equipment in strategy development aiming at holistic growth of the society. Thus, the importance of an efficient tax system and reforms in tax system cannot be undermined.

There are two types of taxes levied in India, i.e., Direct tax, which is levied directly on income, profession, etc., of an individual and where the tax burden cannot be passed on to any other person. Indirect tax, on the other hand, is not paid on the direct income of an individual person but is levied indirectly on the ultimate consumer of goods and services for consumption of goods and services. Hence, the former is levied on the income while latter is levied on the goods and services. In indirect taxes, immediate burden is on one person and ultimate burden is on some other person i.e., the person who ultimately consumes.

Note: For detail study on Direct Tax and Indirect Tax like meaning, taxable event, difference between Direct and Indirect tax , etc. please refer Lesson 1.

INDIRECT TAXES IN INDIA – AN OVERVIEW

During the post-Independence period, central excise duty was levied on a few commodities which were in the nature of raw materials and intermediate inputs, and consumer goods were by and large outside the purview of this duty. The first set of reforms were suggested by the Taxation Enquiry Commission (1953-54). The Commission recommended that sales tax should be used specifically by the States as a source of revenue. The Union Governments' intervention was generally allowed only in case of inter-State sales. It also recommended the levy of a tax on inter-State sales subject to a ceiling of 1%, which the states would administer and also retain the revenue from it.

The power to levy tax on sale and purchase of goods on inter-State trade and commerce was assigned to the Union by the Constitution (Sixth Amendment) Act, 1956. By mid-1970s, central excise duty was extended to most manufactured goods. Central excise duty was levied on a unit, called specific duty and on value, called *ad valorem* duty. The number of rates was too many with no offsetting of taxes paid on inputs. This led to significant cascading and classification disputes.

The Indirect Taxation Enquiry Committee constituted in 1976 under Shri L.K. Jha recommended, *inter alia*, converting specific rates into *ad valorem* rates, rate consolidation and input tax credit mechanism of value added tax at manufacturing-level (MANVAT). In 1986, the recommendation of the "Jha Committee on moving on to value added tax in manufacturing was partially implemented. This was called Modified Value Added Tax (MODVAT). In principle, duty was payable on value addition but in the beginning it was limited to select inputs and manufactured goods only with one-to-one correlation between input and manufactured goods for eligibility to take input tax credit. The comprehensive coverage of MODVAT was achieved by 1996-97.

The next wave of reform in indirect tax sphere came with the New Economic Policy of 1991. The Tax Reforms Committee under the chairmanship of Prof. Raja J Chelliah was appointed in 1991. This Committee recommended broadening of the tax base by taxing services and pruning exemptions, consolidation and lowering of rates, extension of MODVAT on all inputs including capital goods. It suggested that if complete benefits were to be derived from the tax reforms the reform of tax structure must be accompanied by a reform of tax administration. Many of the recommendations of the Chelliah Committee were implemented. In 1999-2000, tax rates were merged into three rates, with additional rates on a few luxury goods. In 2000-01, three rates were merged into one rate called Central Value Added Tax (CENVAT). A few commodities were subjected to special excise duty.

Taxation of services by the Union was introduced in 1994 bringing in its ambit only three services, namely general insurance, telecommunication and stock broking. Gradually, over the next decade, more and more services were brought under the tax net. In 1994, tax rate on three services was 5% which gradually increased and in 2017 it was 15% (including cess). Before 2012, services were taxed under a positive list approach. This approach was prone to tax avoidance. In 2012 budget, negative list approach was adopted where 17 services were out of taxation net and all other services were subject to tax.

In 2004, the Input Tax Credit scheme for CENVAT and Service Tax were merged to permit cross utilization of credits across these taxes.

Before state level VAT was introduced by states in the first half of the first decade of this century, sales tax was levied in states since independence. Sales tax had some serious flaws. It was levied by states in an uncoordinated manner the consequences of which were different rates of sales tax on different commodities in different states. Rates of sales tax were more than ten in some states and these varied for the same commodity in different states. Inter-State sales were subjected to levy of Central Sales Tax. As this tax was appropriated by the exporting State credit, it was not allowed by the dealer in an importing state. This resulted into exportation of tax from richer to poorer states and also cascading of taxes. Interestingly, states had power of taxation over services from the very beginning. States levied tax on advertisements, luxuries, and entertainments, amusements, betting and gambling.

A report, titled “Reform of Domestic Trade Taxes in India”, on reforming indirect taxes, especially State sales tax, by National Institute of Public Finance and Policy under the leadership of Dr. Amaresh Bagchi, was prepared in 1994. This Report prepared the ground for implementation of VAT in States. Some of the key recommendations were: replacing sales tax by VAT by moving over to a multistage system of taxation; allowing input tax credits for all inputs, including on machinery and equipment; harmonization and rationalization of tax rates across States with two or three rates within specified bands; pruning of exemptions and concessions except for a basic threshold limit and items like unprocessed food; zero rating of exports, inter-State sales and consignment transfers to registered dealers; taxing inter-State sales to non-registered persons as local sales; modernization of tax administration, computerization of operations and simplification of forms and procedures.

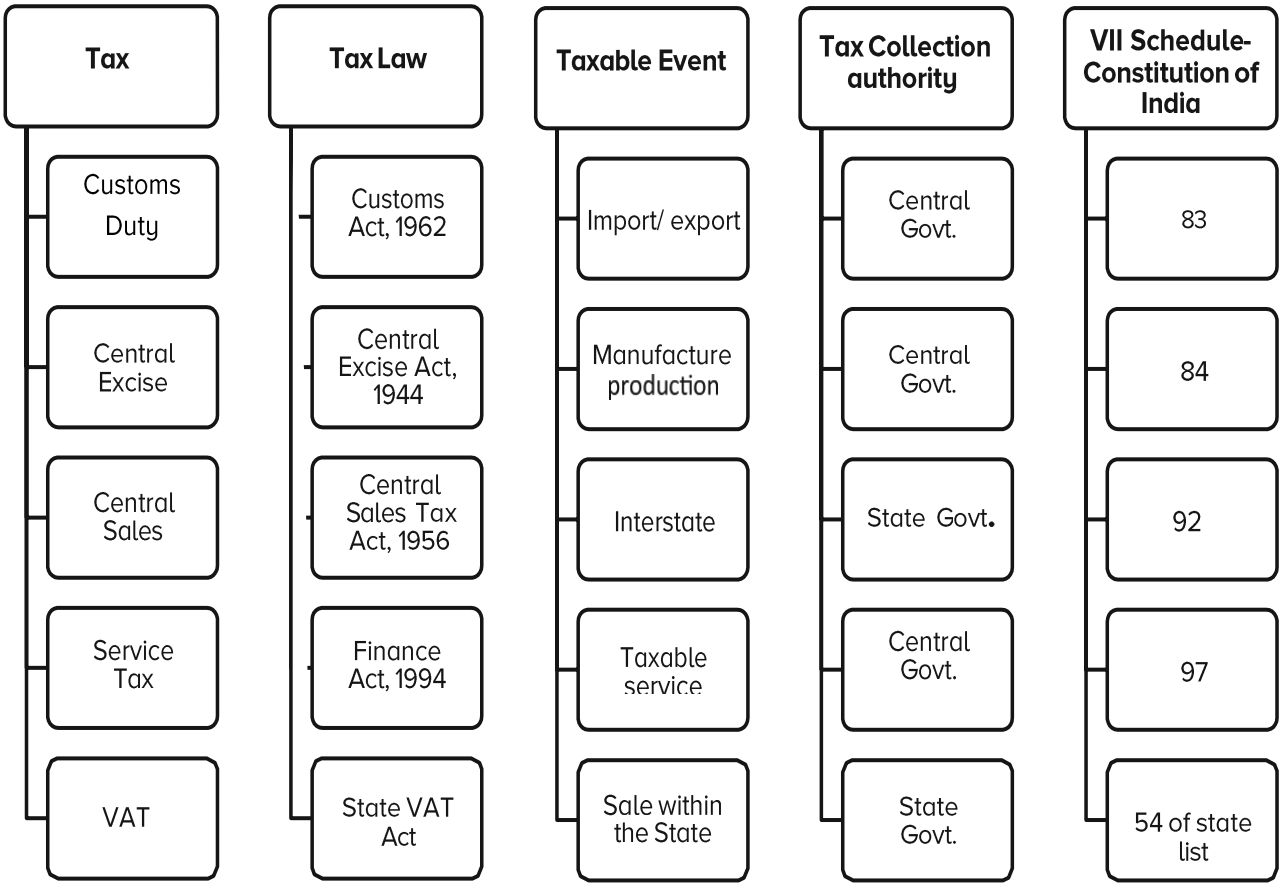
The first preliminary discussion on transition from sales tax regime to VAT regime took place in a meeting of Chief Ministers convened by the Union Finance Minister in 1995. A standing Committee of State Finance Ministers was constituted, as a result of meeting of the Union Finance Ministers and Chief Ministers in November, 1999, to deliberate on the design of VAT which was later made by the Empowered Committee of State Finance Ministers (EC). Haryana was the first State to implement VAT, in 2003. In 2005, VAT was implemented in most of the states. Uttar Pradesh was the last State to implement VAT, from January 01, 2008.

PRE-GST INDIRECT TAX REGIME

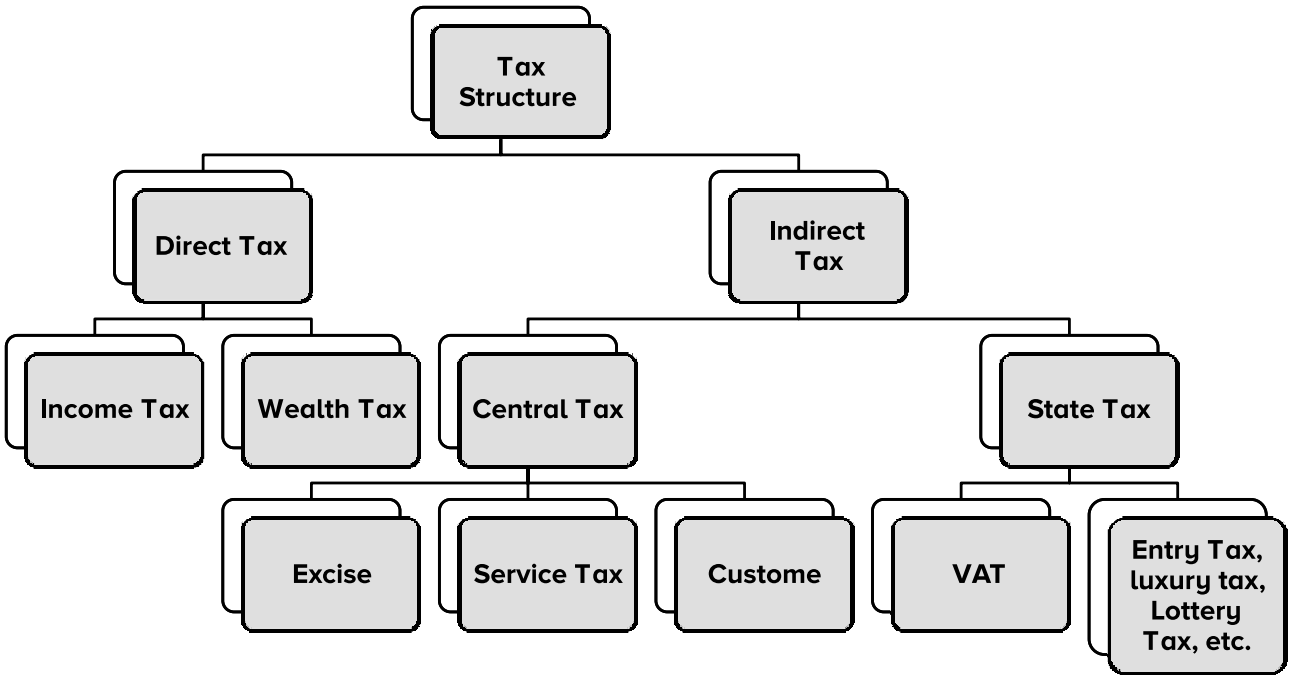
Broadly, the previous indirect tax regime consisted of Central and State laws. For the Central Government, Central Excise, Customs and Service tax were the three main components of indirect taxes. While for State Government, Value Added Tax (VAT) and Central Sales Tax (CST) were the major taxes along with Octroi, Entertainment Tax etc. Taxation of goods and services was governed under separate legislatures. In respect of goods, the Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the states had the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre had the power to levy a tax (Central Sales Tax) but, the tax was collected and retained entirely by the states. As far as services were concerned, it was the Centre alone that was empowered to levy service tax governed by the Finance Act.

Introduction of the Value Added Tax (VAT) was considered to be a major step and an essential breakthrough in the field of indirect taxes. Although primarily VAT was successful, there were certain shortcomings in the structure of VAT. The reasons for such shortcomings was that there was a mosaic of taxes being levied on goods and services, such as luxury tax, entertainment tax, etc., which were not subsumed in the VAT thereby marginalizing the benefits of comprehensive tax credit mechanism. Further to this, many other taxes were levied by both the Central Government and the State Government on production, manufacture and distributive trade, where no set-off was available in the form of input tax credit. These taxes added to the cost of goods and services and led to tax on tax i.e., cascading of taxes and the erstwhile indirect tax regime was ineffective to remove this cascading effect of taxes.

The following diagram summarizes the erstwhile indirect taxation in India:



Pre-GST Tax Structure & Deficiencies



There are various economic factors internal as well as external due to which reforms in tax system become necessary. Issue of reforms in Indian tax system has always been a priority for all the administrative machinery even at the highest policy forums in the country. Integration of domestic economy with world economy makes it desirable.

Previous structure of indirect taxation in India had some challenges which needed to be addressed. Some of the challenges under the previous indirect tax structure could be attributed to:

- Central Excise wherein there were variable rates under Excise Duty such as 2% without CENVAT, 6%, 10%, 18%, 24%, 27%, coupled with multiple valuation system and various exemptions.
- VAT where different states were charging VAT at different rates, which were resulting in imbalance of trade between the states.
- Also, under VAT, there was a lack of uniformity in terms of registration, due date of payment, return filing assessment procedures, refund mechanism, appellate process etc., thus complicating the compliance mechanism. For example: A business establishment having offices in different states were required to follow the laws of the respective states.

Some of the limitations in old System

- Multiple tax
- Multiple taxable event
- Cascading effect
- No uniformity
- Classification issue
- Different department for different types of taxes
- Higher compliance etc.

- In respect of taxation of goods, CENVAT was confined to the manufacturing stage and did not extend to the distribution chain beyond the factory gate. As such, CENVAT paid on goods could not be adjusted against State VAT payable on subsequent sale of goods. This was true both for CENVAT collected on domestically produced goods as well as that collected as additional duty of customs on imported goods.

- CENVAT comprised of several components in the nature of cesses and surcharges such as the National Calamity Contingency Duty (NCCD), education and secondary and higher education cess, additional duty of excise on tobacco and tobacco products etc. This multiplicity of duties complicated the tax structure and often used to obstruct the smooth flow of tax credit.
- While input tax credit of CENVAT or additional duty of customs paid on goods was available to service providers paying Service Tax, they were unable to neutralize the State VAT or other State taxes paid on their purchase of goods.
- State VAT was payable on the value of goods inclusive of CENVAT paid at the manufacturing stage and thus the VAT liability of a dealer always used to get inflated without compensatory set-off.
- Inter-State sale of goods was liable to the Central Sales Tax (CST) levied by the Centre and collected by the states. This was an origin-based tax and could not be set-off against VAT in many situations.
- State VAT and CST were not directly applicable to the import of goods on which Special Additional Duties (SAD) of customs were levied at a uniform rate of 4% by the Centre. Input tax credit of such duties was available only to those entities who were manufacturing excisable goods. Other importers had to claim refund of this duty as and when they pay VAT on subsequent sales.
- VAT dealers were unable to set-off any Service Tax that they paid on procurement of taxable input services.
- State Governments also levied and collected a variety of other indirect taxes such as luxury tax, entertainment tax, entry tax etc. for which no set-off was available.

Need for GST in India

The introduction of CENVAT removed to a great extent the cascading burden by expanding the coverage of credit for all inputs, including capital goods. CENVAT scheme later also allowed credit of services and the basket of inputs, capital goods and input services could be used for payment of both central excise duty and service tax. Similarly, the introduction of VAT in the States has removed the cascading effect by giving set-off for tax paid on inputs as well as tax paid on previous purchases and has again been an improvement over the previous sales tax regime.

But both the CENVAT and the State VAT have certain incompleteness. The incompleteness in CENVAT was: it had not been extended to include chain of value addition in the distributive trade below the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods has not yet been removed and the cascading effect of that part of tax burden has remained unrelieved. Moreover, there are several taxes in the states, such as, Luxury Tax, Entertainment Tax, etc. which had not been subsumed in the VAT. Further, there has also not been any integration of VAT on goods with tax on services at the State level with removal of cascading effect of service tax.

Central Sales Tax (CST) was another source of distortion in terms of its cascading nature. It was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place. Despite remarkable harmonization in VAT regimes under the auspices of the Empowered Committee (EC), the national market was fragmented with too many obstacles in free movement of goods necessitated by procedural requirement under VAT and CST.

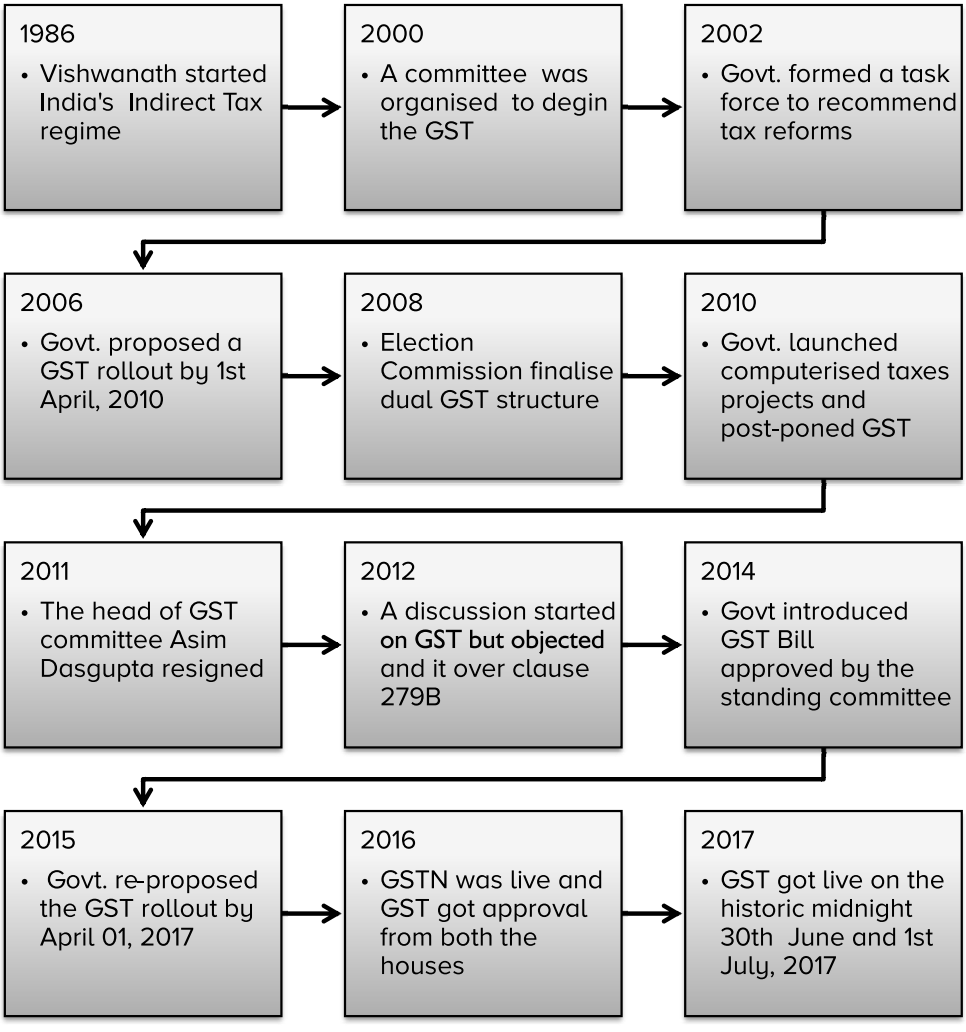
In the constitutional scheme, taxation powers on goods was with Central Government but it was limited up to the stage of manufacture and production while states have powers to levy taxes on sale and purchase of goods. While the Centre had powers to tax services the States also had powers to tax certain services specified

in clause (29A) of Article 366 of the Constitution. This sort of division of taxing powers created a grey zone which led to legal disputes. Determination of what constitutes a goods or service is difficult because in modern complex system of production, a product is normally a mixture of goods and services.

As can be seen from the previous paragraphs, India moved towards value added taxation both at Central and State level, and this process was complete by 2005. Integration of Central VAT and State VAT therefore is nothing but an inevitable consequence of the reform process. The Constitution of India envisages a federal nature of power bestowed upon both Union and States in the Constitution itself. As a natural corollary of this, any unit of the taxation system required a dual GST, levied and collected both by the Union and the States.

Journey of GST in India

The Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) in 2005 recommended the introduction of a comprehensive tax on all goods and services replacing the Central-level VAT and State-level VATs.



It recommended replacing all indirect taxes except the customs duty with value added tax on all goods and services with complete set-off in all stages of a product making.

In the budget of 2006-07 the then Union Finance Minister announced that GST would be introduced with effect from April 1, 2010.

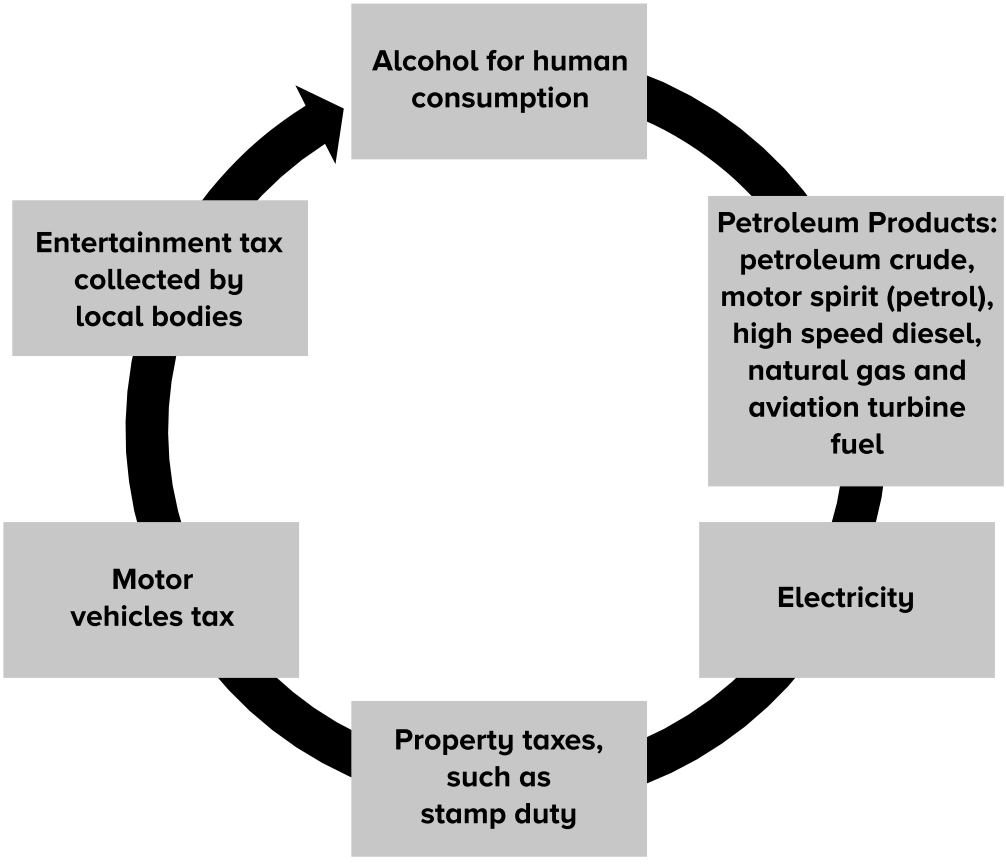
The implementation of GST was assigned to the Empowered Committee of State Finance Ministers (EC). In April, 2008, the EC submitted a report, titled "A Model and Road map for Goods and Services Tax (GST) in India" containing broad recommendations about the structure and design of the GST.

GST was launched on July 1, 2017

A dual GST model for the country was proposed by the EC and was accepted by centre. Under Dual model GST had two components viz., Central GST to be levied and collected by the Centre and the State GST to be levied and collected by the respective States.

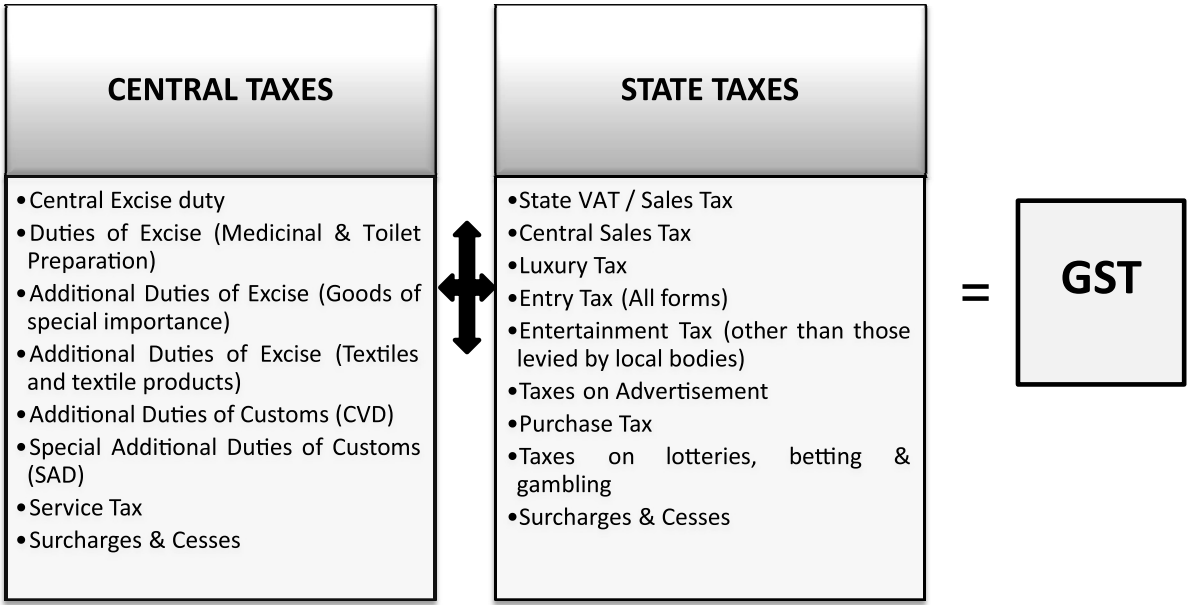
What are outside the purview of GST

The following subject matters kept outside the purview of GST. As such these are taxed under the existing laws of centre and states as the case may be.



Tobacco and tobacco products would be subject to GST. In addition, the Centre would have the power to levy Central Excise duty on these products.

What is subsumed within GST



CONSTITUTIONAL POWERS OF TAXATION

Constitution of India is the supreme law of India. Constitution of India thus lays down the foundation brick for arranging the powers, duties and the supremacy to legislate all laws of India. The authority to levy a tax is hence derived from the Constitution of India.

Article 246 of the Indian Constitution, lays down three types of lists and distributes legislative powers including taxation, between the Parliament of India and the State Legislatures. It lays down the subject matters with respect to which only the Parliament can make rules, where the State Legislatures can exclusively lay down the rules and a Concurrent List whereby both the Parliament as well as State Legislatures can legislate. Thus, the Constitution of India allocates the power to levy various taxes between the Centre and the states.

Provisions related to GST under the Indian Constitution

In India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government. The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution.

The Constitution of India is the supreme law of India. It consists of a Preamble, 25 parts containing 448 Articles and 12 Schedules.

- **Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that “no tax shall be levied or collected except by authority of law”. The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.
- **Article 245:** Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution.
- **Article 246:** It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.

List I- Union list	Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule.
List II- State list	the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule.
List III- Concurrent list	Parliament or the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule.

Further, the Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

- **Article 246A:** Power to make laws with respect to Goods and Services Tax. [Article 246A w.e.f. September 16, 2016].
- **Article 254:** Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

Newly Inserted Article 246A

(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, of services, or both takes place in the course of inter-State trade or commerce.

The Constitution of India has been amended by the Constitution (One Hundred and First Amendment) Act, 2016 for this purpose.

Insertion of Article 246A of the Constitution of India gave powers to the State and Union Legislatures, along with Parliament, to make and amend GST laws as imposed by them. Parliament is given a special power over the states to make laws as per inter-State supplies.

explanation: The provisions of this article, shall, with respect to goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

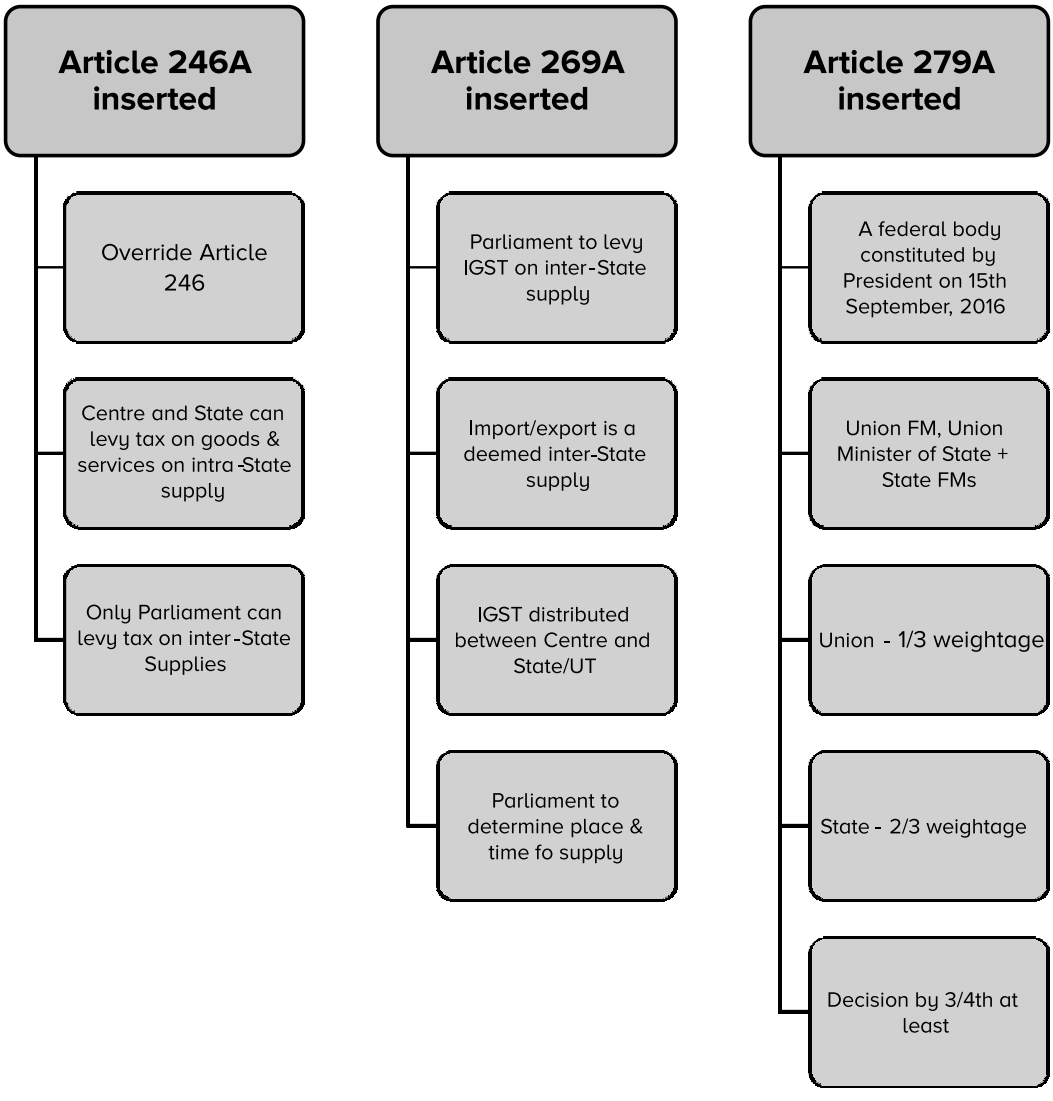
- **Article 248 amended**: Residuary powers of legislation amended.

  Article 248 grants the residuary powers to Parliament to make laws with respect to any matter not enumerated in the Concurrent List or State List.

  Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists. This article has been amended. Now, this power has been subjected to Article 246A, namely the power to make laws with respect to Goods and Services Tax to be imposed by the Centre and States.

- **Article 269A:** This Article of the Constitution of India describes the manner of revenue distribution from inter-State supplies between the centre and state. The GST Council is empowered to frame the rules in this regard.
- **Article 279A:** Constitution of GST Council.

The President shall, within 60 days from the date of commencement of the Constitution (101st Amendment) Act, 2016, by order, constitute a Council that called the Goods and Services Tax Council. Accordingly, the President has since constituted the GST Council.



GOODS & SERVICES TAX COUNCIL

GST Council is comprised of the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers as members. It shall make recommendations to the Union and the States on the following issues:

As provided for in Article 279A of the Constitution, the Goods and Services Tax Council (GST Council) was notified with effect from September 12, 2016

a) The taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;

As provided for in Article 279A of the Constitution, the Goods and Services Tax Council (GST Council) was notified with effect from September 12, 2016;

b) The goods and services that may be subjected to or exempted from the GST;

c) Model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;

d) The threshold limit of turnover below which the goods and services may be exempted from GST;

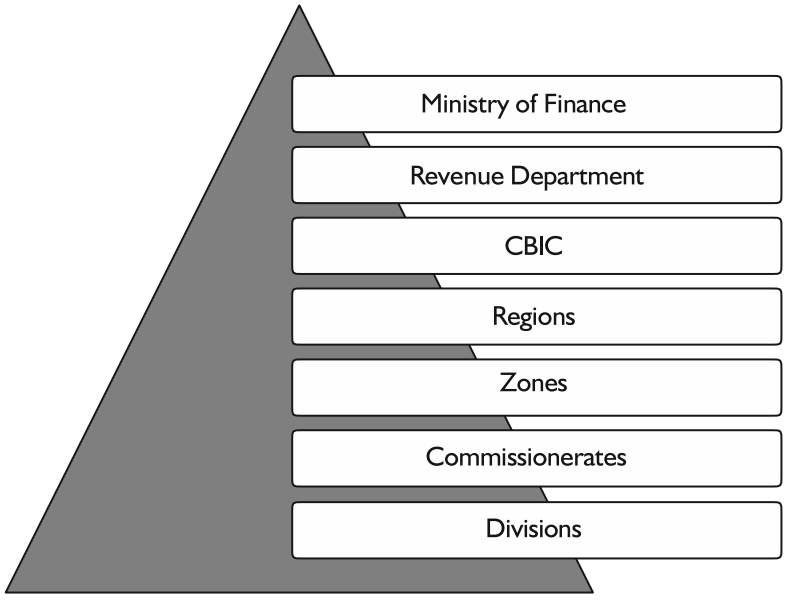
e) The rates including floor rates with bands of GST;

f) Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster;

g) Special provision with respect to the north-east states, J&K, Himachal Pradesh and Uttarakhand; and

h) Any other matter relating to the GST, as the Council may decide.

ADMINISTRATIVE MECHANISM AT THE CENTRAL LEVEL



AUTHORITY	HEADED BY
Ministry of Finance	Union Finance Minister
Revenue Department	Revenue Secretary
CBIC (Central Board of Indirect Taxes & Customs)	Chairman and Members
Regions	Principal Chief Commissioners
Zones	Chief Commissioners
Commissionerates	Commissioners/ Principal Commissioners
Divisions	Divisional officers/ Deputy Commissioner etc.

GST Council is the apex body for making recommendations on various issues relating to policy making, formulation of principles, implementation of policies under Goods and Services Tax regime.

Administration and Procedural Aspects of Goods and Services tax are administered by the Central Board of Indirect Taxes & Customs (CBIC) which is under the control of the Department of Revenue, Ministry of Finance.

CASE LAW

29.09.2020	***National Highways Authority of India (Appellant) vs. Sahakar Global Limited (Respondent)***	***Delhi High Court***

GST implementation being a "change in law" qualifies as a *force majeure* event

Facts of the Case:

The Appellant invited bids from entities interested in undertaking toll collection from users. The bid by Respondent was accepted by the Appellant. The parties entered into a contract agreement on June 30, 2017 and accordingly the project site was duly handed over to the Respondent on July 2, 2017.

However, two days prior to the execution of the agreement i.e., on June 28, 2017, *Notification No. 9/2017-Central Tax* was issued stating that the CGST Act, 2017 would come into effect from July 1, 2017, due to which, there was a heavy fall in the traffic volume of the commercial transport vehicles and user fee collection on the highway owing to the implementation of GST. The reduction in toll collections rendered the Respondent unable to deposit weekly remittances on time and it tried to plead its case with the Appellant in order to revisit their agreement pertaining to toll collections or seek grant of leniency.

Subsequently, the Respondent, citing implementation of GST as a *force majeure* event covered under the contract agreement, submitted a statement of the losses suffered by it until July 9, 2017. The Appellant refused to accept the Respondent's claims and denied that the implementation of GST was a *force majeure* event and shortfall in toll collection was a business risk associated with the work, and the Respondent was required to forthwith deposit the outstanding toll collections with penal interest.

Judgment:

The Respondent invoked arbitration wherein the Learned Arbitrator held that implementation of GST was indeed a *force majeure* event whereunder it accepted GST w.e.f. July 1, 2017 as a 'change in law' falling under the ambit of force majeure as envisaged in the contract agreement and the Appellant was liable to pay compensation for loss generated in revenue triggered by reduced toll collections due to implementation of GST.

Delhi High Court dismissed the petition and refused to interfere with the arbitral award passed by the Arbitrator to pay the compensation for loss generated in revenue triggered by the reduced toll collection due to implementation of GST and held that, the date of implementation of GST was not known and could not be speculated by anybody. It is a 'change in law' qualifying as a *force majeure* event.

LESSON ROUND-UP

- There are two types of taxes i.e., Direct tax and Indirect Tax.
- Previous Indirect tax laws consisted of various taxes at Central and State level including VAT, Excise, Service Tax and like.
- Previous structure of indirect taxation in India had some challenges which needed to be addressed.
- Goods & Services Tax regime of indirect taxes brought a single tax which was levied on supply of goods or services or both with concurrent jurisdiction of Centre and states.

- Various Constitutional amendments became necessary to enable centre and states to levy GST simultaneously.
- A high powered federal body called GST Council has been established under Article 279A of the Constitution of India.
- Various new Articles were inserted and old ones omitted and GST was bought in by Constitution (101st) Amendment Act, 2016.
- GST is one of the most demanding reforms in the field of indirect taxation. GST is an indirect tax which has replaced many indirect taxes like excise duty, service tax, VAT, CST and many other central and state level taxes.

GLOSSARY

- **Taxes:** The word tax is based on the latin word taxo which means to estimate. To tax means to impose a financial charge or other levy upon a taxpayer, an individual or legal entity, by a state or the functional equivalent of a state such that failure to pay is punishable by law.
- **Direct Taxes:** Taxes which are directly levied on Income of the person and its burden can not be shifted; for example Income Tax.
- **Indirect Taxes:** Indirect taxes are imposed on price of goods or services. person paying the indirect tax can shift the incidence to another person; for example GST or Customs duty.
- **GST Council :** GST council is an apex member committee under GST, set up to modify, reconcile and procure any law or regulation pertaining to the Goods and Service tax in India. The Council meets at a destined date to take up issues pertaining to the enforcement of the law, discusses matters at hand and take actions.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions (MCQs)

1. The GST Council was established under of the Constitution.
   a) Article 269A
   b) Article 368
   c) Article 286
   d) Article 279A
2. The exclusive right to make laws for matters containing in List-III of Schedule VII of the Constitution of India has been given to
   a) State Government
   b) Central Government
   c) Both of the above
   d) None of the Above

3. Which of the following taxes have been subsumed in GST?
   a) Value Added Tax (VAT)
   b) Central Sales Tax (CST)
   c) Central Excise Duty and Service Tax
   d) All of the above
4. GST came into force by the _____ Constitutional Amendment Act.
   a) 110
   b) 101
   c) 111
   d) None of the above
5. _____ contains the power to make laws with respect to Goods and Services Tax by Union and State Government.
   a) Article 254
   b) Article 246
   c) Article 246A
   d) Article 264

Answers: 1 (d), 2 (c), 3 (d), 4 (b), 5 (c)

Descriptive Questions

1. Explain Constitutional amendments made to implement GST.
2. "GST is One Nation One Tax" Explain the Concept.
3. What were the Taxes which GST subsumed?
4. Which commodities have been kept outside the purview of Goods and Services Tax (GST)?
5. What were the highlights of Constitutional (101st Amendment) Act, 2016 with respect to Goods and Service Tax?

LIST OF FURTHER READINGS

- Goods & Services Tax, Laws, Concepts and Impact Analysis-Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- GST Ready Reckoner- Taxmann – V.S. Datey
- A complete guide to Goods & Services Tax Ready Reckoner in Q & A Format- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- Bare Acts of GST

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- *http://gstcouncil.gov.in https://www.gst.gov.in/*
- *https://www.cbic.gov.in/htdocs-cbec/gst/index-english*

Basics of Goods and Services Tax 'GST'

Lesson 15

KEY CONCEPTS

■ CGST ■ IGST ■ SGST ■ UTGST ■ GST Compensation Cess ■ inter-State Supply ■ intra-State Supply

Learning Objectives

To understand:

- Concepts of GST
- Destination Principle
- Dual GST Model
- Provisions of IGST Act, 2017
- Provisions of UTGST Act, 2017
- Provisions of GST (Compensation to State) Act, 2017

Lesson Outline

REGULATORY FRAMEWORK

1. Integrated Goods and Services Tax Act, 2017

Section	*Deals with*
Section 2	Definitions
Section 5	Levy and Collection
Section 16	Zero Rated Supply
Section 20	Application of provisions of CGST Act

2. Union Territory Goods and Services Tax Act, 2017

Section	*Deals with*
Section 7	Levy and Collection
Section 8	Power to grant exemption from tax
Section 9	Payment of Tax
Section 9A	Utilisation of Input Tax Credit
Section 9B	Order of Utilisation of Input Tax Credit
Section 10	Transfer of Input Tax Credit
Section 15	Constitution of Authority for Advance Ruling
Section 16	Constitution of Appellate Authority for Advance Ruling
Section 18	Transitional arrangements for Input Tax Credit
Section 22	Power to make Rules
Section 23	General Power to make Regulations
Section 24	Every Rule made by the Central Government, every Regulation made by the Board
Section 25	Power to Issue Instructions or Directions
Section 26	Removal of Difficulties

3. Goods and Services Tax (Compensation to States) Act, 2017

Section	*Deals with*
Section 2	Definitions
Section 3	Projected Growth Rate
Section 4	Base Year

Section 5	Base Year Revenue
Section 6	Projected Revenue for any year
Section 7	Calculation and release of Compensation
Section 8	Levy and Collection of Cess
Section 9	Returns, Payments and Refunds
Section 10	Crediting proceeds of Cess to Fund
Section 11	Other Provisions relating to Cess
Section 12	Power to make Rules

4. Similar Provisions

Section	*Deals with*	*Act*
Section 9	Levy and Collection	CGST, 2017
Section 5	Levy and Collection	IGST, 2017
Section 7	Levy and Collection of Tax	UTGST, 2017

BASIC CONCEPTS AND OVERVIEW OF GOODS AND SERVICES TAX

Meaning of GST

Goods and Services Tax (GST) is a destination based tax on consumption of goods and services. It is levied at all stages right from manufacture to final consumption with credit of taxes paid at previous stages available as set-off. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer. It is a single, unified tax on every value-addition, right from manufacture to sale / consumption of goods / services. Hence, with the advent of GST, the legacy taxes on manufacture (Excise), inter-State sales (CST), intra-State sales (VAT) and Service Tax have been subsumed. By subsuming more than a score of taxes under GST, road to a harmonized system of indirect tax has been paved making India an economic union. There has been a paradigm shift in the way the tax is being levied. We have now moved from source based to destination-based taxation, with GST coming into foray. Hence GST is also labelled as a destination-based / consumption-based tax.

Destination Based Tax:

Destination Based Tax is the tax based on destination or consumption of the goods or services. It is different from origin based taxation because origin based tax is levied where goods or services are produced.

Continuous chain of tax credits

GST also does away with the cascading effects of taxation, by providing a comprehensive and continuous chain of tax credits, end to end and taxing only the value-added at every stage. The final tax is borne by the end consumer, as all the parties in the interim can extinguish their respective collections against their respective liabilities and the tax already paid by them (Input Tax Credit).

In India we have adopted dual GST Model in which States and Union Government impose tax simultaneously. Federal structure of the Constitution is also retained under this model. To ensure seamless flow of credit

throughout the territory of India a link Act was necessary and hence IGST Act, 2017 was passed. Compensation to states for the loss due to introduction of GST is provided through an Act, GST (Compensation to States) Act, 2017.

GSTN

GSTN stands for Goods and Service Tax Network (GSTN). A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST processing system. The GSTN shall provide a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST. The functions of the GSTN would, inter alia, include:

(i) facilitating registration;

(ii) forwarding the returns to Central and State authorities;

(iii) computation and settlement of IGST;

(iv) matching of tax payment details with banking network;

(v) providing various MIS reports to the Central and the State Governments based on the tax payer return information;

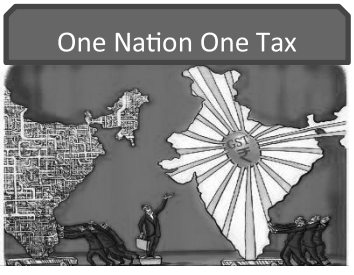
(vi) providing analysis of tax payers' profile; and

(vii) running the matching engine for matching, reversal and reclaim of Input Tax Credit.

GST MODEL

Dual GST Model:

The Dual GST Model refers to a concept where both the Centre and States simultaneously levy taxes on the supply of goods and services while the administration is run separately. India has adopted a dual GST model, i.e., where the tax is imposed concurrently by the Centre and the States. For an intra-State sale, the GST is equally divided between the Centre and the State (CGST + SGST), and for inter-State sales, the GST is collected by the Centre (IGST). Sections 7 and 8 of the IGST Act deal with the criteria for determining whether a supply is inter-State or intra-State in nature.



GST consists of the following Acts:

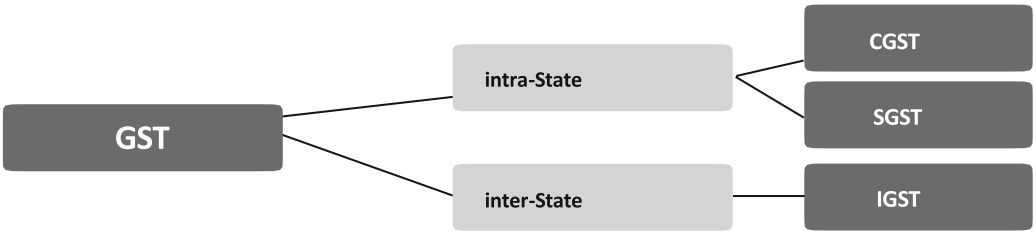
- Central Goods & Services Tax Act, 2017
- State Goods & Services Tax Act, 2017
- Integrated Goods & Services Tax Act, 2017
- Union Territory Goods & Services Tax Act, 2017
- Goods & Services (Compensation to States) Act, 2017

CGST/SGST/UTGST/IGST

The Central and State Governments have simultaneous powers to levy the GST on intra-State supply. However, the Parliament alone has exclusive power to make laws with respect to levy of goods and services tax on inter-State supply.

- GST is a destination-based tax applicable on all taxable events, involving supply of goods or services or both. , **Central Goods & Services Tax (CGST)**, levied by the Central Government and **State Goods and Services Tax (SGST)**, levied by the State Government.
- **Union Territory Goods and Services Tax (UTGST)** levied by Union Territories, on intra-State supplies of taxable goods or services or both.

inter-State supplies of taxable goods/services are subject to Integrated Goods & Services Tax (IGST), which is levied by the Central Government.



INTEGRATED GOODS & SERVICES TAX ACT, 2017

The Integrated Goods and Services Tax Act, 2017 (IGST) was passed by the Parliament for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

The Union Government presented the Integrated Goods and Service Tax Bill, 2017 in Lok Sabha and it was passed by the same on 29th March, 2017. The Rajya Sabha passed the bill on 6th April, 2017 and was assented to by the President on 12th April, 2017.

IGST is levied and collected by the Centre on inter-State supply of goods and/or services. As per Article 269A of the Constitution, Goods and services tax on supplies in the course of inter-state trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. IGST paid is available as credit to set off against the payment of IGST, CGST and SGST on output supplies.

Integrated Goods and Service Tax (IGST) means tax levied under the IGST Act on the supply of any goods and/ or services in the course of inter-State trade or commerce.

The IGST mechanism ensures that the tax money goes to the state where consumption takes place. IGST can be viewed as a smart-accounting mechanism serving a clearing house function in inter-state supplies to ensure that the tax money goes to the correct state.

IGST (Integrated Goods & Services Tax) Act, 2017 deals with supplies inter-State, import into India and supplies made outside India. The following table illustrates the same.

SUPPLY	***TAX / TAXES***
intra-State	CGST+ SGST
intra-Union Territory	CGST+ UTGST
inter-State/ import/ SEZ	IGST

IGST is applicable all over India including the state of Jammu & Kashmir vide The Integrated Goods and Services Tax (Extension to Jammu And Kashmir) Act, 2017 w.e.f. July 08, 2017.

IGST is a mechanism to monitor the inter- State trade of goods and services and ensure that the SGST component accrues to the consumer State. It maintains the integrity of ITC chain in inter-State supplies. The IGST rate is broadly equal to CGST rate plus SGST rate. IGST would be levied by the Central Government on all inter-State transactions of taxable goods or services.

IGST rate= CGST rate + SGST rate

Cross-utilisation of credit requires the transfer of funds between respective accounts. The utilisation of credit of CGST & SGST for payment of IGST would require the transfer of funds to IGST accounts. Similarly, the utilisation of IGST credit for payment of CGST & SGST would necessitate the transfer of funds from IGST account.

The IGST payment can be done by utilising the ITC. The amount of ITC on account of IGST is allowed to be utilised towards the payment of IGST, CGST and SGST/UTGST.

Nature of Supply [Section 7 to 9 of Integrated Goods & Services Tax Act, 2017]

Goods and Services Tax (GST) envisages two types of supply, intra-State and inter-State. Under GST Supply of Goods or Services within the same state or Union Territory is called intra-State Supply. The supply of goods or services from one state to another is termed as inter-State supply under GST. The following table illustrates the principles to be applied for determining whether a supply is intra-state or inter-state. Students may note that it is important to know whether a given supply is inter-State or intra-State as the tax or taxes payable are different in each case. For example, IGST is payable for inter-State supply and CGST + SGST is payable for intra-State supply.

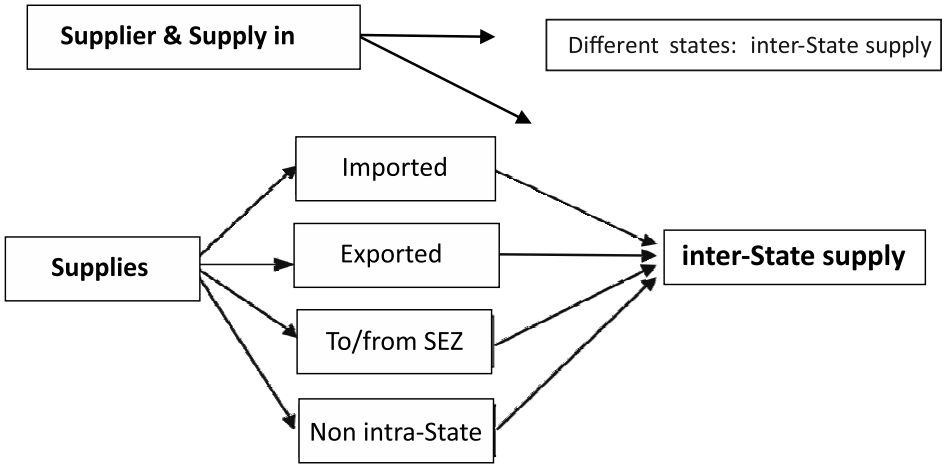
Section 7 of the IGST Act, 2017 deals with the situations where a supply is categorized as inter-State supply. Such situations are tabulated as under –

Transaction Type	*Nature of supply*
Domestic	
Supply of goods [Section 7(1)] or supply of services [Section 7(3)] where location of the supplier and the place of supply are in: • two different States; • two different Union territories; • or a State and a Union territory	inter-State
Imports	
Supply of Imported goods into the territory of India till they cross the customs frontiers of India [Section7(2)]	inter-State
Supply of service imported into the territory of India [Section 7(4)]	inter-State
Exports and other scenarios	
Supply of goods or services or both,- • Where the supplier is located in India and the place of supply is outside India; • to or by a Special Economic Zone developer or a Special Economic Zone (SEZ) unit; or • in the taxable territory, not being an intra-State supply and not covered elsewhere in this section.	inter-State Supply

Section 8 of the IGST Act deals with the situations where a supply is categorized as intra-State supply. Such situations are tabulated as under –

intra-State Supply			
Supply of	***Goods [Section 8(1)]***	***Services [Section 8(2)]***	***Nature of Supply***
Where location of the supplier and the place of supply are in	same State or same Union Territory		intra-State

Essentially, if the location of supplier and the place of supply is within the same state, it is an intra-State supply, and if these are in different states, then that is inter-State supply.



Supply in Territorial Waters [Section 9 of the IGST Act, 2017]

Notwithstanding anything contained in this Act –

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(a) where the place of supply is in the territorial waters, the place of supply,

***Note*: 1** nautical mile = 1.853 Km approximately

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

The expression territorial waters have not been defined under the GST law. It should be understood as the area upto 12 nautical miles from base line of sea coast into the sea.

If the supplier is in territorial waters, the location of supplier or if the supply is in territorial waters, the place of supplies shall be taken as the coastal state or Union Territory closest to the base line.

***Example 1*:** Suppose there is a supply from the territorial waters where the supplier is located and the nearest base line is at Kandla, Gujarat state, then the place of supply is said to be in Gujarat.

***Example 2*:** Some goods were supplied to a fishing trawler located in territorial waters near Yanam, a part of Union Territory of Puducherry. Since the nearest base line is at Yanam, place of supply shall be the Union Territory of Puducherry. If the supplier is located in Puducherry, it shall be an intra-State supply. If the supplier is located in Chennai, it is an inter-State supply.

It is very important to determine the nature of supply – whether it is inter-State or intra-State, as the kind of tax to be paid (IGST or CGST+SGST) depends on that.

(i) inter-State Supply (Section 7 of Integrated Goods and Services Act, 2017)

Subject to the place of supply provisions, where the location of the supplier and the place of supply are in:

(a) Two different States;

(b) Two different Union Territories; or

(c) One State and One Union Territory.

Such supplies shall be treated as the supply of goods or services in the course of inter-State trade or commerce. Any supply of goods or services in the taxable territory, not being an intra-State supply, shall be deemed to be a supply of goods or services in the course of inter- State trade or commerce.

Also, supplies to or by Special Economic Zones (SEZs) are defined as inter-State supply. Further, the supply of goods imported into the territory of India till they cross the customs frontiers of India or the supply of services imported into the territory of India shall be treated as supplies in the course of inter- State trade or commerce. Also, the supplies to international tourists are to be treated as inter- State supplies.

- Supply of services from one State or Union Territory to another State or Union Territory
- Import of goods till they the cross customs frontier
- Import of services
- Export of goods or services
- Supply of goods/services to/by SEZ
- Supplies to international tourists
- Any other supply in the taxable territory which is not intra-State supply.

Thus, the nature of the supply depends on the location of the supplier and the place of supply.

(ii) intra-State Supply (Section 8 of Integrated Goods and Services Act, 2017)

It has been defined as any supply where the location of the supplier and the place of supply are in the same State or Union Territory.

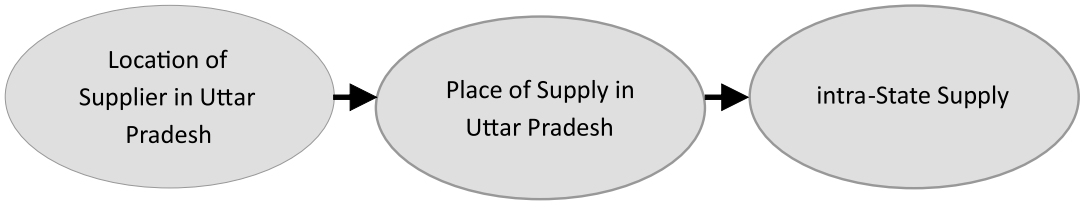


Illustration:

Divya GST Registered person in Varanasi (Uttar Pradesh) provides Management Consultancy services to Aman GST Registered person in Noida for Rs. 8 lakhs. The place from where the supply is made is Varanasi and the place where the supply is received is Noida. The supply in this situation is an intra-State supply.

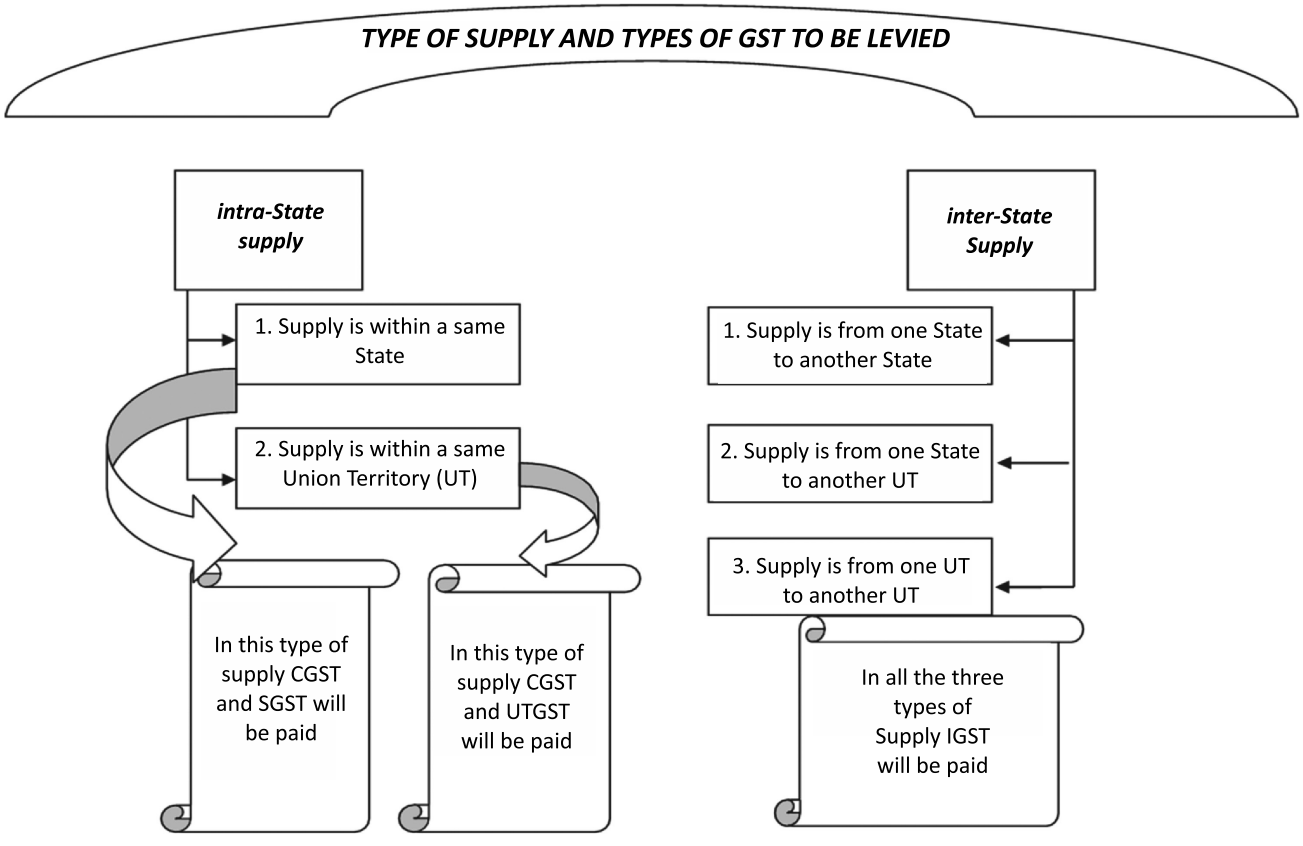
Illustration:

Divya GST registered person in Varanasi (Uttar Pradesh) provides Management Consultancy services to Aman GST registered person in the Mumbai (Maharashtra) for Rs. 8 lakhs. The place from where the supply is made is Varanasi and the place where the supply is received is in Mumbai. The supply in this situation is an inter-State supply.

Illustration:

Amrinder, a Company Secretary GST registered person in Maharashtra for the past 5 years and having a flourishing practise there, goes to Delhi for 10 days as a visiting faculty for a summer course at a reputed College. While in Delhi, Amrinder earns Rs. 5 Lakh as Professional Fee for the services rendered.

This is an example of inter-State Supply because, Amrinder does not have a registered place of business in Delhi, or a fixed establishment in Delhi. The location of supplier will thus have to be taken as Maharashtra where Amrinder is registered under GST. Since the location of supplier is in Maharashtra and the place of supply is in Delhi, the supply is an inter-State supply, though no supply has actually taken place from Maharashtra.



Definitions

Section 2 of the IGST Act, 2017 contains the definitions of various terms used at several places in the Act. Some of the important definitions are reproduced as follows:

Section 2(3): "continuous journey" means a journey for which a single or more than one ticket or invoice is

issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation – For the purposes of this clause, the term "stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

Section 2(5): "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Section 2(6): "export of services" means the supply of any service when, –

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Section 2(7): "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs.

Section 2(10): ''import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

Section 2(11): ''import of services" means the supply of any service, where –

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India.

Section 2(14): "location of the recipient of services" means,

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient.

Section 2(15): "location of the supplier of services" means, –

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier.

Section 2(16): "non-taxable online recipient" means any Government, Local Authority, Governmental Authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation. – For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body, –

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with ninety per cent. or more participation by way of equity or control,to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution.

Section 2(19): "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

Section 2(20): "Special Economic Zone developer" shall have the same meaning as assigned to it in clause of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co- Developer as defined in clause (f) of section 2 of the said Act.

Section 2(21): "supply" shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act.

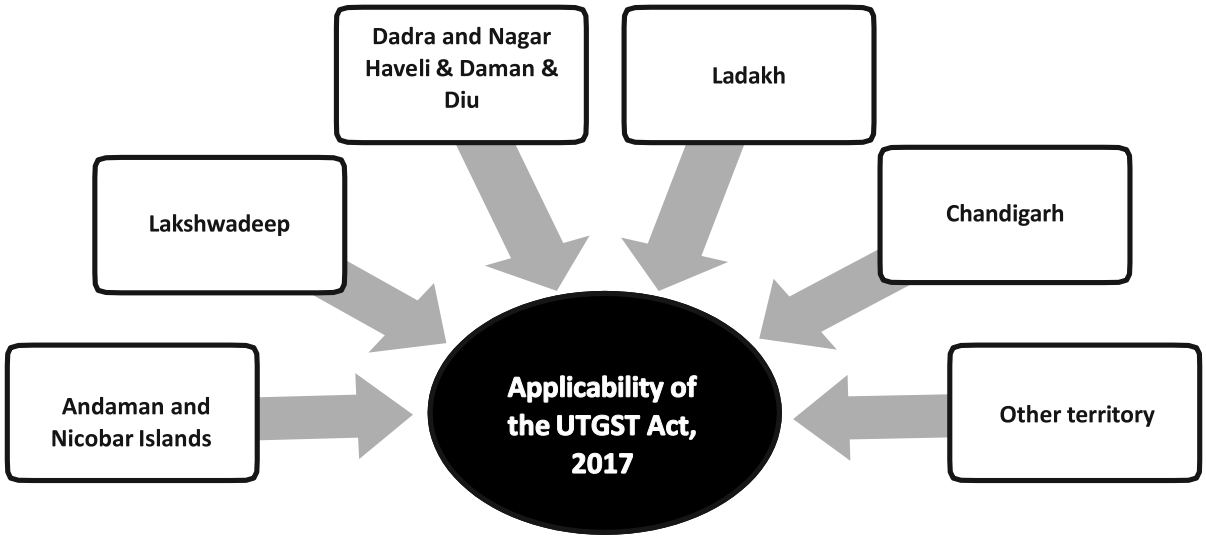
Section 2(22): "taxable territory" means the territory to which the provisions of this Act apply.

UNION TERRITORY GOODS & SERVICES TAX ACT, 2017

UTGST is the GST levied by the Union Territory on transactions of taxable goods and services within a Union Territory. The Union Territory Goods and Services Tax Act, 2017 is an act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Union territories and the matter connected therewith or incidental thereto.

Applicability of the UTGST Act, 2017

This Act may be called the Union Territory Goods and Services Tax Act, 2017. It extends to the Union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Ladakh (Note: added vide Section 136 of Finance Act, 2020), Chandigarh and other territory.



Delhi, Puducherry and Jammu Kashmir are Union Territories but this Act will not be applicable there as they have their own State Legislature and Government. State GST would be applicable in their case.

Some definitions prescribed in the Act as defined under Section 2 are as follows:

Definitions :

In this Act, unless the context otherwise requires:

1) ''appointed day'' means the date on which the provisions of this Act shall come into force;
2) ''Commissioner'' means the Commissioner of Union territory tax appointed under section 3;
3) ''designated authority'' means such authority as may be notified by the Commissioner;
4) ''exempt supply'' means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;
5) ''existing law'' means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;
6) ''Government'' means the Administrator or any Authority or officer authorised to act as Administrator by the Central Government;
7) ''output tax'' in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.

Applicability of GST on Union Territory of Jammu & Kashmir and Ladakh

As per Jammu and Kashmir Reorganisation Act, 2019, the State of Jammu & Kashmir has been divided between Union Territories, namely, Union Territory (UT) of Jammu and Kashmir and UT of Ladakh. The appointed date for the same was 1st October, 2019.

CBIC has issued Notification No. 62/2019- Central Tax dated 26th November, 2019 which seeks to notify the transition plan with respect to J&K reorganization w.e.f. 31.10.2019.

However, as per Section 2(114) of the CGST Act, "Union Territory" means the territory of-

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli and Daman and Diu;

(d) Ladakh;

(e) Chandigarh; and

(f) Other territory.

Section 3 of the said Act states that Union Territory of Ladakh shall be formed without legislature. Hence, it shall have status to that of a Union Territory.

In view thereof, Union Territory of Jammu and Kashmir shall continue to charge SGST and CGST for intra- state supplies, however for supplies made from Jammu & Kashmir to Ladakh (and vice – versa), IGST shall be charged [Section 7(1)(b) of the IGST Act]. UTGST and CGST will be charged for supplies made within Ladakh.

Now, the Ministry of Home Affairs (Department of Jammu and Kashmir Affairs) has issued a Removal of Difficulties Order dated 30-10-2019 which seeks to remove difficulties arising in giving effect to the provisions of the Jammu and Kashmir Reorganisation Act, 2019.

Now, Section 2(7) of the said order states that:

> "The Jammu and Kashmir Goods and Services Tax Act, 2017 shall be applicable to the Union Territory of Jammu and Kashmir and the Union Territory Goods and Services Tax Act, 2017 shall be applicable to the Union Territory of Ladakh."

Merger of Daman & Diu and Dadra & Nagar Haveli

On 3rd day of December, 2019 the Parliament passed the Dadra and Nagar Haveli and Daman and Diu Bill, 2019 for the merger of the two UTs and the appointed date of the said amendment was made effective from 26th January, 2020.

Upon Merger of Union Territories of Dadra and Nagar Haveli and Daman and Diu, single State Code under Goods and Service Tax Laws in this Union Territory was declared.

It was decided by the GST Council to allot State Code No. 26 to the merged Union Territory of Dadra and Nagar Haveli and Daman and Diu w.e.f. 1st August, 2020.

Consequently, all the Registered Persons in the erstwhile Union Territory of Daman and Diu having GSTIN (Goods and Service Tax Identification Number) starting with State Code 25 switched over to New State Code number 26.

Administration & Powers of Officers [Section 4, 5 & 6]

Authorisation of Officers (Section 4)

The Administrator may, by order, authorise any officer to appoint officers of Union Territory tax below the rank of Assistant Commissioner of Union Territory tax for the administration of this Act.

Powers of Officers (Section 5)

(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.

Authorisation of Officers of central tax as proper officer in certain circumstances (Section 6)

(1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act, 2017 are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued :

a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

Levy and Collection of UTGST [Section 7]

As per the provision of Section 7 of the UTGST Act, 2017 there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act, 2017 and at such rates, not exceeding twenty per cent, as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

However, the Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.

All the provisions of this Act shall apply to a recipient of goods or services or both, notified under reverse charge as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

The Central Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on intra-State supplies of which, shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Further it is provided that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Note: *For details study on Levy and Collection please refer Lesson 16.*

Exemption from GST [Section 8]

As per the provisions of Section 8 of the Act, the Central Government on the recommendations of the GST Council, by notification exempt either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable on such supply. In other cases, Central Government in public interest and on recommendation of the Council, by special order, exempt from payment of tax.

The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification or order issued, insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under Section 8(1) or order under Section 8(2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation – For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Note: *For details study on exemption under GST please refer Lesson 16.*

Payment of Tax [Section 9]

As per the provision of section 9 of the Act, the amount of Input Tax Credit available in the electronic credit ledger of the registered person on account of:

a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in that order;

b) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

c) the Union territory tax shall not be utilised towards payment of Central tax.

The amount of Input Tax Credit available in the electronic credit ledger of the registered person on account of:

1. integrated tax shall be utilised in order of:
   - towards payment of integrated tax; and
   - amount remaining, may be utilised towards the payment of Central tax and State tax, or as the case may be, Union territory tax.

2. the Union territory tax shall be utilised in order of:
   - towards payment of Union territory tax; and
   - amount remaining, may be utilised towards payment of integrated tax.

3. the Union territory tax shall not be utilised towards payment of Central tax.

Note: *For details study of ITC please refer Lesson 18.*

Utilisation of Input Tax Credit [Section 9A]

Notwithstanding anything contained in section 9, the Input Tax Credit on account of Union territory tax shall be utilised towards payment of integrated tax or Union territory tax, as the case may be, only after the Input Tax Credit available on account of integrated tax has first been utilised towards such payment.

Order of utilisation of Input Tax Credit [Section 9B]

Notwithstanding anything contained in this Chapter and subject to the provisions of clause (c) of section 9, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the Input Tax Credit on account of integrated tax, Central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

Order of utilization of Input Tax Credit at present is as follows:

Input tax credit on account of	*Output liability on account of Integrated tax*	*Output liability on account of Central tax*	*Output liability on account of State tax/ Union Territory tax*
Integrated tax	(I)	(II) – In any order and in any proportion	
(III) Input tax credit on account of Integrated tax to be completed exhausted mandatorily			
Central tax	(V)	(IV)	Not permitted
State tax/ Union Territory tax	(VII)	Not permitted	(VI)

There is no offset available between the CGST and the SGST/ UTGST.

In other words, first fully exhaust ITC on IGST towards output liability of IGST and CGST/SGST/UTGST. CGST/ SGST/UTGST output liability payment can be in any order or ratio. Later, utilize ITC on CGST to pay output liability of CGST and balance of IGST, if any. Further, utilize ITC on SGST/UTGST to pay output liability of SGST/ UTGST and balance of IGST, if any.

Transitional Input Tax Credit: Input Stocks [Section 18]

The eligible Input Tax Credits in respect of inputs held in stocks, inputs held in semi finished goods and inputs held in stock of finished goods on the day immediately preceding the appointed day will be eligible as Input Tax Credit to be taken as UTGST in the electronic ledger.

The following registered taxable person will be eligible for the Input Tax Credit:

a) Who was not liable to be registered under existing Law;

b) Who was involved in sale of exempted goods or tax free goods;

c) Goods which have suffered tax at first point of sale and their subsequent sale was not liable to tax in the Union Territory under the previous law but which are liable to be taxed in GST;

d) Where a person is entitled to the credit of input tax at the time of sale of goods.

Section 2(5) of UTGST Act, 2017: "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation.

However, the Input tax credit is available subject to the following conditions:

i. such inputs or goods are used or intended to be used for making taxable supplies under GST;

ii the said registered person is eligible for Input Tax Credit on such inputs under GST;

iii. the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and

iv. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

However, in case such registered person other than a manufacturer or a supplier of services, is not in possession of an invoice or tax paying document, such registered person can take credit at such rate as may be prescribed. However he would be required to pass the benefit of reduced taxes to his recipient.

Transitional Input Tax Credit: Taxable as well as Exempted Goods

A registered person, who was engaged in the sale of taxable goods as well as exempted goods or tax free goods under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger the amount of credit of the value added tax and entry tax, if any, carried forward in a return furnished under the previous law by him and the amount of credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or tax free goods in accordance with the provisions of the Act.

Transitional Input Tax Credit: Switch Over from Composition Levy

A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the previous law shall be eligible for, credit of value added tax in respect of inputs held in stock and

inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:

i. Such inputs or goods were used or intended to be used for making taxable supplies under this Act;

ii. the said registered person is not paying tax under section 10 of the Central Goods and Services Tax Act;

iii. the said registered person is eligible for Input Tax Credit on such inputs under this Act;

iv. the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs; and

v. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

Advance Ruling [Section 14 of UTGST Act, 2017]

''Advance Ruling'' means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the Central Goods and Services Tax Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

''Appellate Authority'' means the Appellate Authority for Advance Ruling constituted under section 16; "Applicant'' means any person registered or desirous of obtaining registration under this Act; "Authority" means the authority for Advance Ruling constituted under Section 15.

Questions for which Advance Ruling can be sought?

Advance Ruling can be sought for the following questions:

- classification of any goods or services or both;
- applicability of a notification issued under provisions of the GST Act(s);
- determination of time and value of supply of goods or services or both;
- admissibility of Input Tax Credit of tax paid or deemed to have been paid;
- determination of the liability to pay tax on any goods or services under the Act;
- whether applicant is required to be registered under the Act;
- whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

Constitution of Authority for Advance Ruling [Section 15 of UTGST Act, 2017]

The Central Government shall, by notification, constitute an Authority to be known as the (name of the Union territory) Authority for Advance Ruling provided that the Central Government may, on the recommendations of the Council, notify any Authority located in any State or any other Union territory to act as the Authority for the purposes of this Act.

The Authority shall consist of :

i. one member from amongst the officers of central tax; and

ii. one member from amongst the officers of Union territory tax, to be appointed by the Central Government.

The qualifications, the method of appointment of the members and the terms and conditions of their service shall be such as may be prescribed.

Constitution of Appellate Authority for Advance Ruling [Section 16 of UTGST Act, 2017]

The Central Government shall, by notification, constitute an Appellate Authority to be known as the (name of the Union territory) Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority.

The Appellate Authority shall consist of:

i. the Chief Commissioner of central tax as designated by the Board; and

ii. the Commissioner of Union territory tax having jurisdiction over the applicant.

Miscellaneous

Subject to the provisions of this Act and the rules made thereunder, the provisions of the Central Goods and Services Tax Act, 2017 relating to –

(i) scope of supply;

(ii) composition levy;

(iii) composite supply and mixed supply;

(iv) time and value of supply;

(v) Input Tax Credit;

(vi) registration;

(vii) tax invoice, credit and debit notes;

(viii) accounts and records;

(ix) returns;

(x) payment of tax;

(xi) tax deduction at source;

(xii) collection of tax at source;

(xiii) assessment;

(xiv) refunds;

(xv) audit;

(xvi) inspection, search, seizure and arrest;

(xvii) demands and recovery;

(xviii) liability to pay in certain cases;

(xix) advance ruling;

(xx) appeals and revision;

(xxi) presumption as to documents;

(xxii) offences and penalties;

(xxiii) job work;

(xxiv) electronic commerce;

(xxv) settlement of funds;

(xxvi) transitional provisions; and

(xxvii) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall *mutatis mutandis* apply.

The above provisions are applicable to IGST Act also.

The Central Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

Power to Make Rules [Section 22 of UTGST Act, 2017]

Section 22 of the UTGST Act, 2017 lays down the powers of Central Government to make rules on the recommendations of the Council. The Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a maximum penalty of ten thousand rupees (Rs.10,000).

General Power to Make Regulations [Section 23 of UTGST Act, 2017]

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Laying of Rules, Regulations and Notifications [Section 24 of UTGST Act, 2017]

Every rule made by the Central Government, every regulation made by the Board and every notification issued by the Central Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

Power to Issue Instructions or Directions [Section 25 of UTGST Act, 2017]

For the purpose of uniformity in the implementation of this Act, the Commissioner may, issue such orders, instructions or directions to the Union Territory tax officers as he may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

Removal of Difficulties [Section 26 of UTGST Act, 2017]

If any difficulty arises in giving effect to any provisions of this Act, the Central Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty. However, no such order shall be made after the expiry of a period of five years from the date of commencement of this Act.

Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

THE GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017

Background & Introduction

The GST Council in its 10th meeting held on 18th February, 2017 approved the GST (Compensation to States) Bill that provides for the compensation of loss arising out of introduction of Goods and Services Tax to states in India. The Act which provides for compensation to the states for the loss of revenue arising on account of implementation of Goods and Services Tax for a period of five years in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, came in force as the Goods & Services Tax (Compensation to States) Act, 2017.

The Union Government presented the Goods and Services Tax (Compensation to States) Bill, 2017 in Lok Sabha on 27th March, 2017 and the same has been passed by Lok Sabha on 29th March, 2017. The Rajya Sabha passed the bill on 6th April, 2017 and was assented by the President on 12th April, 2017.

This Act may be called the Goods and Services Tax (Compensation to States) Act, 2017. It extends to the whole of India.

The compensation cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

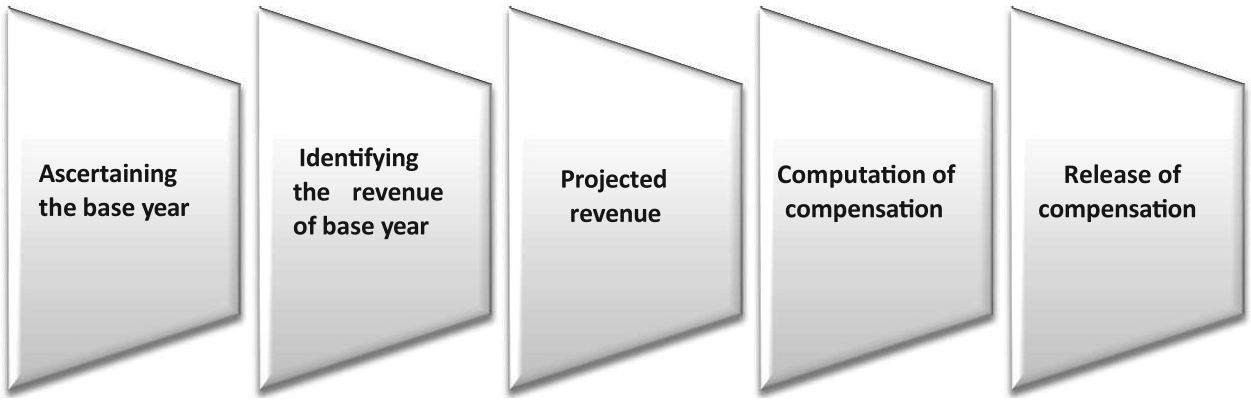
Compensation Cess not charged on goods exported by an exporter under bond and the exporter are be eligible for refund of Input Tax Credit of Compensation Cess relating to goods exported. In case goods have been exported on the payment of Compensation Cess the exporter is eligible for refund of Compensation Cess paid on goods exported by him. Compensation Cess not be leviable on supplies made by a taxable person who has decided to opt for composition levy.

The constitutional validity of Compensation Act was challenged in the matter of *Union of India Vs. Mohit Minerals Pvt. Ltd*. before Hon'ble Supreme Court where The Supreme Court has placed extensive reliance upon the Statement of Objects and Reasons of the Amendment Act which highlights that the purpose of GST is to confer "concurrent taxing powers on the Union as well as the States including Union Territory with legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both" and affirmed the constitunional Validity of Compensation Cess Act.

Salient Features of GST (Compensation to States) Act, 2017

The GST (Compensation to States) Act, 2017 provides for the manner of ascertaining the amount of compensation that shall be payable to states during the transition period of five years by the Centre on account of revenue

loss attributable to levy of Goods and Services Tax in India. It involves the following steps:



The compensation shall be met out from compensation Cess for which the provisions in relation to collection, payment return, refund etc. have been provided for in the GST (Compensation to States) Act, 2017.

Highlights of the Act:

1. It provides for the compensation of loss to the states arising due to implementation of Goods and Services Tax in India.
2. The financial year 2015-16 shall be taken as base year for the purpose of calculating compensation amount payable to the states.
3. The revenue to be compensated consists of revenues from all the taxes that are levied by the states which have subsumed under Goods and Services Tax, as audited by the Comptroller and Auditor General of India.
4. The projected growth rate of revenue during transition period shall be 14%.
5. The compensation shall be released at the end of every two months period on a provisional basis and final adjustment shall be made after getting audited accounts of the year from the Comptroller and Auditor General of India.
6. In case of eleven special category states referred to in Article 279A of the Constitution, the revenue forgone on account of exemption of taxes granted shall be counted towards the definition of Revenue for the base year 2015-16 for calculating compensation.
7. The revenues of the states that were not credited to the consolidated fund of states government but were directly collected by "mandi" or "municipality" would also be included in the definition of revenue if these were subsumed in the Goods and Services Tax.
8. To generate revenue to compensate states for five years for loss suffered by the states on account of implementation of Goods and Services Tax, is by levy of a Cess on such goods as recommended by the GST Council over and above the GST rate on that item.
9. The proceeds of the Cess shall be credited to the fund called Goods and Services Tax Compensation Fund and all the compensation payable to the states as GST compensation shall be paid from this fund. The balance if any left out in the GST compensation fund after five year shall be equally shared between the Centre and the states.

Some definitions prescribed in Section 2 of the Goods and Services Tax (Compensation to States) Act, 2017 are as follows:

Section 2 : In this Act, unless the context otherwise requires:

a) "Central tax" means the central goods and services tax levied and collected under the Central Goods and Services Tax Act;

b) "Central Goods and Services Tax Act" means the Central Goods and Services Tax Act, 2017;

c) "Cess" means the goods and services tax compensation cess levied under section 8;

d) "Compensation" means an amount, in the form of goods and services tax compensation, as determined under section 7;

e) "Council" means the Goods and Services Tax Council constituted under the provisions of article 279A of the Constitution;

f) "Fund" means the Goods and Services Tax Compensation Fund referred to in section 10;

g) "Input tax" in relation to a taxable person, means,

   i. Cess charged on any supply of goods or services or both made to him;

   ii. Cess charged on import of goods and includes the Cess payable on reverse charge basis;

h) "Integrated Goods and Services Tax Act" means the Integrated Goods and Services Tax Act, 2017;

i) "Integrated tax" means the integrated goods and services tax levied and collected under the Integrated Goods and Services Tax Act;

j) "Prescribed" means prescribed by rules made, on the recommendations of the Council, under this Act;

k) "Projected growth rate" means the rate of growth projected for the transition period as per section 3;

l) "Schedule" means the Schedule appended to this Act;

m) "State" means,

   i. for the purposes of sections 3, 4, 5, 6 and 7 the States as defined under the Central Goods and Services Tax Act; and

   ii. for the purposes of sections 8, 9, 10, 11, 12, 13 and 14 the States as defined under the Central Goods and Services Tax Act and the Union territories as defined under the Union Territories Goods and Services Tax Act.

n) "State tax" means the State goods and services tax levied and collected under the respective State Goods and Services Tax Act;

o) "State Goods and Services Tax Act" means the law to be made by the State Legislature for levy and collection of tax by the concerned State on supply of goods or services or both;

p) "Taxable supply'' means a supply of goods or services or both which is chargeable to the Cess under this Act;

q) "Transition date" shall mean, in respect of any State, the date on which the State Goods and Services Tax Act of the concerned State comes into force;

r) "Transition period" means a period of five years from the transition date; and

s) "Union Territories Goods and Services Tax Act" means the Union Territories.

The words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act and the Integrated Goods and Services Tax Act shall have the meanings respectively assigned to them in those Acts.

Projected Growth Rate [Section 3 of GST (Compensation to States) Act, 2017]

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen per cent (14%) per annum.

Base Year [Section 4 of GST (Compensation to States) Act, 2017]

For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year. Thus, the base year shall be Financial Year 2015-16.

Base Year Revenue [Section 5 of GST (Compensation to States) Act, 2017]

Section 5(1) mandates that subject to the provisions of sub-sections (2), (3), (4), (5) and (6), the base year revenue for a State shall be the sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or Union and net of refunds, with respect to the following taxes, imposed by the respective State or Union, which are subsumed into GST:

a) the Value Added Tax 'VAT', sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution;

b) the central sales tax 'CST' levied under the Central Sales Tax Act, 1956 (74 of 1956);

c) the entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile entry 52 of List-II (State List) of the Seventh Schedule to the Constitution;

d) luxuries tax, entertainments tax, amusements, betting and gambling or any other tax levied by the concerned State under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the constitution;

e) advertisement tax or any other tax levied by the concerned State under the erstwhile entry 55 of List-II (State List) of the Seventh Schedule to the Constitution;

f) the duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile article 268 of the Constitution;

g) any Cess or surcharge or fee leviable under entry 66 read with entries 52, 54, 55 and 62 of List-II of the Seventh Schedule to the Constitution by the State Government under any Act notified under sub-section (4), prior to the commencement of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

The following amounts **shall not** be included in the revenue collected during the base year in a State, net of refunds, in the calculation of the base year revenue for that State:

a) any taxes levied under any Act enacted under the erstwhile entry 54 of List-I (State List) of the Seventh Schedule to the Constitution, prior to the coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

b) tax levied under the Central Sales Tax Act, 1956, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

c) any Cess imposed by the State Government on the sale or purchase of petroleum crude, high speed

diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and

d) the entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

The base year revenue shall include the amount of tax collected on sale of services by the said State Government during the base year in respect of the State of Jammu and Kashmir.

Also, in respect of the States mentioned in sub-clause (g) of clause (4) of article 279A of the Constitution, the amount of revenue foregone on account of exemptions or remission given by the said State Governments to promote industrial investment in the State, with respect to such specific taxes referred to in sub- section (1), shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

The base year revenue shall be calculated as mentioned above and on the basis of the figures of revenue collected and net of refunds given in that year, as audited by the Comptroller and Auditor-General of India.

In respect of any State, if any part of revenues mentioned above are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

Projected Revenue for any Year [Section 6]

The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.

Illustration – If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be as follows –

Projected Revenue for 2018-19 $= 100\left(1\frac{14}{100}\right)^3 = 148.1544$

GST Compensation [Section 7 of GST (Compensation to States) Act, 2017]

The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor General of India. However, in case any excess amount has been released as compensation to a State in any financial year during the transition period, as per the audited figures of revenue collected, the excess amount so released shall be adjusted against the compensation amount payable to such State in the subsequent financial year. [Section 7(2)]

The total compensation payable for any financial year during the transition period to any State shall be calculated in the following manner:

a) the projected revenue for any financial year during the transition period, which could have accrued to a State in the absence of the goods and services tax, shall be calculated by applying the projected growth rate over the base year revenue of that state.

b) the actual revenue collected by a State in any financial year during the transition period shall be :

   i. the actual revenue from State tax collected by the State, net of refunds given by the said State under Chapters XI and XX of the State Goods and Services Tax Act;

ii. the integrated goods and services tax apportioned to that State; and

iii. any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refund of such taxes, as certified by the Comptroller and Auditor- General of India.

c) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State referred to in clause (b). [Section 7(3)]

The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of the said period, in the following manner:

a) The projected revenue that could have been earned by the State in absence of the goods and services tax till the end of the relevant two months period of the respective financial year shall be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, calculated in accordance with section 6.

Illustration: If the projected revenue for any year calculated in accordance with section 6 is one hundred rupees, for calculating the projected revenue that could be earned till the end of the period of ten months for the purpose of this sub-section shall be 100x(10/12)=Rs.83.33;

The actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period shall be:

i. the actual revenue from State tax collected by the State, net of refunds given by the State under Chapters XI and XX of the State Goods and Services Tax Act;

ii. the integrated goods and services tax apportioned to that State, as certified by the Principal Chief Controller of Accounts of the Central Board of Indirect Taxes and Customs; and

iii. any collection of taxes levied by the said State, under the Acts specified in sub-section (4) of section 5, net of refund of such taxes.

b) the provisional compensation payable to any State at the end of the relevant two months period in any financial year shall be the difference between the projected revenue till the end of the relevant period in accordance with clause (a) and the actual revenue collected by a State in the said period as referred to in clause (b), reduced by the provisional compensation paid to a State till the end of the previous two months period in the said financial year during the transition period. [Section 7(4)]

In case of any difference between the final compensation amount payable to a State calculated in accordance with the provisions of sub-section (3) upon receipt of the audited revenue figures from the Comptroller and Auditor- General of India, and the total provisional compensation amount released to a State in the said financial year in accordance with the provisions of sub-section (4), the same shall be adjusted against release of compensation to the State in the subsequent financial year. [Section 7(5)]

Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the Fund in such manner as may be prescribed. [Section 7(6)]

Compensation Cess [Section 8 of GST (Compensation to States) Act, 2017]

There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, 2017 and such inter-State supplies of goods or services

or both as provided for in section 5 of the Integrated Goods and Services Tax Act, 2017 and collected on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act, 2017 is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council. On 24.06.2022, the Ministry of Finance vide Notification No 1/2022 Compensation Cess has notified Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022, w e f 01.07.2022 through which it has extended the time period for levy of compensation Cess up to 31st March 2026.

However, no such Cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act, 2017.

The Cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify.

Where the Cess is chargeable on any supply of goods or services or both with reference to their value, the value of such supply shall be determined under section 15 of the Central Goods and Services Tax Act for all intra- State and inter-State supplies of goods or services or both.

The Cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, at the point when duties of Customs are levied on the said goods under Section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

Payments, Return and Refund [Section 9 of GST (Compensation to States) Act, 2017]

Every taxable person, making a taxable supply of goods or services or both, shall:

a) pay the amount of Cess as payable under this Act in such manner;

b) furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and

c) apply for refunds of such Cess paid in such form, as may be prescribed.

For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act, 2017 and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or the rules made thereunder.

Crediting Proceeds of Cess to Fund [Section 10 of GST (Compensation to States) Act, 2017]

(1) The proceeds of the Cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.

(2) All amounts payable to the States under section 7 shall be paid out of the Fund.

(3) Fifty per cent. of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.

(3A) Notwithstanding anything contained in sub-section (3), fifty per cent. of such amount, as may be recommended by the Council, which remains unutilised in the Fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their base year revenue determined in accordance with the provisions of section 5:

Provided that in case of shortfall in the amount collected in the Fund against the requirement of compensation to be released under section 7 for any two months' period, fifty per cent. of the same, but not exceeding the total amount transferred to the Centre and the States as recommended by the Council, shall be recovered from the Centre and the balance fifty per cent. from the States in the ratio of their base year revenue determined in accordance with the provisions of section 5.

(4) The accounts relating to Fund shall be audited by the Comptroller and Auditor General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.

(5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

Other Provisions relating to Cess [Section 11 of GST (Compensation to States) Act, 2017]

The provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017, and the rules made thereunder, including those relating to assessment, Input Tax Credit, non- levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, *mutatis mutandis*, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax and integrated tax on such intra-State supplies under the said Act or the rules made thereunder.

The Input Tax Credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

Power to make Rules [Section 12 of GST (Compensation to States) Act, 2017]

The Central Government shall, on the recommendations of the Council, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

a) the conditions which were included in the total base year revenue of the States

b) the conditions subject to which any part of revenues not credited in the Consolidated Fund of the respective State shall be included in the total base year revenue of the State

c) the manner of refund of compensation by the States to the Central Government

d) the manner of levy and collection of cess and the period of its imposition

e) the manner and forms for payment of cess, furnishing of returns and refund of cess

f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Overview of the IGST Act*

Q 1. What is IGST?

Ans. "Integrated Goods and Services Tax" (IGST) means tax levied under the IGST Act on the supply of any goods and/ or services in the course of inter-State trade or commerce.

Q 2. What are inter-state supplies?

Ans. A supply of goods and/or services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States, two different union territory or in a state and union territory Further import of goods and services, supplies to SEZ units or developer, or any supply that is not an intra-State supply. (Section 7 of the IGST Act).

Q 3. How will the inter-State supplies of Goods and Services be taxed under GST?

Ans. IGST shall be levied and collected by Centre on interstate supplies. IGST would be broadly CGST plus SGST and shall be levied on all inter-State taxable supplies of goods and services.

The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information is also submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds.

Q 4. What are the advantages of IGST Model?

Ans. The major advantages of IGST Model are: a. Maintenance of uninterrupted ITC chain on inter-State transactions; b. No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer; c. No refund claim in exporting State, as ITC is used up while paying the tax; d. Self-monitoring model; e. Ensures tax neutrality while keeping the tax regime simple; f. Simple accounting with no additional compliance burden on the taxpayer; g. Would facilitate in ensuring high level of compliance and thus higher collection efficiency. Model can handle 'Business to Business' as well as 'Business to Consumer' transactions.

Q 5. How will imports/exports be taxed under GST?

Ans. All imports/exports will be deemed as inter-state supplies for the purposes of levy of GST (IGST). The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available as ITC of the IGST paid on import on goods and services. Exports of goods and services will be zero rated. The exporter has the option either to export under bond without payment of duty and claim refund of ITC or pay IGST at the time of export and claim refund of IGST. The IGST on imports is leviable under the provisions of the Customs Tariff Act and shall be levied at the time of imports along with the levy of the Customs Act (Section 5 of the IGST Act).

Q 6. How will the IGST be paid?

Ans. The IGST payment can be done utilizing ITC or by cash. However, the use of ITC for payment of IGST will be done using the following hierarchy, - First available ITC of IGST shall be used for • payment of IGST; Once ITC of IGST is exhausted, the ITC of CGST • shall be used for payment of IGST; If both ITC of IGST and ITC of CGST are • exhausted, then only the dealer would be permitted to use ITC of SGST for payment of IGST.

Remaining IGST liability, if any, shall be discharged using payment in cash. GST System will ensure maintenance of this hierarchy for payment of IGST using the credit.

Q 7. How will the settlement between Centre, exporting state and importing state be done?

Ans. There would be settlement of account between the Centre and the states on two counts, which are as follows :

Centre and the exporting state : The exporting state shall pay the amount equal to the ITC of SGST used by the supplier in the exporting state to the Centre.

Centre and the importing state : The Centre shall pay the amount equal to the ITC of IGST used by a dealer for payment of SGST on intra- state supplies. The settlement would be on cumulative basis for a state taking into account the details furnished by all the dealer in the settlement period. Similar settlement of amount would also be undertaken between CGST and IGST account.

Q 8. What treatment is given to supplies made to SEZ units or developer?

Ans. Supplies to SEZ units or developer shall be zero rated in the same manner as done for the physical exports. Supplier shall have option to make supplies to SEZ without payment of taxes and claim refunds of input taxes on such supplies (section 16 of the IGST Act).

Q 9. Are business processes and compliance requirement same in the IGST and CGST Acts?

Ans. The procedure and compliance requirement are same for processes likes registration, return filing and payment of tax. Further, the IGST Act borrows the provisions from the CGST Act as relating to assessment, audit, valuation, time of supply, invoice, accounts, records, adjudication, appeal etc. (Section 20 of the IGST Act).

***Source** : www.cbic.gov.in*

LESSON ROUND-UP

- President on 12th April, 2017, gave assent to the following four Acts:
  - Central Goods & Services Tax Act, 2017
  - Integrated Goods & Services Tax Act, 2017
  - Union Territory Goods & Services Tax Act, 2017
  - Goods & Services Tax (Compensation to States) Act, 2017.
- Federal structure of the Constitution is continued under the GST regime of indirect taxes.
- IGST is levied and collected by the Centre on inter-state supply of goods and services including imports into India and supplies made outside India along with supplies to/from SEZs.
- Owing to shortcomings in previous regime like cascading effect under Central Sales Tax regime, IGST came into being.
- Union Territory Goods and Services Tax Act, 2017 would be applicable in the Union Territories except Delhi and Puducherry.
- Various provisions of the Central Goods and Services Tax Act, 2017 as contained in Act shall apply to Union Territories.
- The GST (Compensation to States) Act, 2017 Act provides for calculation and ascertainment of base year, projected growth rate, compensation to be paid and the like.
- There shall be levied a cess and collected on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue.

- GST does away with the cascading effects of taxation, by providing a comprehensive and continuous chain of tax credits, end to end and taxing only the value-add at every stage.
- India has adopted a dual GST model, i.e., where the tax is imposed concurrently by the Centre and the States. For an intra-State sale, the GST is equally divided between the Centre and the State (CGST + SGST), and for inter-State sales, the GST is collected by the Centre (IGST).
- The exemptions from GST are those that have been kept out of scope and have been notified separately.
- When the location of supplier and the place of supply is within the same state, it is an intra-state Supply, and if these are in different states, then that is inter-state supply.
- To conform with international standards, IGST paid on goods taken out of India by a foreign tourist will be refunded under IGST Act, 2017.

GLOSSARY

Central Goods and Services Tax (CGST): It is levied & collected under the authority of CGST Act, 2017 passed by the Parliament. It is a tax levied on intra- State Supplies of both goods and/or services by the Central Government and is governed by the CGST Act, 2017.

State Goods and Services Tax (SGST): It is levied & collected under the authority of SGST Act, 2017 passed by respective State. It is a tax levied on intra- State Supplies of both goods and/or services by the State Government and is governed by the SGST Act, 2017.

Integrated Goods and Services Tax (IGST): It is levied on all inter-State supplies in the GST regime. The IGST mechanism ensures that the tax money goes to the state where consumption takes place. Though IGST is levied by the centre, the revenue does not belong fully to the centre. The tax revenue collected as IGST goes partially to the Centre as CGST and the remaining to the State/Union Territory where consumption takes place as SGST/UTGST.

Union Territory Goods and Services Tax (UTGST): It is levied & collected under the authority of UTGST Act, 2017 passed by the Parliament. This is applicable to Union Territories. UTGST applicable territories as mentioned in Section 2 of UTGST Act, 2017 are Andamans and Nicobar Islands; Lakshadweep; Dadra & Nagar Haveli; Daman and Diu; Chandigarh and Other territories.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions (MCQs)

1. Which of the following is considered as inter-State Supply?
   a) Supplies received from SEZ unit in Noida to Domestic Tariff Area
   b) Supplies made to SEZ developer in Kandla from Kerala
   c) Goods imported from France
   d) All of the Above

2. Which section of IGST Act 2017 deals with Zero Rated Supply?
   a) Section 20
   b) Section 16
   c) Section 5
   d) None of the Above
3. When did President give assent to GST (Compensation to states) Act 2017?
   a) 12th April 2017
   b) 27th March 2017
   c) 1st July 2017
   d) None of the above
4. Which financial year is taken as base year for the purpose of calculating compensation amount payable to the states under GST (Compensation to states) Act 2017?
   a) Financial Year 2014-15
   b) Financial Year 2016-17
   c) Financial Year 2015-16
   d) None of the Above
5. The UTGST States to which the UTGST Act, 2017 applies are:
   a) Dadra and Nagar Haveli and Daman and Diu
   b) Chandigarh
   c) Ladakh
   d) All of the above

Answers: 1 (d), 2 (b), 3 (a), 4 (c), 5 (d)

Descriptive Questions

1. Are all goods and services taxable under GST?
2. Which are the questions for which advance ruling can be sought?
3. Explain with the help of illustrations how a particular transaction of goods and/or services is taxed simultaneously under Central GST (CGST) and State GST (SGST)?
4. A dual GST has been implemented in India. Elaborate.
5. What was the need to bring GST in India? What are the taxes which have been subsumed in GST?

LIST OF FURTHER READINGS

- Goods & Services Tax, Laws, Concepts and Impact Analysis-Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra.
- GST Ready Reckoner- Taxmann – V.S. Datey.
- A complete guide to Goods & Services Tax Ready Reckoner in Q & A Format- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra.

Levy and Collection of GST

Lesson 16

KEY CONCEPTS

■ Taxable Event ■ Supply ■ Exempt Supply ■ Reverse Charge

Learning Objectives

To understand:

- Various Concepts Relating to Supply of Goods and Services
- Difference Between Composite Supply and Mixed Supply
- Charging Section of GST
- Various Exemptions Under GST
- Provisions Relating to Composition Scheme
- Concept of Forward Charge Mechanism
- Provisions Relating to Reverse Charge Mechanism

Lesson Outline

REGULATORY FRAMEWORK

1. Central Goods and Services Tax

Section 7	Meaning and Scope of Supply
Section 2(30)	Definition of Composite Supply
Section 2(74)	Definition of Mixed Supply
Section 2(90)	Definition of Principal Supply
Section 2(47)	Definition of Exempt Supply
Schedule I	Activities to be treated as Supply even if made without Consideration
Schedule II	Activities to be treated as Supply of Goods or Supply of Services
Schedule III	Activities or transaction which shall be treated neither as Supply of Goods nor a Supply of Services
Section 8	Tax Liability on Composite and Mixed Supplies
Section 9	Levy and Collection GST
Section 10	Composition Scheme
Section 11	Power to grant exemption

2. Integrated Goods and Services Taxt Act, 2017

Section 5	Levy and Collection of GST
Section 6	Exemption from payment of IGST

TAXABLE EVENT

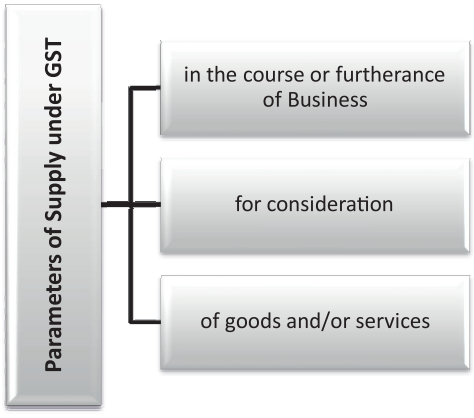
Taxable Event under Goods and Services Tax is Supply of goods or services or both for consideration.

The crux of any taxation system is the incidence, i.e., the point at which the liability to charge tax arises, and that event is nomenclated as the taxable event. Goods and Services Tax, with its introduction and in the process of subsuming the other Acts, has overcome many shortcomings of the legacy system too, one of them being, the definition of taxable event. The multitude of tax laws that prevailed earlier, that is Central Excise, Sales Tax, Service Tax, VAT etc., were prone to ambiguity and controversies which has been overcome to a great extent by the comprehensive approach and definition as laid down by GST. GST has kept it not only simple, but also robust, by stating that the entire value of supply of goods / services are taxed in an integrated manner.

Taxable event means an event or situation which gives rise to tax liability or which generate revenue for Government. The occurrence of a taxable event is a crucial event in GST since the levy and collection of tax is dependent on it. The 'taxable event' under GST is the Supply of Goods or Services or both for consideration. The taxable events under the previous indirect tax laws such as manufacture, sale, or provision of services is subsumed in the taxable event known as 'Supply'.

CONCEPT OF SUPPLY

Generic meaning of 'supply': Supply includes all forms of supply (goods and / or services) and includes agreeing to supply when the supply is for a consideration and in the course or furtherance of business (as defined under Section 7 of the Act). Supply means to make something available to someone who needs it. The various taxable events in pre-GST regime such as purchase, sale, manufacturing, service, entry tax etc. have been subsumed in Supply. Supply includes sales, barter transfer, exchange, license, rental, lease and disposal. If a person undertakes any of these transactions during the course or furtherance of business for consideration. It is called Supply. The Scope of supply has been given under Section 7 of the CGST Act, 2017.



Supply specifically provides for the inclusion of the following 8 classes of transactions:

The term 'supply' is wide in its import covers all forms of supply of goods or services or both that includes sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

(i) *Sale :* Sale is a lawful, permanent and absolute transfer of ownership of property in goods for money consideration under a valid contract such that no rights are left behind with the transferor;

(ii) *Transfer :* Transfer is to lawfully convey property from one person to another. Here, consent of transferor and capacity of transferee need not be present although all other ingredients of a lawful contract are incumbent;

(iii) *Barter :* Barter is where the consideration is in the form of goods or services (and not in money) for a sale or transfer. So in general, barter is itself not a supply but the form that consideration takes. But, when barter is called one of the forms of supply, it covers other forms of supply whose consideration is non-monetary. Therefore, barter will involve two supplies and not one. Each of these supplies would need to be examined for its respective taxability;

(iv) *Exchange :* Exchange is where consideration is still not in money but in the form of immovable property *(CIT v. Motors and General Stores Pvt. Ltd. AIR 1968 SC 200)*. Similar to barter, exchange also involves two supplies. Given that land and (completed) building is excluded from supply, exchange would be the supply whose consideration is immovable property. And the object of supply itself may be of goods or of services;

(v) *License :* License is similar to lease except that possession is not transferred but mere permission to enter and use the property (movable or immovable) is allowed along with all other ingredients of a lease. Supplier of a license retains possession of the property during the term of license without right to use (if license precludes joint use). And after expiry of the term of license or on termination of license, the licensee will be a trespasser;

(vi) *Rental :* Rental is lease in respect of movable property. And since recurring payment in lease (of immovable property) is called rental, transfer of possession with user rights for recurring payment of consideration is interchangeably applied for movable and immovable property;

(vii) *Lease :* Lease is where possession is transferred along with the right to use immovable property with a duty to care, protect and return subject to normal wear and tear along for consideration in the form of non- recurring premium only or along with recurring rent. Essence of lease being delivery of possession along with user rights is the reason lease is also used in the context of movable property (under the earlier laws). Supplier of a lease does not have possession hence not enjoy the right to use but retains right to repossess after term of lease;

(viii) *Disposal :* Disposal is sale or transfer but property that does not possess merchantable warranty. Articles that are not merchantable are not 'fit for sale' but trade does take place for the reason that the

supplier disposes the article without ascribing any worth but the recipient accepts the article for some intrinsic worth that he is able to extract or obtain.

MEANING AND SCOPE OF SUPPLY

Heading	*Provisions and Analysis*
General meaning **[Section 7(1)(a)]**	Supply includes – all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; **Analysis:** The definition of supply is inclusive which encompasses various forms of supply like sale, barter, etc. Significantly, it includes stock transfer of goods between two divisions of the same person or enterprise. Further, the services in the nature of renting, leasing, etc. are also included within the scope of 'supply'. However, to constitute an activity as 'supply', the common conditions are that the activity must be for a consideration and it should be in the course or furtherance of business.
Section 7(1) (aa)	Supply includes the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. *Explanation* - For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, Tribunal or Authority, the person and its members or constituents shall bedeemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another; **Analysis:** The aforesaid provision has been inserted through Finance Act, 2021 and has been given retrospective effect from 1.7.2017. The purpose of such insertion is to constitute activities or transactions between an association, club or similar entities and its members or constituents as 'supply'. For the purpose of taxability, the members and the entity shall be deemed to be two distinct persons.
Import of Services [Section7(1)(b)]	Import of services for a consideration whether or not in the course or furtherance of business; **Analysis:** Here, the business test is not relevant. The import of service may or may not be in the course or furtherance of business and still continue to fall within the scope of 'supply'. Thus, even the import of services by individuals for personal use is considered as supply and chargeable to tax in India. The transaction, however, should conform to the definition of 'import of service' as per Section 2(11) of the IGST Act, 2017 which provides that "import of service" means the supply of any service, where - (i) the supplier of service is located outside India; (ii) the recipient of service is located in India; and (iii) the place of supply of service is in India. Among other conditions, Place of Supply should be in India, which can be ascertained by referring to Section 13 of the IGST Act. Tax in such cases is payable under reverse charge by the recipient located in the taxable territory with no threshold.

Heading	*Provisions and Analysis*
	However, section 14 of the IGST Act, 2017 provides that in respect of import of service by way of online information and database access or retrieval services by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.
Supply Without Consideration [Section 7(1)(c)]	The activities specified in **Schedule I**, made or agreed to be made Without a Consideration; Thus, the activities listed in **Schedule I** shall be treated as supply even if made without consideration.
Deeming certain activities as either supply of goods or supply of services [Section 7(1A)]	Where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in **Schedule II.** This provision is inserted in place of erstwhile Section 7(1)(d) vide the **Central Goods and Services Tax (Amendment) Act, 2018 retrospectively from 01.07.2017.** **The effect of the amendment is that the activities listed** in **Schedule II** shall be treated either as supply of goods or supply of services provided the basic conditions for an activity to be construed as supply as laid down in Section 7(1) are fulfilled.
Neither a Supply of goods or services [Section7(2)]	Notwithstanding anything contained in sub-section (1) (a) Activities or transactions specified in **Schedule III;** or (b) such activities or transactions undertaken by the Central Government, a State Government or any Local Authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services. Vide Notification No. 25/2019-C.T. (Rate), dated 30-09-2019, the Central Government has exercised powers under Section 7(2) of the CGST Act and notified that the activity or transaction by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called, undertaken by the State Governments shall be treated neither as a supply of goods nor a supply of service.
Issue of Notification by Government [Section 7(3)]	Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as - (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods.

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors

[Circular No. 116/35/2019 – GST, dated October 11, 2019]

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation).

There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration. *For further details please visit:*

https://taxinformation.cbic.gov.in/view-pdf/1002950/ENG/Circulars

Treatment of supply by an artist in various States and supply of goods by artists from galleries [Circular No. 22/22/2017 – GST, dated December 21, 2019]

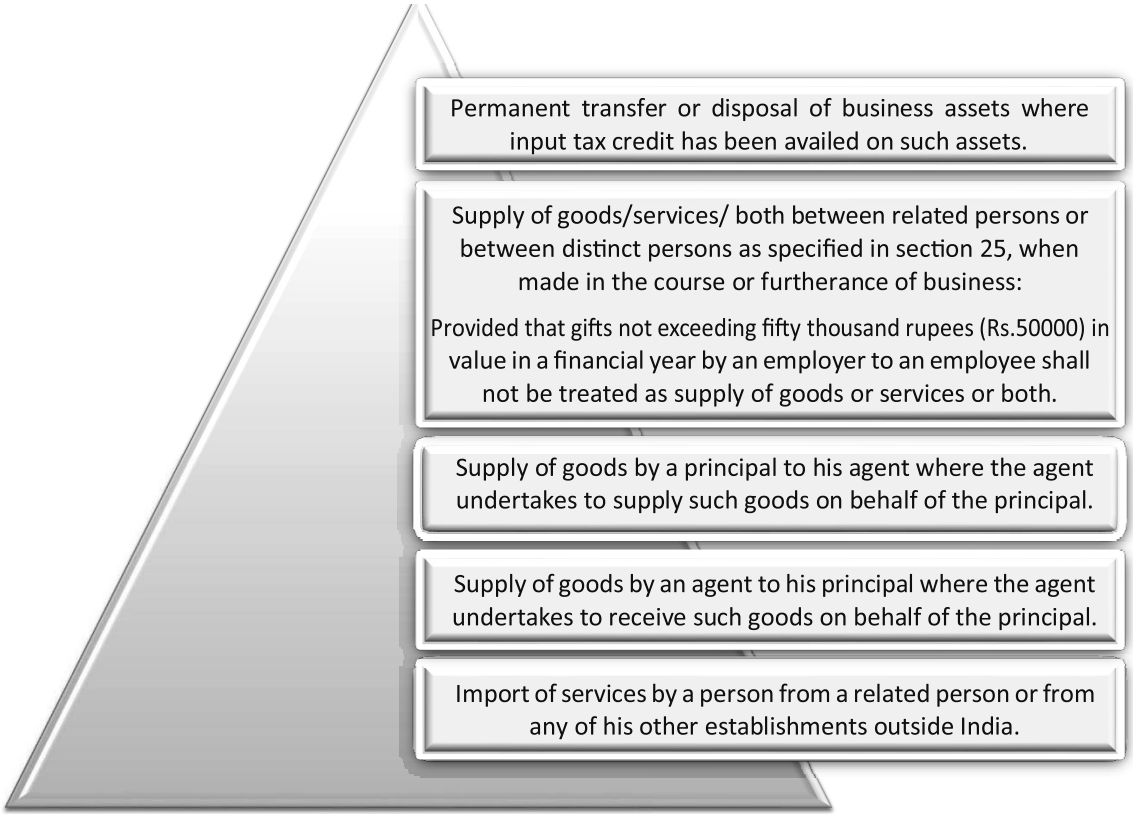
In case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

For further details please visit:

https://taxinformation.cbic.gov.in/view-pdf/1003044/ENG/Circulars

Schedule I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION [DEEMED SUPPLIES]



S. No.	Title	Provision	Analysis
1.	Permanent transfer or disposal of business assets	Permanent transfer or disposal of business assets where Input Tax Credit has been availed on such assets.	Typically, donation of business assets or scrapping or disposal in any other manner (other than as a sale - i.e., without a consideration) would qualify as 'supply' under this clause, where Input Tax Credit has been claimed on the same. *Example:* In case of cars purchased by the company for use by directors would not qualify for Input Tax Credit and such Input Tax Credit would therefore, not have been claimed. Say, after a few years, the same car is transferred to such director on a free of cost basis. In normal course, it is a disposal of business assets. However, this would not be treated as a supply for Schedule I as no Input Tax Credit was availed on such car.
2.	Goods or Services or both transferred between related persons or between distinct persons	➢ Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. ➢ Provided that gifts not exceeding fifty thousand rupees (Rs.50000) in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.	Transactions between distinct persons or between related persons have been considered as supply even if made without consideration. 'Distinct person' has been defined in Section 25 of the CGST Act, to mean a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

A persons shall be deemed to be "related persons" if –

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty- five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Example:

Mr. Atin is engaged in supply of professional services as Company Secretary. He has obtained a Registration in the State of West Bengal in respect of his Head Office. In addition, he has obtained registration in the State of Delhi in respect of his branch. In the above case, both registrations of Mr. Atin shall be treated as distinct persons to each other.

- The amount paid by employer to employee in lieu of services rendered by the employee and which is mentioned in the offer letter or agreement is exempted from the levy of tax.
- Moreover, certain supplies are not agreed upon formally; say Diwali gifts, gifts by organization on achieving targets or gifts given casually will be taxable provided value of gifts exceeds Rs. 50,000.
- **Gifts upto Rs. 50,000 to employees are exempted. However, reversal of Input Tax Credit, if availed on purchase of such Gifts shall not be available.**

- **Taxation of perquisites.** ***Press Release on 10.07.2017***

  It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods nor supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the Input Tax Credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the Cost-To-Company (C2C).

- Stock transfer between the related persons or between distinct persons would be subject to GST.

3.	Supply of goods by a principal to his agent or vice versa	Supply of goods - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.	Clearance of goods to a consignment agent / clearing agent and forwarding agent, even if such agents are located in the same State would attract GST.
4.	Import of Service by a taxable person from related person	Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.	Interior design service received by a branch in India from its Head office, located in Singapore, for its new office building, without consideration. The interior service is taxable and liable for GST on reverse charge.

Scope of Principal-Agent relationship in the context of Schedule I of the CGST Act *(Circular No. 57/31/2018 GST dated September 04, 2018)*

The key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

For further details please visit:
https://taxinformation.cbic.gov.in/view-pdf/1003009/ENG/Circulars

Schedule II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

S. No.	*Provision*	*Whether goods orservice*	*Analysis*
1(a)	**Any transfer** of the **title** in goods	Supply of goods	**Example:** When the goods are stolen, title of goods shall pass to insurance company. It would be treated as supply of goods even when there is no physical movement of goods from the insured to the insurer.
1(b)	Any transfer of right in goods or of **undivided share** in goods without the transfer of title thereof	Supply of Service	**Example:** Hire Purchase
1(c)	**Any transfer of title in goods** under an agreement which stipulates that property in goods shall pass **at a future date** upon payment of full consideration	Supply of goods	**Example:** Financial lease / Hire purchase transaction would amount to supply of goods under the GST.
2(a)	**Any lease**, tenancy, easement, licenseto **occupy land**	Supply of Service	**Example:** Land used for circus, entertainment and parking purposes.
2(b)	Any lease or letting out of the **building** including a commercial, industrial or residential complex for business or commerce, either wholly or partly	Supply of Service	**Example:** Leasing of shop in multiplex shall amount to supply of service.

S. No.	*Provision*	*Whether goods orservice*	*Analysis*
3	Any treatment or process which is applied to **another person's goods**	Supply of Service	**Example:** Job work shall be treated as supply of service.
4(a)	**Transfer or** Disposed of **business assets** whether or **not for a consideration.**	Supply of goods	**Example:** Old and discarded Machinery disposed.
4 (b)	Change of use of goods from business to **personal use.**	Supply of Service	**Example:** A computer, company car, when put to non-business use would be covered.
4(c)	Where any **person ceases** to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to have been disposed by him immediately preceding the ceasing of such business,it shall be treated as supply of goods **unless** (a) the business is transferred as a going concern to another person;or (b) the business is carried on by a personal representative who is deemed to be a taxable person.	Supply of goods	**Example:** Say a person runs a shop of refrigerators. On a particular day, he decides to shut his shop permanently. On such day, he is having a stock of refrigerators. In such situation, it shall be deemed that he has disposed of such stock of refrigerators immediately before shutting down his shop and such disposal shall be considered as supply of goods.
5(a)	**Renting of immovable property**	Supply of Service	**Example:** Renting of shop for a consideration.
5(b)	**Construction** of a complex, building, civil structure or a part thereof, including a complex or building **intended for sale to a buyer**, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	Supply of Service	**Example:** Real estate companies generally open booking of flats even before the construction is started and allow customers to pay the price in instalments spread over a number of years until the possession of flat is granted. Such modality of selling flats is considered as supply of service even though the underlying property being transferred is made up of goods.

S. No.	*Provision*	*Whether goods orservice*	*Analysis*
5(c)	Temporary transfer or **permitting the use** or enjoyment of any intellectual property right	Supply of Service	**Example:** Permitting the use of patent, copyright, trademark shall amount to supply of service.
5(d)	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of **information technology software**	Supply of Service	**Example:** As such software per se has been considered as goods, the stated activities if undertaken in respect of **information technology software** have been considered as supply of service.
5(e)	Agreeing to the obligation to refrain from an Act, or to tolerate an act or a situation, or to do an Act;	Supply of Service	**Example:** Mr. Ram request to Mr. Shyam not to teach a particular subject in particular area for 5 years. Shyam agrees with the terms and condition against a consideration of Rs. 5,00,000. The same would amount to supply of service by Shyam and would attract GST.
5(f)	Transfer of the **right to use any goods** for any purpose	Supply of Service	Renting of goods, i.e., movable property shall amount to supply of service. **Example:** Renting of coffee machine, generator etc.
6	The following **composite supplies** shall be treated as a supply of services, namely:- (a) works contract as defined in clause (119) of section 2; and (a) supply , by way of or as part of, or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.	Supply of Service	**Example:** Works contracts involving transfer of property is service under the GST law. **Example:** Restaurant and outdoor catering are service under GST law even though food, being goods, is supplied in the course of such activities.

S. No.	*Provision*	*Whether goods orservice*	*Analysis*
7	Supply of Goods by any unincorporated association or body corporate Supply of goods by **any unincorporated association or body of persons to a member thereof** for cash, deferred payment or other valuable consideration. This entry deals with the supply of goods only and that too when made to a member of such unincorporated association or body corporate	Supply of Goods	**Example:** Supply of goods by a Club to its members.

The **activities listed in Schedule II** shall be treated either as supply of goods or supply of services provided the basic conditions for an activity to be construed as supply as laid down in Section 7(1) are fulfilled.

Clarification issued by CBIC on issues related to taxability of 'tenancy rights' under GST

[Circular No. 44/18/2018-CGST, dated May 2, 2018]

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST.

The transfer of tenancy rights against tenancy premium which is also known as "pagadi system" is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus, a consideration for the said activity shall attract levy of GST.

To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of notification No. 12/2017-Central Tax (Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

For further details please visit:
https://taxinformation.cbic.gov.in/view-pdf/1003022/ENG/Circulars

Clarification on doubts related to scope of "Intermediary"

[Circular No. 159/15/2021 – GST, dated September 20, 2021]

'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 as under–

"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:

Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

For further details please visit:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20159_14_2021_GST.pdf

Clarification regarding applicable GST rates & exemptions on certain services

[Circular No. 164/20/2021 – GST, dated October 06, 2021]

Services by cloud kitchens/central kitchens:

The word 'restaurant service' is defined in Notification No. 11/2017 – CTR as below: - 'Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

The explanatory notes to the classification of service state that 'restaurant service' includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. It is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under 'restaurant service', as defined in notification No. 11/2017-Central Tax (Rate) and **attract 5%** GST [without ITC].

Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities':

It is clarified that services provided by any institutions/ NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government is covered under entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and hence **exempt** from GST.

For further details please visit:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20164_2021_GST.pdf

Schedule III

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

Schedule III to CGST Act, 2017 lists down the following activities which shall be treated neither as supply of goods nor supply of services.

S. No.	*Provision*	*Analysis with examples*
1	Services by an **employee to the employer** in the course of or in **relation to his employment.**	It is important to note that only such services are covered in this entry which are provided in the course of or in relation to employment. If, an employee provides some services beyond her official functions, it will not be covered in this entry.
2	Services by any **court or Tribunal** established under any law for the time being in force.	Legal/ Filing fee taken by courts from petitioners in lieu of its services is not considered as supply.

S. No.	Provision	Analysis with examples
3	(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities; (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.	**Example:** Judge of Supreme Court of India is a constitutional post, remuneration received by them shall not be subject to GST. **Example:** CBDT is a body established by the Central Government. Chairman / Member / Director (who are not employees) of these body shall be out of GST.
4	Services of **funeral**, burial, crematorium or mortuary including transportation of the deceased.	Not liable for tax.
5	**Sale of land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	It is subject to stamp duty.
6	**Actionable claims**, other than lottery, betting and gambling. Actionable claim [Section 2(1)] shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.	Lottery, betting and gambling are subject to GST.
7	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.	Commonly called as 'third country exports', this category of transaction has been specially included in Schedule III w.e.f. 1.2.2019. The effect is that the supply of goods consigned directly from a place in the non-taxable territory to a place in the non-taxable territory without such goods touching the Indian shores shall not be treated as 'supply', thus not leviable to tax.

S. No.	Provision	Analysis with examples
8(a)	Supply of warehoused goods to any person before clearance for home consumption;	Supply of goods lying in a customs bonded warehouse has been treated as neither supply of goods nor supply of service. This entry has been inserted in Schedule III w.e.f. 1.2.2019. However, IGST shall continue to be leviable at the time of clearance of goods from the warehouse for home consumption. **Example:** Lydo Limited imported Chocolates and fill into bond bill of entry for storage of chocolates in customs bonded warehouse. While the goods were still in warehouse, Lydo Ltd. sold such chocolates to Mydo Ltd. Finally, Mydo Ltd. fill ex-bond bill of entry and cleared such chocolates for home consumption. In this situation, the sale transaction between Lydo Ltd. and Mydo Ltd. is not treated as a supply thus not liable to GST.
8(b)	Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.	This entry has been inserted in Schedule III w.e.f. 1.2.2018 to take High Sea Sale transaction out of the purview of 'supply' as per Section 7 CGST Act. **Example:** Lor Ltd. Imported a consignment of Lipsticks from Italy. Before the clearance of such consignment for home consumption, Lor Ltd. sold the imported Lipsticks to L Mart Ltd. by endorsing the Bill of Lading. The sale transaction between Lor Ltd. and L Mart Ltd. shall not be considered as 'supply', thus not chargeable to tax.

Illustration:

Mr. Akshay a dealer sells a washing machine for Rs. 30,000 to earn a profit. Does it qualify as a supply?

Solution:

Yes, it qualifies as supply as per Section 7(1)(a) of CGST Act, 2017.

Illustration:

Mr. Ram (an unregistered person) wants to do MBA abroad. He takes Education consultancy services from a UK based consultant for Rs. 10,000. Does it qualify as a supply?

Solution:

Yes, it qualifies as supply, because as per Section 7(1)(b) of CGST Act, 2017, Supply includes import of services for a consideration whether or not in the course or furtherance of business. Hence, in the above case it will be treated as supply.

Illustration:

ABC Ltd. a manufacturing company scraps old plant and machinery due to renovation of manufacturing facility. The company has taken Input Tax Credit on plant and machinery so scrapped without consideration. Does it qualify as a supply?

Solution:

As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Permanent transfer or disposal of business assets where Input Tax Credit has been availed shall be treated as supply even made without consideration. Hence scrapping of old plant and machinery without consideration shall qualify as supply since Input Tax Credit has been availed by ABC Ltd.

Illustration:

Big Ltd. provides management technical services without consideration to Small Ltd. in which Big Ltd. has controlling rights. These technical services have been provided for benefit of entire group. Does it qualify as a supply?

Solution:

As per Section 7(1) (c) read with Schedule I of CGST Act, 2017, Supply of goods or services between related persons is treated as supply even if it is without consideration. As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be "related persons" if "one of them directly or indirectly controls the other". Since Big Ltd. has controlling rights of Small Ltd., they will be treated as related person and the said transaction will qualify as supply.

Illustration:

American Express Pvt. Ltd. makes gifts to an employee worth Rs. 75,000 during the year. Do such gifts qualify as a supply? Would your answer be different if gifts of Rs. 45,000 have been given to employee?

Solution:

As per Section 7(1) (c) read with Schedule I of CGST Act, 2017, supply of goods or services between related persons is treated as supply even if it is without consideration. As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be "related persons" if such persons are employer and employee. Thus, gifts to employee worth Rs. 75,000 will qualify as supply and such supply would be leviable to GST.

If gifts of Rs. 45,000 are given instead of Rs. 75,000, the same will not qualify as supply since it has been specifically provided that gifts not exceeding Rs. 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

Illustration:

Honda Motors Ltd. engages DB Motors as an agent to sell motorcycle on its behalf. For the purpose, Honda Motors Ltd. has supplied 500 cars to the showroom of DB Motors located in Punjab. Does it qualify as supply?

Solution:

As per Section 7(1) (c) read with Schedule I of CGST Act, 2017, Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal shall be treated as supply even if made without consideration. In view of the same Supply of motorcycles by Honda Motors Ltd. to DB Motors will qualify as supply.

Illustration:

Raheja Builders (a registered taxable person) receives architectural design supplied by a foreign architect to design a residential complex to be built in Faridabad for a consideration of Rs. 1 crore. Does it qualify as supply?

Solution:

As per Section 7(1) (b) of CGST Act, 2017, Importation of services for a consideration whether or not in the course or furtherance of business is covered under supply. In the above case it will be treated as supply and will be liable to GST.

CASE LAWS

1. In re : IIT Madras Alumni Association [2020 (42) G.S.T.L. 564 (A.A.R. - GST - T.N.)]

The applicant sought Advance Ruling on the following question:

Whether collecting money by IITMAA from its members and receiving donations/grants/subsidies/ budgetary support from IIT, Madras to defray expenses incurred towards administering the association and other expenses related to its engagement activities initiated by members themselves amounts to supply or not. Consequently, whether there is any liability to comply with GST law including registration and payment of tax.

Held: In order to tax, the activity must be a supply of either goods or service, the supply is to be for a consideration to a person in the course of furtherance of business, i.e., there should be a supply of goods or service, recipient, provider, consideration, in the course or for furtherance of business. In the instant case it is evident from the Bye-laws/MOA submitted by the applicant that the mission of IITMAA is to provide a forum for its members and to facilitate professional networking among alumni, students, faculty for mutual benefit in academic, professional, and business areas and to facilitate alumni to contribute to IIT Madras by raising funds, sharing knowledge/expertise, research, academic support, technical collaboration etc. the objectives also include helping alumni families and needy alumni and mobilize funds to manage the association affairs. The applicant collects membership fee from the members and also collects charges for various events, activities which include conducting seminars, holding meetings, organizing events, publishing magazines and newsletters, maintaining websites, and technology infrastructure for the benefit of its members. Thus, the supply of the services of these activities by the applicant to its members for consideration either in form of membership fee or additional charges collected for specific activities constitute a 'supply of service' under Section 7(l)(a) of CGST/TNGST Act as it is in the course of furtherance of business of the applicant as per Section 2(17) of the Act.

2. In re : B.R. Sridhar [2021 (44) G.S.T.L. 211 (A.A.R. - GST - Kar.)]

The Applicant, being the owner of an immovable property bearing Sy. No. 4, measuring 1 acre 2 guntas, situated at Bikasipura Village, Uttarahalli Hobli, Bangalore has entered into a Joint Development Agreement dated 19-5-2016 with M/s. Suprabhat Constructions, a partnership firm, authorizing them to construct residential flats by incurring the necessary cost together with certain common amenities and upon the development of the said property, the applicant gets 40% share of undivided right, title and interest in the land proportionate to super built up area and 40% of car parking spaces. In view of this, the applicant has sought Advance Ruling in respect of the following question.

Whether the total amounts received by the Owner towards the advances or sale consideration of the flats fallen to his share of 40% in terms of the Joint Development Agreement dated 19-5-2016 and the subsequent Area Sharing Agreement dated 3-1-2018, are not amenable for payment of GST, since Applicant has sold or agreed to sell or gifted, the flats after obtaining Occupancy Certificate dated 26-8-2019 and that Applicant has not received any part of the sale consideration prior to the said date of Occupancy Certificate, thus falling under Entry No. 5 of Schedule III of CGST Act read with Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 and the corresponding provisions of SGST Act.

Held: The amounts received by the applicant, either by himself or through his agents, towards sale of their share of flats are not exigible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate dated 26-8-2019, as the said activities are treated neither supply of goods nor supply of service in terms of Schedule-III of the CGST Act, 2017 subject to Clause 5(b) of the Schedule-II of the CGST Act, 2017.

3. Bai Mamubai Trust vs. Suchitra (2019) - Bombay High Court

Scope of Supply – damage constitutes supply?

Facts: Commercial property owned by the plaintiff was illegally occupied by defendant.

Court appointed Receiver to collect formal possession but not physical possession of the property.

Court receiver is entitled to receive:

- His service charges towards function assigned by Court
- Receipt of royalty of Rs. 45,000/- pm from defendant

Held that: Service charges payable to the Receiver appointed by the Court is covered by "Services by any Court or Tribunal established under any law for the time being in force".

Compensation paid towards damages or towards securing any future determination of compensation or damages for a violation of the legal rights of the landlord (plaintiff) in the tenanted premises. The basis of payment is illegal possession or trespass and hence lacked necessary reciprocity to make it a supply.

Damages represent an award in money for a civil wrong which is in contrast to 'consideration'. While damages are towards restitution for loss caused on account of violation, consideration is towards an identifiable supply. The law of damages is not restricted to only unpaid consideration, i.e. what ought to have been paid, but also expands to compensating the loss to a party which may not even be privy to the agreement (e.g. in torts) – Para 60;

The measure for computation cannot be the litmus test for ascertaining the character of a supply.

Even though business and supply definitions are inclusive, a positive act of supply is a necessary concomitant of a supply transaction.

COMPOSITE & MIXED SUPPLY

Often goods or services or both together are supplied in combination and that's when it may not be simple enough to distinguish supplies and identify them separately, as each of them may attract a different rate of tax but is sold as one package.

Illustration:

Heera Printers is a printing house registered under GST. It receives an order for printing 5000 copies of a book on yoga and meditation authored by a well-known yoga guru. The content of the book is to be provided by the yoga guru to Heera Printers. It is agreed that Heera Printers will use its own paper to print the said books.

You are required to determine the rate of GST applicable on supply of printed books by Heera Printers assuming that rate of GST applicable on services is 18% whereas the rate of GST applicable on supply of goods is 12%.

Solution :

Section 2(30) provides that a composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies.

Further, section 8(a) stipulates that a composite supply comprising two or more supplies, one of which is a principal supply, is treated as a supply of such principal supply. Hence, one needs to ascertain what constitutes the principal supply in this supply. As per section 2(90), principal supply is the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

The above circular further clarifies that in the composite supply of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.

Accordingly, in the given case, the supply of printed books by Heera Printers is a composite supply wherein the principal supply is supply of printing services. Thus, the rate of GST applicable thereon is the rate applicable on supply of printing services, i.e. 18%.

Composite Supply

Section 2 (30) defined “Composite Supply” as a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

The features of a composite supply are:

a) Two or more taxable supplies of goods / services / both which are supplied in conjunction with each other.

b) They are naturally bundled.

c) A single price is charged for the supply.

d) One of the supplies within the package is identifiable as a principal supply.

Examples:

1. When a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.
2. Package of accommodation facilities and breakfast are naturally bundled, thus a composite supply.
3. Suppose a dealer sells Laptop along with bags. The rate of GST on Laptop and bag are different. Since the Laptop is a principal supply, the rate of Laptop shall be applicable on such composite supply.

Mixed Supply

Under Section 2(74) of CGST Act, 2017, "Mixed Supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

The features of a mixed supply are:

a) Two or more taxable supplies of goods / services / both which are supplied in conjunction with each other

b) They are deliberately bundled

c) A single price is charged for the supply

d) None of the supplies within the package is identifiable as a principal supply

Examples:

1. A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold separately.
2. Cadburry sold gift packets of chocolate and fresh Juices. The GST rate of chocolate is **28%** & fresh juice liable to GST at **12%**. This is the example of mixed supply & would be liable to GST at **28%** (higher of **12%** or **28%** applicable).

Guiding principles for determining whether a supply is a composite supply or mixed supply: While there are no infallible tests for such determination, the following guiding principles could be adopted to determine as to whether it would be a composite supply or a mixed supply. However, every supply should be independently analyzed.

Description	***Composite Supply***	***Mixed Supply***
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not 'aim in itself of recipient	Yes	No

Each supply priced separately	No	No
All supplies are goods	Yes	Yes
All supplies are services	Yes	Yes
One supply is goods and other supply is services	Yes	Yes

S. No.	*Issue*	*Clarification*
1.	**Supply of books, pamphlets, brochures, envelopes,** annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply. Principal supply has been defined in Section 2(90) of the Central Goods and Services Tax Act, 2017 as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.	In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.
2.	Whether retreading of tyres is a supply of goods or services?	In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%).

S. No.	Issue	Clarification
3.	Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?	In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4thFebruary, 2016. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT. In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III of notification No. 1/2017-Central Tax (Rate). GST payable on the certificates would be available as ITC to the bank buying the certificates.

CASE LAWS

1. ***In Re: Aquaa Care (Surat) Ro Technologies Private Limited, (2019)- AAR Gujarat***

Where company is selling water in containers whether selling of container and water is composite supply? Water cannot be sold standalone without filling in containers and thus the supply is naturally bundled and supplied in conjunction with each other in the ordinary course of business - Selling of water in container is composite supply where selling of purified water is the principal supply.

2. ***In Re : Mfar Hotels & Resorts Pvt. Ltd. [2020 (42) G.S.T.L. 470 (AAR - GST - T.N.)]***

The applicant sought ruling on the following query

What is the rate of tax applicable on the supply of Tobacco (Smokes) when these items are supplied independently and not as composite supply in the restaurant? In other words what is the rate of GST if these items alone are supplied and not along with food as Composite supply to the guest?

Held: The applicant supplies cigarettes as a separate supply in the restaurant to a casual guest who do not avail of any other services offered by the applicant other than buying cigarettes at the restaurant. The applicant in the menu for restaurant has various cigarette products, i.e., any guest who comes to the restaurant can have cigarettes alone also as these are in the menu of the restaurant. When a guest (resident or non-resident) comes to the restaurant and orders from the menu tobacco products, it involves supply of goods (cigarettes) and supply of services by the restaurant. In this case both the supplies are taxable. The serving of any items by a restaurant involves the supply of the items along with the use of the facilities/staff of the restaurant. However, in this case the sale of cigarette products are not naturally bundled together with the restaurant services as the services of the restaurant involve serving of food and beverages alone in the normal course. Hence is not a composite supply as per Section 2(30) of the Act. However, when such cigarettes products are supplied by the restaurant, a single price is charged as seen in the invoices submitted by the applicant.

In the instant case, supply of tobacco products by the restaurant is not a composite supply but involves supply of two individual supplies of goods (tobacco products) and supply of services of serving by the restaurant. Such a supply is a mixed supply.

LEVY AND COLLECTION OF CGST AND IGST

Levy and collection [section 9 of CGST Act, 2017/ section 5 of IGST Act, 2017/ section 7 of UTGST Act, 2017][1]

Charging Sections of GST

The charging section is a must in any tax law for levy and collection of tax. Section 9, Section 5 and Section 7 are the charging provision of CGST Act, 2017, IGST Act, 2017 and UTGST Act, 2017 respectively. GST is levied at the point of supply, that is at the time and place of supply and that's when the liability to charge GST arises.

As explained under Section 15 to Central Goods & Services tax Act, 2017, such GST would be levied on the transaction value.

Under CGST Act (Section 9)	*Under IGST Act (Section 5)*	*Under UTGST Act (Section 7)*
(1) Subject to the provisions of sub-section (2), ➢ there shall be levied a tax called the CGST, ➢ on all Intra-State supplies, ➢ of goods or services or both, ➢ except on the supply of alcoholic liquor for human consumption, ➢ on the value determined under section 15 and ➢ at such rates, not exceeding twenty per cent (20%), ➢ as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. **Note:** Supply of alcoholic liquor for human consumption is specifically excluded and continue to be subject to state excise and VAT State levy.	The provisions under section 5 of IGST Act are similar to section 9 of CGST Act except- (i) the word CGST has been substituted by IGST under IGST Act (ii) under IGST Act, tax called integrated tax to be levied on all inter-State supplies and on goods imported into India (iii) maximum rate under section 5(1) of the IGST Act is 40% (i.e. 20% CGST+20% UTGST)	The provisions under section 7 of UTGST Act are similar to section 9 of CGST Act except- (i) the word CGST has been substituted by UTGST under UTGST Act (ii) under UTGST Act, tax called UT integrated tax to be levied on all intra-State supplies, (iii) maximum rate under section 5(1) of the UTGST Act is 20%

1. Provision related to Levy and collection under IGST and UTGST Fare contained in Section 5 of IGST Act, 2017 and Section 7 of UTGST Act, 2017 respectively.

Under CGST Act (Section 9)	*Under IGST Act (Section 5)*	*Under UTGST Act (Section 7)*
(2) The central tax on the supply of *petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel* shall be levied with effect from such date as may be **notified by the Government** on the recommendations of the Council. **Analysis** Alcoholic liquor for human consumption is currently outside the ambit of GST. Further petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel is also kept outside GST for the time being, but can be brought under it's regime from such date as may be notified by the GST Council. (3) The Government may, on the recommendations of the Council, **by notification**, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. (4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both. The above noted provision was substituted w.e.f. 01.02.2018 in place of Section 9(4) as originally introduced. By way of this amendment, the reverse charge on supplies received from unregistered person shall require notification from the Government. Under the substituted provision, Notification No. 7/2019-Central Tax (Rate), dated 29- 03-2019 has been issued by the Government to prescribe payment of tax under reverse charge by the promotors of real estate project in respect of purchase of materials, cement and capital goods from unregistered persons in certain scenarios.		

Under CGST Act (Section 9)	*Under IGST Act (Section 5)*	*Under UTGST Act (Section 7)*
Hitherto, Section 9(4) was generally requiring payment of tax under reverse charge on supplies received from unregistered persons. Although, the said provision was suspended until 30.9.2019 and finally it ceased to have an effect w.e.f. 31.1.2019. (5) The Government may, on the recommendations of the Council, by notification, **specify categories of services** the tax on Intra-State supplies of which shall be paid by the Electronic Commerce Operator (ECO) if such services are supplied through it, and all the provisions of this act shall apply to such ECO as if he is the supplier liable for paying the tax in relation to the supply of such services: ➢ Provided that where an Electronic Commerce Operator does not have a physical presence in the taxable territory, any person representing such ECO for any purpose in the taxable territory shall be liable to pay tax: ➢ Provided further that where an ECO does not have a physical presence in the taxable territory and he also does not have a representative in the said territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.		

Vide Notification No.17/2017-Central Tax (Rate), dated June 28, 2017 as amended from time to time, the following services have been notified under Section 9(5) of the CGST Act, 2017 Central Government hereby notifies that in case of the following categories of services, the tax on Intra-State supplies shall be paid by the Electronic Commerce Operator -

(a) Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle, omnibus or any other motor vehicle.

Note: With effect from 01.01.2022 Transport of passengers by any type of motor vehicles through Electronic Commerce Operator is covered as service on which tax shall be paid by the ECO.

(b) Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through ECO is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act, 2017.

(c) Services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through ECO is liable for registration under clause (v) of section 20 of the

Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

(d) Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

Note: With effect from 01.01.2022 Restaurant services through Electronic Commerce Operator with some exception is covered as service on which tax shall be paid by the ECO.

Explanation- For the purposes of this notification -

(a) **"Radio taxi"** means a taxi including a radio cab, by whatever name called, whichis in two-way radio communication with a central control office and is enabled fortracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);

(b) **"maxicab", "motorcab"** and **"motor cycle"** shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(c) "specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent."

EXEMPTIONS UNDER GST[2]

Governments offer exemptions which are based on goods and services consumed by low income people, people living in disadvantaged regions and so on. Central Government has the power to grant exemption on goods and / or services in the public interest generally or by special order.

General exemption is granted by **notification** and is available to all persons. It may be absolute or conditional. Such exemption may be total or partial.

Specific, also known as *ad hoc* exemption is granted to persons under circumstances of an exceptional nature by a **special order** communicated to the party seeking exemption. Example: charitable, educational, scientific, research, defence purpose etc.

Central Government also has the power to interpret by an explanation the provisions of the notification or order at a later date but within one year which has retrospective effect.

Exempt supply has been defined as supply of any goods / services / both, which attract a NIL rate of tax, or which may be wholly exempt from tax, and therefore includes non-taxable supplies.

Goods exempt from Tax [Notification No. 2/2017- Central Tax (Rate) dated June 28, 2017]

Essential goods that have been exempted under GST, some of the key ones are:

a) Unbranded atta / besan / maida

b) Unpacked food grains

c) Fresh Milk

d) Eggs

e) Curd

f) Fresh vegetables

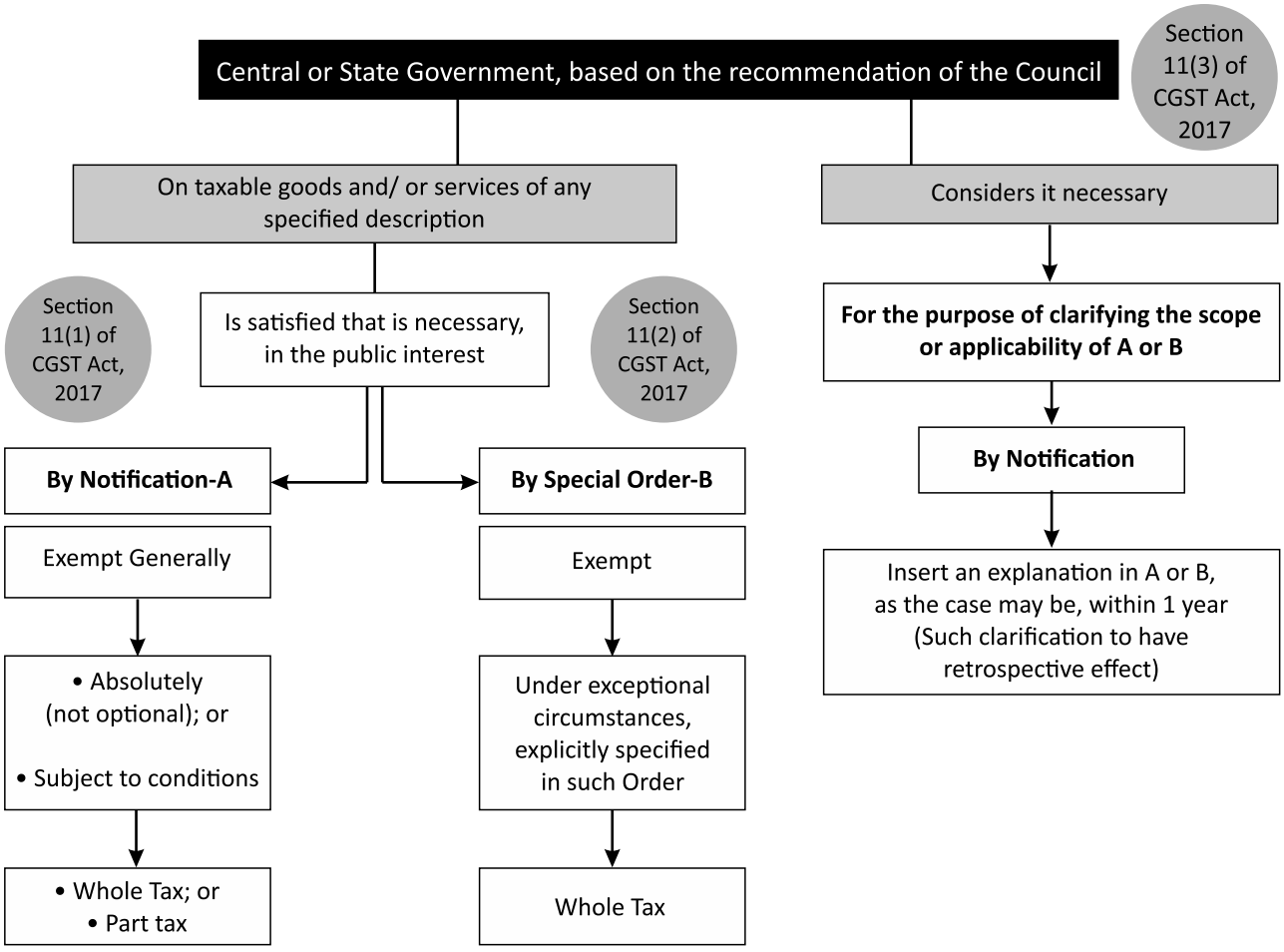
2. https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-for-CGST-exemption.pdf

g) Betel Leaves

h) Plastic Bangles

i) Live Fish

j) Indian National Flag



Power to grant exemption from tax [Section 11 of CGST Act, 2017 and Section 6 of the IGST Act, 2017]

General Exemption [Section11(1)]	Where the Government is satisfied that it is **necessary** in the public interest so to do, it may, on the recommendations of the Council, **by notification, exempt generally**, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from **such date as may be** specified in such notification. **Explanation-** For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Circumstances of an exceptional nature [Section 11(2)]	Where the Government is satisfied that it is necessary in the **public interest** so to do, it may, on the recommendations of the Council, by **special order** in each case, under circumstances of an **exceptional nature** to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
Power to Insert explanationwithin one year [Section 11(3)]	The Government may, if it considers necessary or expedient so to do for the **purpose of clarifying** the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2**), insert an explanation in such notification or order**, as the case may be, by notification at any time **within one year of issue of the notification** under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it **had always been the part** of the first such notification or order, as the case may be.

Distinctions between General Exemption and Specific (Special Order) Exemption

General Exemption [Section 11(1) of CGST Act, 2017]	***Exemption By Special Order [Section 11(2) of CGST Act, 2017]***
This is granted by a notification.	This is granted by a special order.
This is goods/ services specific. Any supplier supplying these notified goods or services can enjoy the exemption.	This is person specific and purpose specific. The goods are generally chargeable but exempted in special circumstances and hence not available to all persons generally.
It may be absolute or conditional. If absolute, the supplier has to avail it and he can collect tax only at effective rates.	No such distinction.
It may be partial or total.	It is always total.

Both the exemptions are granted in the public interest and both can be explained within one year of issue by the government. All the exemptions are based on the recommendations of the GST Council.

Exempt Supply

Section 2(47) of the CGST Act, 2017 defines “exempt supply” as supply of any goods or services or both which attracts **Nil** rate of tax or which may be wholly exempt from tax under section 11 of CGST Act, 2017, or under section 6 of the IGST Act, 2017 and includes non-taxable supply.

Thus, exempt supply includes the following:

- Any goods or services which attract Nil rate of tax under GST tariff.
- Any goods or services which are wholly exempted from tax under any notification issued under Section 11 CGST Act or Section 6 IGST Act. [Refer Notification No. 12/2017- Central Tax (Rate)].
- Any goods or services are held as no-supply under the GST law. It includes goods or services which have been excluded from the purview of GST like Alcoholic liquor for human consumption. It also includes goods or services listed under Schedule III of the CGST Act.

Zero Rated Supply

Section 16(1) IGST Act provides that "zero rated supply" means any of the following supplies of goods or services or both, namely: -

- Export of goods or services or both; or
- Supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit.

Section 16(2) of the IGST Act, 2017 provides that subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, 2017, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. It means that even though one is not required to pay output tax on zero rated supply, the supplier is eligible to avail Input Tax Credit in respect of such supply. Section 16(3) provides that a registered person making zero rated supply shall be eligible to claim refund of unutilised Input Tax Credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act, 2017 or the rules made thereunder.

However, a condition has been imposed that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the CGST Act, 2017 within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (FEMA) for receipt of foreign exchange remittances. Students may note that hitherto, the person making zero rated supplies was permitted to charge output tax on such supplies and later claim refund of such tax under section 54 of the CGST Act. However, in the Finance Act, 2021, the legislature has withdrawn such general provision and delegated powers to the Government to grant such facility to specific class of persons or specific class of goods or services based on the recommendation of GST Council. Section 16(4) inserted in the IGST Act, 2017 thus reads as below.

The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Thus, any export of goods or services and supply to SEZ developer or unit for authorized operations is termed as zero-rated supply. The supplier is eligible to avail Input Tax Credit in relation to such supply. The Input Tax Credit so availed can be utilized towards payment of output tax against other taxable supplies or can be claimed as refund subject to the condition that the export proceeds are realized within the time line permissible under FEMA.

CASE LAW

In re: Carnation Hotels Private Limited (2019) - GST AAR Karnataka

Accommodation services provided to SEZ units are to be treated as zero rated supplies.

The applicant having registered office in New Delhi proposed to operate hotels and rent out the rooms to the employees of SEZ units sought advance ruling whether such accommodation services rendered by the applicant to SEZ units can be treated as 'zero rated supplies' under GST.

Under GST, Supply of goods/services or both to a SEZ Developer/Unit are treated as 'Zero Rated Supplies'. Supply to SEZ developer/units shall be treated as such only if those are used towards authorized operations by SEZ.

GST AAR Karnataka held that if the hotel or accommodation services received by SEZ developer/ unit for authorized operations, as endorsed by the specified officer of the zone, the benefit of zero rated supply shall be available to the supplier. Therefore, accommodation services supplied by the applicant to SEZ units are to be treated as 'zero rated supplies'.

Difference between Nil Rated, Exempt, Zero Rated and Non-GST supplies

Supply Name	***Description***
Zero Rated	Exports Supplies made to SEZ or SEZ Developers. ITC can be availed.
Nil Rated	Supplies that have a declared rate of 0% GST. ITC cannot be availed. *Example:* Salt, grains, jaggery etc.
Exempt	Supply which attracts Nil rate of tax or which are specifically exempt from GST through government notification and includes non-taxable supply. ITC cannot be availed. *Example:* Fresh milk, Fresh fruits, Curd, Bread etc.
Non-GST	These supplies do not come under the purview of GST law. ITC cannot be availed. *Example:* Alcohol for human consumption, Petrol etc.

Illustration:

XYZ Education Advisory promotes the courses of foreign universities among prospective students. It has tied up with various Universities all over the world. These Universities have engaged them for promotional and marketing activities for promotion of the courses taught by them and making the prospective students aware about the course fee and other associated costs, market intelligence about the latest educational trend in the territory and ensuring payment of the requisite fees to the Universities if the prospective students decide upon pursuing any course promoted by the Applicant.

XYZ Education Advisory receives consideration in the form of commission from the foreign University for these services rendered to prospective students. It wants to know whether the service provided to the Universities abroad would be considered "export" within the meaning of Section 2(6) of the Integrated Goods and Services Act, 2017, and, therefore, a zero-rated supply under the CGST Act, 2017?

Solution:

The facts of the case are similar to the matter before Authority of Advance Ruling in the case of *Global Reach Education Services Pvt. Ltd.* where the West Bengal Authority for Advance Ruling has held that Section 2(6) of the Integrated Goods and Services Tax Act, 2017, reads as "export of services" means the supply of any service when -

i) the supplier of service is located in India;

ii) the recipient of service is located outside India;

iii) the place of supply of service is outside India;

iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8."

It is, thus, evident from the above citation that in the case of Export of Services all the conditions as laid down under Section 2(6) of IGST Act, 2017 is to be followed in totality without any violation, and that there is no scope of partial compliance of the conditions laid down therein. The main service provided by the applicant is facilitating recruitment of students and the consideration is paid as commission.

XYZ Education Advisory, therefore, represents the University in the territory of India and acts as its recruitment agent and not as an independent service provider.

Being an intermediary service provider, the place of supply shall be determined under section 13(8)(b) of the IGST Act, 2017 and not under section 13(2) of the IGST Act, 2017. The place of supply under the above legal framework is the territory of India. As the condition under section 2(6)(iii) of the IGST Act,2017 is not satisfied, the service provided by XYZ Education Advisory to the foreign universities does not qualify as "Export of Services", and is, therefore, taxable under the GST Act.

Pertinently, the referred Advance Ruling has also been affirmed by the Appellate AAR.

Services Exempt from Tax [Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017]

Sr. No.	***Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017***
1.	Services by an entity registered **under section 12AA** of the Income-tax Act, 1961 **by way** of charitable activities.
2.	Services by way of **transfer of a going concern**, as a whole or an independent part thereof.
3.	**Pure services** (excluding works contract service or other composite supplies involving supply of any goods) provided to ➢ the Central Government, ➢ State Government, or ➢ Union Territory, or ➢ Local Authority, or ➢ a Governmental authority, or ➢ a Governmental entity by way of any activity in relation to any function entrusted **to a Panchayat** under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article **243W** of the Constitution.
4.	Services by Governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
5.	Services **by** ➢ a **Governmental authority** by way of any activity in relation to any function entrusted to a Panchayatunder article 243G of the Constitution.
6.	Services **by** the **Central Government, State Government, Union Territory or Local Authority** excluding the following services - (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any services, other than services covered under entries (a) to (c) above, provided to business entities.
7.	Services provided **by** ➢ The Central Government, ➢ State Government, ➢ Union Territory, or ➢ Local authority to a business entity with an aggregate turnover of to **such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017**. Explanation: For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to - (a) services, - (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers; and (b) services by way of renting of immovable property.
8.	Services provided by ➢ The Central Government, ➢ State Government, ➢ Union Territory, or ➢ Local Authority to another Central Government, State Government, Union Territory or Local Authority.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
	Provided that nothing contained in this entry shall apply to services - (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers.
9.	Services provided **by** - ➢ Central Government, ➢ State Government, ➢ Union Territory, or ➢ A Local Authority where the consideration for such services does not exceed five thousand rupees: **Provided** that nothing contained in this entry shall apply to - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers: **Provided further** that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union Territory or a Local Authority, the exemption shall apply only where the consideration charged for such service does not exceed five thousand rupees (Rs. 5000) in a financial year.
9A	Services provided by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India. Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2017.
9AA	Services provided by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India. Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.
9B	Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
9C	Supply of service by a Government Entity to Central Government, State Government, Union Territory, Local Authority or any person specified by Central Government, State Government, Union Territory or Local Authority against consideration received from Central Government, State Government, Union Territory or Local Authority, in the form of grants.
9D	Services by an old age home run by Central Government, State Government or by an entity registered under section 12AA of the Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto twenty five thousand rupees (Rs. 25,000) per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.
10	Services provided **by** way of pure labour contracts of: ➢ construction, ➢ erection, ➢ commissioning, ➢ installation, ➢ completion, ➢ fitting out, ➢ repair, ➢ maintenance, ➢ renovation, ➢ or alteration of a civil structure or any other original works pertaining to the Beneficiary-led individual house construction or enhancement under the Housing for **All (Urban) Mission** or Pradhan Mantri Awas Yojana.
10A	Services supplied **by** electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.
11.	Services **by** way of pure labour contracts of ➢ construction, ➢ erection, ➢ commissioning, or ➢ installation of original works pertaining to a **single residential unit** otherwise than as a part of a residential complex.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
11A	Service provided **by** Fair Price Shops to Central Government, State Government or Union Territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.
12.	Services **by** way of renting of residential dwelling for use as residence.
13.	Services **by** a person by way of - (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by ➢ an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961, or ➢ a trust or an institution registered under sub-clause (v) of clause (23Q of section 10 of the Income-tax Act, or a body or an authority covered under clause (23BBA) of section 10 of the Income-tax Act: **Provided** that nothing contained in entry (b) of this exemption shall apply to,- (i) renting of rooms where charges are Rs. 1000 or more per day; (ii) renting of premises, community halls, kalian mandapam or open area, and the like where charges are Rs. 10,000 or more per day; (iii) renting of shops or other spaces for business or commerce where charges are Rs. 10,000 or more per month.
14.	Services **by** a - ➢ hotel, inn, guest house, club or campsite, by whatever name called, ➢ for residential or lodging purposes, ➢ having value of supply of a unit of accommodation below or equal one thousand rupees (Rs. 1000) per day or equivalent.
15.	Transport of passengers, with or without accompanied belongings**, by** - (a) air, embarking from or terminating in an airport located in the state of - ➢ Arunachal Pradesh, ➢ Assam, ➢ Manipur, ➢ Meghalaya, ➢ Mizoram, ➢ Nagaland, ➢ Sikkim, ➢ Tripura, ➢ at Bagdogra located in West Bengal;

Sr. No.	Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017
	(b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air-conditioned stage carriage. However, nothing contained in items (b) and (c) above shall apply to services supplied through an Electronic Commerce Operator (ECO), and notified under section 9(5) of the CGST Act, 2017.
16.	Services provided - ➢ **to** the Central Government, ➢ by way of transport of passengers with or without accompanied belongings, ➢ by air, ➢ embarking from or terminating at a regional connectivity scheme airport, ➢ against consideration in the form of viability gap funding: **Provided** that nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.
17.	Service of transportation of passengers, with or without accompanied belongings, **by** - (i) railways in a class other than - (A) first class; or (B) an air-conditioned coach; (ii) metro, monorail or tramway; (iii) inland waterways; (iv) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (v) metered cabs or auto rickshaws (including e-rickshaws). However, nothing contained in item (v) above shall apply to services supplied through an ECO, and notified under section 9(5) of the CGST Act, 2017.
18.	Services **by** way of transportation of goods (a) by road except the services of- (A) a goods transportation agency; or (B) a courier agency; (b) by inland waterways.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
19.	Services **by** way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
19A.	Services **by** way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India. Nothing contained in this serial number shall apply after the 30th day of September, 2021.
19B.	Services **by** way of transportation of goods by a vessel from customs station of clearance in India to a place outside India. Nothing contained in this serial number shall apply after the 30th day of September, 2021.
19C.	Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited.
20.	Services **by** way of transportation by **rail or a vessel** from one place in India to another of the following goods- (i) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (ii) defence or military equipments; (iii) newspaper or magazines registered with the Registrar of Newspapers; (iv) railway equipments or materials; (v) agricultural produce; (vi) milk, salt and food-grain including flours, pulses and rice; and (vii) organic manure.
21.	Services provided **by** a **goods transport** agency, by way of transport in a goods carriage of,- (a) agricultural produce; (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees (Rs. 1500); (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty (Rs. 750); (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
21A.	Services provided **by** a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely :- (a) any factory registered under or governed by the factories Act, 1948; or (b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any Co-operative Society established by or under any law for the time being in force; or (d) any body corporate established, by or under any law for the time being in force; or (e) any partnership firm whether registered or not under any law including association of persons; (f) any casual taxable person registered under the Central Goods and Services Tax Act, 2017 or the Integrated Goods and Services Tax Act, 2017 or the State Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017.
21B.	Services provided **by** a goods transport agency, by way of transport of goods in a goods carriage, to, - (a) a Department or Establishment of the Central Government or State Government or Union Territory; or (b) Local Authority; or (c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services.
22.	Services by way of giving on hire - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a Local Authority, an Electrically operated vehicle meant to carry more than twelve passengers; or *Explanation* - For the purposes of this entry, "Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle. (b) to a goods transport agency, a means of transportation of goods; (c) motor vehicle for transport of students, faculty and staff to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.
23.	Service **by** way of access to a road or a bridge on payment of toll charges.
23A.	Service **by** way of access to a road or a bridge on payment of annuity.
24.	Services **by** way of loading, unloading, packing, storage or warehousing of rice.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
24A.	Services **by** way of warehousing of minor forest produce.
24B.	Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.
25.	Transmission or distribution of electricity by an electricity transmission or distribution utility.
26.	Services **by** the Reserve Bank of India.
27.	Services **by** way of- (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.
27A.	Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
28.	Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013.
29.	Services of life insurance business provided or agreed to be provided ➢ by the Army, Naval and Air Force Group Insurance Funds; ➢ to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
29A.	Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.
29B.	Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.
30.	Services **by** Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948.
31.	Services provided **by** Employees Provident Fund Organisation to persons governed under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 .
31A.	Services **by** Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 .
31B.	Services **by** National Pension System (NPS) Trust to its members against consideration in the form of administrative fee.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
32.	Services provided **by** Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 .
33.	Services provided **by** the ➢ Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 ; ➢ by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
34.	Services **by** an acquiring bank, ➢ to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service. **Explanation** - For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.
34A.	Services supplied **by** Central Government, State Government, Union Territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.
35.	Services of **General Insurance business** provided under following schemes- (a) Hut Insurance Scheme; (b) Cattle Insurance under Swamajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) Premia collected on export credit insurance; (h) Restructured Weather Based Crop Insurance Scheme (RWCIS) approved by the Government of India and implemented by the Ministry of Agriculture; (i) An Arogya Bima Policy; (j) Pradhan Mantri Fasal Bima Yojna (PMFBY); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme;

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
	(p) Pradhan Mantri Suraksha Bima Yojna; (q) Niramaya Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999; (r) Bangla Shasya Bima.
36.	Services of Life Insurance business provided under following schemes- (i) Janashree Bima Yojana; (ii) Aam Aadmi Bima Yojana; (iii) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of two lakh rupees (Rs. 200,000); (iv) Varishtha Pension Bima Yojana; (v) Pradhan Mantri Jeevan Jyoti Bima Yojana; (vi) Pradhan Mantri Jan Dhan Yojana; (vii) Pradhan Mantri Vaya Vandan Yojana.
36A.	Services **by** way of reinsurance of the insurance schemes specified in serial number 35 or 36 or 40.
37.	Services **by** way of collection of contribution under Atal Pension Yojana.
38.	Services **by** way of collection of contribution under any pension scheme of the State Governments.
39.	Services **by** the following persons in respective capacities- (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch; (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in clause (a); or (c) business facilitator or a business correspondent to an insurance company in a rural area.
39A.	Services **by** an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR). **Explanation.** - For the purposes of this entry, the intermediary of financial services in IFSC is a person,- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
40.	Services provided to the Central Government, State Government, Union Territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union Territory.
41.	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent, or more ownership of Central Government, State Government, Union Territory to the industrial units or the developers in any industrial or financial business area. **Explanation.** - For the purpose of this exemption, the Central Government, State Government or Union Territory shall have 50 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union Territory. Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area : Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard: Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty : Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.
41A.	Service **by** way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under : **[GST payable on TDR or FSI (including additional FSI) or both for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)** Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate or first occupation of the project, as the case may be, in the following manner -

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
	[GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein] × (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project) Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier. Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 1-4-2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: **[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).**
41B.	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 1-4-2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: **[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)].**
41B.	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner -

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
	[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] × (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project) Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.
42.	Services provided by ➢ the Central Government, ➢ State Government, ➢ Union Territory, ➢ a Local Authority, ➢ by way of allowing a business entity to operate, ➢ as a telecom service provider, or ➢ use radio frequency spectrum. during the period prior to 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.
44.	Services provided **by** an incubate **upto a total turnover of fifty lakh rupees** in a financial year subject to the following conditions, namely:- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee.
45.	Services provided **by-** (a) an arbitral tribunal to- (i) any person other than a business entity; or (ii) a business entity with a turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017; (ii) the Central Government, State Government, Union Territory, Local Authority, Governmental Authority or Governmental Entity.

Sr. No.	Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017
	(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017; or (iv) the Central Government, State Government, Union Territory, Local Authority, Governmental Authority or Governmental Entity. (c) a senior advocate by way of legal services to- (i) any person other than a business entity; (ii) a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017; or (iii) the Central Government, State Government, Union Territory, Local Authority, Governmental Authority or Governmental Entity.
46.	Services **by** a veterinary clinic in relation to health care of animals or birds.
47.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union Territory, or ➢ a Local Authority by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.
47A.	Services **by** way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.
48.	Taxable Services, provided or to be provided, ➢ by a Technology Business Incubator; or ➢ a Science and Technology Entrepreneurship Park recognized by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India; or ➢ bio-incubators recognized by the Biotechnology Industry Research Assistance Council, under Department of Biotechnology, Government of India.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
49.	Services **by** way of ➢ collecting or providing news by ➢ an independent journalist, ➢ Press Trust of India, or ➢ United News of India.
50.	Services of public libraries by way of lending of ➢ books, ➢ publications, or ➢ any other knowledge-enhancing content or material.
51.	Services provided **by** the Goods and Services Tax Network to the Central Government or State Governments or Union Territories for implementation of Goods and Services Tax.
52.	Services **by** an **organiser** ➢ to any person in respect of a business exhibition, ➢ held outside India.
53.	Services **by** way of sponsorship of sporting events organised,- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any District, State, Zone or Country; (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympics Committee of India or Special Olympics Bharat; (c) by Central Civil Services Cultural and Sports Board; (d) as part of national games, by Indian Olympic Association; or (e) under Panchayat Yuva Kreeda Aur Khel Abhivaan Scheme.
53A.	Services **by** way of fumigation in a warehouse of agricultural produce.
54.	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; or (ii) supply of farm labour; (iii) processes earned out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
	(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; (v) loading, unloading, packing, storage or warehousing of agricultural produce; (vi) agricultural extension services; (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce; (viii) services by way of fumigation in a warehouse of agricultural produce.
55.	Carrying out an **intermediate production process as job work** in relation to ➢ cultivation of plants, ➢ rearing of all life forms of animals, except, ➢ the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
55A.	Services **by** way of artificial insemination of livestock (other than horses).
56.	Services by way of slaughtering of animals.
57.	Services **by** way of ➢ pre-conditioning, ➢ pre-cooling, ➢ ripening, ➢ waxing, ➢ retail packing, ➢ labeling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
58.	Services provided **by** ➢ National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation; and ➢ Farmer's Welfare by way of cold chain knowledge dissemination.
59.	Services **by** a foreign diplomatic mission located in India.
60.	Services **by** a specified organization in respect of a **religious pilgrimage** facilitated by the Government of India, under bilateral arrangement.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
61.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union Territory, or ➢ a Local Authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
61A	Services **by** way of granting National Permit to a goods carriage to operate through-out India/ contiguous States.
62.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union Territory, or ➢ a Local Authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union Territory or Local Authority under such contract.
63.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union Territory, or ➢ a Local Authority by way of assignment of right to use natural resources to ➢ an individual farmer for, ➢ cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products.
64.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union Territory, or ➢ a Local Authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union Territory or Local Authority before the 1st April, 2016: **Provided** that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
65.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union Territory, or by way of deputing officers after office hours or on holidays ➢ for inspection, ➢ or container stuffing, or ➢ such other duties in relation to import export cargo on payment of Merchant Overtime charges.
65A.	Services **by** way of providing information under the Right to Information Act, 2005.
65B.	Services supplied **by** a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders. **Explanation -** "mining lease holder" means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957, the rules made thereunder or the rules made by a State Government under sub- section (1) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. Provided that at the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of goods and services tax deposited by mining lease holders on royalty is more than the goods and services tax exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of goods and services tax paid by mining lease holders is less than the amount of goods and services tax exempted, the exemption shall be restricted to such amount as is equal to the amount of goods and services tax paid by the mining lease holders and the ERCC shall pay the difference between goods and services tax exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and goods and services tax paid by the mining lease holders on royalty.
66.	Services provided - (a) **by** an educational institution to its students, faculty and staff; (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee. (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union Territory; (iii) security or cleaning or housekeeping services performed in such educational institution;

Sr. No.	Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017
	(iv) services relating to admission to, or conduct of examination by, such institution; (v) supply of online educational journals or periodicals. Provided that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent. Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of, - (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course. Provided that nothing contained in clause (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.
67.	Omitted w.e.f. 01.01.2019.
68.	Services provided to a recognized sports body **by** (a) an individual as ➢ a player, ➢ referee, ➢ umpire, ➢ coach, or ➢ team manager. for participation in a sporting event organized by a recognized sports body; (b) another recognized sports body.
69.	Any services provided **by,-** (i) the National Skill Development Corporation set up by the Government of India; (ii) a Sector Skill Council approved by the National Skill Development Corporation; (iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council in relation to (a) the National Skill Development Programme implemented by the National Skill Development Corporation; or (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (c) any other Scheme implemented by the National Skill Development Corporation.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
70.	Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative Scheme.
71.	Services provided **by** training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by National Council for Vocational Training.
72.	Services provided to the Central Government, State Government, Union Territory administration under any training programme for which 75% expenditure is borne by the Central Government, State Government, Union Territory administration.
73.	Services provided **by** cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.
74.	Services **by** way of- (a) Health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) Services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
74A.	Services provided **by** rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union Territory or an entity registered under section 12AA of the Income-tax Act, 1961.
75.	Services provided **by** operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.
76.	Services **by** way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
77.	Service **by** an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution- (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or (c) up to an amount of seven thousand five hundred rupees (Rs.7500) per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
77A.	Services provided **by** an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in, - (i) Activities relating to the welfare of industrial or agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (Rs 1000/-) per member per year.
78.	Services **by** an artist by way of a performance in folk or classical art forms of: (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is **not more than one lakh and fifty thousand rupees (Rs.1,50,000)**: **Provided** that the **exemption shall not apply** to service provided by such artist as a brand ambassador.
79.	Services **by** way of admission to - ➢ a museum, ➢ national park, ➢ wildlife sanctuary, ➢ tiger reserve, or ➢ zoo.
79A.	Services **by** way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any of the State Acts, for the time being in force.
80.	Services **by** way of training or coaching in recreational activities relating to arts or culture, or sports by charitable entities registered under section 12AA of Income-tax Act, 1963.
81.	Services **by** way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event; (d) planetarium, where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than Rs. 500 per person.
81A.	Services **by** way of right to admission to the events organised under FIFA U-17 World Cup 2017 (not relevant now).

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
82.	Services provided to the United Nations or a specified international organization is exempt by way of refund.
82A.	Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020 (not relevant now).
	Description of services which are exempt under IGST only
83.	Services provided to a foreign diplomatic mission or consular post in India or for personal use or for the use of the family members of diplomatic agents or career consular officers posed therein, is exempt by way of refund.
84.	Services by the Central Government or State Government or any Local Authority by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution is neither a supply of goods nor a supply of service.
85.	Services **received** from a provider of service located in a non-taxable territory by (a) the Central Government, State Government, Union Territory, a Local Authority, a Governmental Authority or an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or (c) a person located in a non-taxable territory: **Provided** that the exemption shall not apply to - (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.
86.	Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves.
87.	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.

Illustration:

Ashish acts as a team manager for Indian Sports Authority (ISA), a recognised sports body, for a tennis tournament organised by a multinational company and received a remuneration of Rs. 2,00,000. Determine whether GST is payable on the remuneration received by Ashish.

Solution : Services provided by a team manager to a recognised sports body for participation in a sporting event are exempt from GST provided said sporting event is organised by a recognized sports body.

In the given case, the services are being provided by a team manager to a recognised sports body, but the sporting event is not organised by a recognised sports body. Therefore, the services provided by Ashish are not exempt from GST.

Illustration:

Ramu Transporters, a Goods Transport Agency, transported relief materials meant for victims of Kerala floods, a natural disaster, by road from Delhi to Ernakulam, for a company. Ramu Transporters is of the view that it is not liable to pay GST on the said services provided as said services are exempt. You are required to advice it on the said issue.

Solution : Services provided by a goods transport agency, by way of transport in a goods carriage of relief materials meant for victims of, *inter alia,* natural or man-made disasters, calamities, are exempt from GST. Therefore, services provided by Ramu Transporters will be exempt from GST.

Clarification regarding applicability of GST on supply of food in Anganwadis and Schools [Circular No. 149/05/2021 – GST, dated June 17, 2021]

Clarification on applicability of GST on the issues as to whether serving of food in schools under Mid-Day Meals Scheme would be exempt if such supplies are funded by government grants and/or corporate donations. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.

Entry 66 clause (b)(ii) of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union Territory. This entry applies to pre-school and schools.

Accordingly, as per said entry 66, any catering service provided to an educational institution is exempt from GST. The entry further mentions that such exempt service includes mid- day meal service as specified in the entry. The scope of this entry is thus wide enough to cover any serving of any food to a school, including pre-school. Further, an Anganwadi interalia provides pre-school non-formal education. Hence, aganwadi is covered by the definition of educational institution (as pre-school).

As per recommendation of the GST Council, it is clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include aganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

For further details please visit: https://www.cbic.gov.in/resources/htdocscbec/gst/Circular_Refund_149.pdf

Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity) [Circular No. 150/06/2021 – GST, dated June 17, 2021]

GST is exempt on service, falling under heading 9967 (service code), by way of access to a road or a bridge on payment of annuity. Heading 9967 covers “supporting services in transport” under which code 996742 covers “operation services of National Highways, State Highways, Expressways, Roads & Streets; Bridges and Tunnel operation services”. Entry 23 of said notification exempts “service by way of access to a road or a bridge on payment of toll”. Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity. It is hereby clarified that Entry 23A of notification No. 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.

For further details please visit: https://www.cbic.gov.in/resources//htdocscbec/gst/Circular_Refund_150.pdf

Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination) [Circular No. 151/07/2021 – GST, dated June 17, 2021]

GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution. Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations. GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc., when provided to such Boards.

For further details please visit: https://www.cbic.gov.in/resources//htdocscbec/gst/Circular_Refund_151.pdf

Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis [Circular No. 152/08/2021 – GST, dated June 17, 2021]

Works contract service provided by way of construction such as of rope way shall fall under entry at Sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%.

For further details please visit: https://www.cbic.gov.in/resources//htdocscbec/gst/Circular_Refund_152.pdf

GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS [Circular No. 153/09/2021 – GST, dated June 17, 2021]

In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

For further details please visit: https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_153.pdf

COMPOSITION SCHEME [SECTION 10 OF CGST ACT, 2017]

Composition Scheme in GST provides an alternative method of tax payment small and medium taxpayers whose turnover is not exceeding the prescribed threshold. The tax rates under this scheme have been kept at minimal but at the same time a person opting to pay tax under composition levy scheme can neither take Input Tax Credit nor it can collect any tax from the recipient. It is a voluntary and optional scheme.

Who can opt for Composition Scheme

Notwithstanding anything to the contrary contained in this act but subject to the provisions of sub-sections (3) and (4) of section 9,

- a registered person,
- whose aggregate turnover in the preceding financial year,
- did not exceed One Crore and fifty lakh rupees (Rs.1.5 Crore)*,

– may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9,

– an amount of tax calculated at the rates as prescribed under Rule 7 of the CGST Rules, 2017.

* for supply of goods and restaurant services

In case of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand the threshold limit is Rs. 75 lakhs [instead of Rs. 1.5 Crore] (Notification No. 14/2019 Central Tax dated March 07, 2019).

Section 2(6) defines "aggregate turnover" as the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and Inter-State supplies of persons having the same Permanent Account Number, is to be computed on all India basis but excludes Central Tax, State Tax, Union Territory Tax, Integrated Tax and Cess.

Optees of Composition Scheme allowed to provide limited quantum of service -

A person who opts to pay tax under composition scheme may supply services (other than restaurant service) of value **not exceeding ten per cent**. of turnover in a State or Union Territory in the preceding financial year.

or

five lakh rupees (Rs.5,00,000),

whichever is higher.

Exclusion of interest/discount from the value of turnover in a State/ Union Territory

For the above purpose, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union Territory.

Presently, following rates have been prescribed under Rule 7 of CGST Act, 2017.

Sl. No.	*Category of registered persons*	*Rate of CGST*	*Rate of SGST*	*Total tax*
1.	**Manufacturers,** other than manufacturers of such goods as may be notified by the Government. Presently, the Government has notified Pan Masala, Ice Cream and other edible ice, whether or not containing cocoa, Tobacco and manufactured tobacco substitutes as the goods not eligible* for composition levy.	0.5% of the turnover in the State or Union Territory	0.5% of the turnover in the State or Union Territory	1% of the turnover in the State or Union Territory
2.	**Suppliers** making supplies referred to in clause (b) of paragraph 6 of Schedule II [i.e., supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration] [**mainly Restaurant Service**].	2.5% of the turnover in the State or Union Territory	2.5% of the turnover in the State or Union Territory	5% of the turnover in the State or Union Territory

3.	Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter [mainly traders].	0.5% of the turnover of taxable supplies of goods and services in the State or Union Territory	0.5% of the turnover of taxable supplies of goods and services in the State or Union Territory	1% of the turnover of taxable supplies of goods and services in the State or Union Territory

The composition levy under section 10 of the CGST act is mainly available to the manufacturers and traders of goods and to service providers engaged in restaurant business. However, considering that persons engaged in the manufacture and/ or supply of goods may have to engage themselves in the supply of service to some extent as a business necessity, the amendment is carried out in Section 10 w.e.f. 1.2.2019 so as to provide that the suppliers otherwise eligible for composition levy may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II i.e., restaurant service), of value not exceeding ten per cent. of turnover in a State or Union Territory in the preceding financial year **or** five lakh rupees, whichever is higher.

With effect from April 01, 2022, *Notification No. 14/2019 Central Tax dated 07.03.2019* has been amended to include following items also

- Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
- Bricks of fossil meals or similar siliceous earths
- Building bricks
- Earthen or roofing tiles.

Eligibility to Opt Under Composition Scheme Section 10(2)

The registered person shall be eligible to opt under sub-section (1), if: -

(a) save as provided in sub-section (1) he is not engaged in the supply of services;

(b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;

(c) he is not engaged in making any Inter-State outward supplies of goods;

(d) he is not engaged in making any supply of goods through an ECO who is required to collect tax at source under section 52; and

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council.

Provided that where more than one registered persons are having the same Permanent Account Number (PAN) (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

The list notified by the Government were the concept of the composition scheme cannot be levied is as under :

1) The person involved in the manufacturing of Pan masala, Tobacco and Ice Cream.

2) The person manufacturing or supplying the aerated water. etc.

Composition Scheme primarily for supplier of services Section 10(2A) of the CGST Act, 2017

A registered person who is not eligible to opt to pay under Composition Scheme meant primarily for supplier of goods and whose aggregate turnover in the preceding financial year did not exceed Rs. 50 Lacs. The maximum effective rate of tax is 6 % (i.e. 3% CGST and 3% SGST for respective State) of the turnover in state or turnover in Union Territory. All other conditions are same as already covered above in Section 10(2) of CGST Act, 2017.

When option will Lapse [Section 10(3)]

The option availed by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).

Restriction on Collection of Tax [Section 10 (4)]

A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

In effect, the taxable person opting composition scheme shall consider tax payable under such scheme as its cost and factor in the price itself. It will not collect such tax as tax separately in the invoices issued to the recipient. Neither, it can avail Input Tax Credit charged by its suppliers.

What If a Person not eligible under Composition Scheme makes payment of Tax

According to Such Scheme Section 10 (5) if the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.

Illustration:

Mr. A, a retailer, presents the following information for the year -

Purchases of goods: Rs. 30,00,000., out of which goods worth Rs. 2,00,000 purchased from unregistered dealer.Sale of Goods: Rs. 49,00,000. He has opted the composition scheme. Show the treatment in GST, assuming that rate under GST are 0.5% CGST and 0.5% (composition scheme) and 9% CGST and 9% SGST (Regular scheme).

Solution:

Tax payable under Composition Scheme:

CGST payable= 49, 00,000 × 0.5% = 24,500

SGST payable=49, 00,000 × 0.5% = 24,500

Illustration:

A person availing composition scheme during a financial year crosses the turnover of Rs. 150 Lakhs (Rs. 75 lakhs in specified States) during the course of the year, i.e., say he crosses the turnover in December? Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e., till 31st March?

Solution:

No. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds Rs. 150 Lacs (Rs. 75 lakhs in specified States).

Illustration:

Delite Brothers, engaged in the sale of spare parts of motor vehicles, have opted for composition. During the year, apart from the sale of spare parts for Rs. 1.2 Cr, they also provided maintenance service to their few customers for which they earned revenue of Rs.8 Lakhs. Please advise the eligibility of Delite Brothers of composition levy under Section 10 of the CGST Act.

Solution:

Under Section 10 of the CGST Act, the registered person opting to pay tax under composition levy can apart from manufacture / supply of goods, provide service not exceeding 10% of their turnover or Rs. 5 lakhs whichever is higher. In this case, the turnover representing service comes to Rs.8 lakhs which is less than 10% of their total turnover. Thus, Delite brother shall be eligible for composition levy in that financial year.

PROCEDURAL ASPECTS OF COMPOSITION SCHEME

Intimation for Composition Levy [Rule 3]

Intimation to opt composition levy [Rule3(1)]	Any person who has been **granted registration on a provisional basis** under clause (b) of sub-rule (1) of rule 24 and who opts to pay tax under section 10, shall electronically file an intimation in **FORM GST CMP-01**, duly signed, or verified through electronic verification code on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, **prior to the appointed day, but not later than thirty days (30 days) after the said day**, or such further period as may be extended by the Commissioner in this behalf: Provided that where the intimation in **FORM GST CMP-01** is filed after the appointed day, the registered person shall **not collect any tax from the appointed day** but shall **issue bill of supply** for supplies made after the said day.
Mention in registration form [Rule 3(2)]	Any person who applies for registration under sub-rule (1) of rule 8 may give an option to pay tax under section 10 in Part B of **FORM GST REG-01,** which shall beconsidered as an intimation to pay tax under the said section.
Intimation to opt composition levy before commencement of F.Y. [Rule 3(3)]	Any registered person who opts to pay tax under section 10 shall electronically file an intimation in **FORM GST CMP-02**, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notification by the Commissioner prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in **FORM GST ITC-03 i.e., ITC reversal on stock**, in accordance with the provisions of sub-rule (4) of rule 44 **within a periodof sixty days** from the commencement of the relevant financial year.
Rule 3(A)	As a business facilitation measure, the Government has inserted sub-rule (3A) of Rule 3 to provide that notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in **FORM GST CMP-02**, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall

	furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of rule 44 within a period of **one hundred and eighty days** from the day on which such person commences to pay tax under section 10. Provided that the said persons shall not be allowed to furnish the declaration in **FORM GST TRAN-1** after the statement in **FORM GST ITC-03** has been furnished.
Furnish details of stock [Rule 3(4)]	Any person who files an intimation under sub-rule (1) to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in **FORM GST CMP-03**, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, **within a period of sixty days from the date on which the option for composition levy is exercised** or within such further period as may be extended by the Commissioner in this behalf.
One intimation is deemed intimation for all other places Rule 3(5)]	Any intimation under sub-rule (1) or sub-rule (3) or sub-rule (3A) in respect of any place of business in any State or Union Territory shall be **deemed to be an intimation in respect of all other places** of business registered on the same Permanent Account Number.

Effective Date for Composition Levy [Rule 4]

Effective date for composition levy [Rule4(1)]	The option to pay tax under section 10 shall be effective from the **beginning of the financial year**, where the intimation is filed under sub-rule (3) of rule 3 and the **appointed day** where the intimation is filed under sub-rule (1) of the said rule.
Effective date [Rule 4(2)]	The intimation under sub-rule (2) of rule 3 shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.

Conditions and Restrictions for Composition Levy [Rule 5]

Conditions to opt composition levy [Rule5(1)]	The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely: - (i) he is neither a casual taxable person nor a non-resident taxable person; (ii) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3; (iii) the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9; (iv) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;

	(v) he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year; (vi) he shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him; and; (vii) he shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.
No requirement to file a fresh intimation every year [Rule 5(2)]	The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the act and these rules.

Validity of Composition Levy [Rule 6]

Validity of composition scheme [Rule 6(1)]	The option exercised by a registered person to pay tax under section 10 shall remain valid so long as **he satisfies all the conditions** mentioned in the said section and under these rules.
Liable to pay tax under regular Scheme [Rule 6(2)]	The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day **he ceases to satisfy any of the conditions** mentioned in section 10 or the provision of this chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an **intimation** for withdrawal from the scheme in **FORM GST CMP-04** within **seven days** of the occurrence of such event.
File application for withdrawal of scheme [Rule 6(3)]	The registered person who **intends to withdraw from the composition scheme** shall, before the date of such withdrawal, file an application in **FORM GST CMP-04**, duly signed or verified through electronic verification code, electronically on the common portal.
Issue show cause notice for contravention of provision [Rule 6(4)]	Where the proper officer has reasons to believe that the registered person was **not eligible** to pay tax under section 10 or has contravened the provisions of the act or provision of this chapter, he may issue a notice to such person in **FORM GST CMP- 05** to show cause **within fifteen days** of the receipt of such notice as to why option to pay tax under section 10 shall not be denied.
Reply of show cause notice and order by proper officer [Rule 6(5)]	Upon receipt of the reply to the show-cause notice issued under sub-rule (4) from the registered person in **FORM GST CMP-06**, the proper officer shall issue an order in **FORM GST CMP-07** within a period of **thirty days** of the receipt of such reply, **either accepting the reply, or denying** the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

Furnish detail of stock [Rule 6(6)]	Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in **FORM GST CMP-07** under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in **FORM GST ITC- 01 containing details of the stock** of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, **within a period of thirty days, from the date from which the option is withdrawn** or from the date of the order passed in **FORM GST CMP-07**, as the case may be.
Any intimation applicableto all other places also [Rule 6(7)]	Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax u/s 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union Territory, **shall be deemed to be an intimation in respect of all other places** of business registered on the same Permanent Account Number.

Important Clarification by CBIC

Subject: Denial of Composition option by tax authorities and effective date thereof.

1. Rule 6 of the CGST Rules, 2017 deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the CGST Act, 2017 and the CGST Rules. The rule lays down the procedure for withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the CGST Act or the CGST Rules.

2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues raised as below.

3. Sub-rule (2) of rule 6 of the CGST Rules provides that the composition taxpayer shall pay tax under sub- section (1) of section 9 of the CGST Act as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the CGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in **FORM GST CMP-04** on the common portal. He shall file intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event.

4. As per sub-rule (4) of rule 6 of the CGST Rules, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 of the CGST Act or has contravened the provisions of the CGST Act or the CGST Rules, he may issue a notice to such person in F**ORM GST CMP- 05** to show cause as to why the option to pay tax under section 10 of the CGST Act shall not be denied. Upon receipt of the reply to the show cause notice from the registered person in **FORM GST CMP-06**, the proper officer shall, in accordance with the provisions of sub-rule (5) of rule 6 of the CGST Rules, issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 of the CGST Act from the date of the option or from the date of the event concerning such contravention, as the case may be.

5. It is clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in **FORM GST CMP-04** but such date may not be prior to the commencement of the financal year in which such intimation/application for withdrawal is being filed. If at any stage it is found that he has contravened any of theprovisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules. In such cases, as provided under sub-section (5) of section 10 of the CGST Act, the proceedings would have to be initiated under the provisions of section 73 or section 74 of the CGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in **FORM GST CMP-07**. It is also clarified that the registered person shall be liable to pay tax under section 9 of the CGST Act from the date of issue of the order in **FORM GST CMP-07**. Provisions of section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

[Circular No. 77/51/2018-GST, dated 31-12-2018]

Analysis of Composition Scheme as prescribed under Section 10(1) CGST Act:

- The composition scheme **is optional.**
- However, the supplier of goods shall be allowed to make supply of services [other than restaurant service] not exceeding 10% of their turnover within the State or Union Territory or Rs. 5 lakhs whichever is higher.
- Taxable person whose all supplies of goods and services are within the state only are eligible.
- Taxable person who opts for this scheme will not be allowed to charge GST in their invoice. They will issue a bill of supply instead of Tax invoice. They are also **not** entitled to take Input Tax Credit.
- The scheme lapses on the day his aggregate turnover exceeds the specified aggregate turnover limit.
- A registered taxable person having same PAN and multiple registrations in different states have to opt for the composition scheme for all states. If one registered person opts for normal scheme, others become ineligible for composition scheme.
- Composition scheme is not applicable for tax payment under reverse charge mechanism.
- Customer **cannot** claim ITC in respect of purchases from person covered by composition scheme.

- A customer who buys goods from registered person who is under composition scheme will not be able to avail Input Tax Credit because a composition scheme supplier cannot issue a tax invoice.
- A manufacturer can opt for composition scheme generally. However, a manufacturer of goods, which would be notified on the recommendations of the GST Council, cannot opt for this scheme. This scheme is not available for services sector, except restaurants. However, the goods manufacturers/ suppliers can provide services other than restaurant service to the extent of 10% of their turnover.
- Composition tax payers do not need to file any statement of outward or inward supplies. They have to file a quarterly return in **Form GSTR-4** after the end of the quarter. Since they are not eligible for any Input Tax Credit, there is no relevance of **GSTR-2** for them and since the credit of tax paid under Composition Levy is not eligible, there is no relevance of **GSTR-1** for them. In their return, they have to declare summary details of their outward supplies along with the details of tax payment. They also have to give details of their purchases in their quarterly return itself, most of which will be auto populated.

List of Forms

Form No.	*Description*
GST CMP-01	Intimation to pay tax under section 10 (composition levy) (Only for persons registered underthe existing law migrating on the appointed day)
GST CMP-02	Intimation to pay tax under section 10 (composition levy) (For persons registered under theAct)
GST CMP-03	Intimation of details of stock on date of opting for composition levy (Only for persons registeredunder the existing law migrating on the appointed day)
GST CMP-04	Intimation / Application for withdrawal from composition Levy
GST CMP-05	Notice for denial of option to pay tax under section 10
GST CMP-06	Reply to the notice to show cause
GST CMP-07	Order for acceptance/rejection of reply to show cause notice.

Illustration:

XYZ Ltd., a manufacturing concern had effected Intra-State taxable supply of Rs. 20,00,000 and inter-State taxable supply of Rs. 25,00,000 in Financial year 2017-18. The company wants to opt for composition scheme under Section 10 of CGST Act, 2017. As a GST consultant advise XYZ Ltd. whether it can opt for composition scheme.

Solution:

As per provisions of Section 10 of CGST Act, 2017, a manufacturer can opt for composition scheme if he is not engaged in making any Inter-State outward supplies of goods. In this case since XYZ Ltd. has effected inter-State taxable supply of goods, hence it cannot opt for composition scheme.

Illustration:

A, a retailer who keeps no inventories, presents the following expected information for the year -

(1) Purchases of goods: Rs. 50 lakhs (GST @5% extra).

(2) Sales (at fixed selling price inclusive of all taxes): Rs. 60 lakhs (GST rate on such goods as per Customs Tariff is @5%).

Discuss whether he should opt for composition scheme if composite tax is 1% of turnover. Expenses of keeping detailed statutory records required under the GST Laws will be Rs. 1,20,000 p.a., which shall get reduced to Rs. 50,000 if composition scheme is opted for. Other expenses are Rs. 3,00,000 p.a.

Solution:

The cost to the ultimate consumer under two schemes is as under -

Particulars	***Normal GST scheme***	***Composition Scheme***
Cost of goods sold (*No credit under composition scheme, hence, cost of goods sold will be higher)	50,00,000	52,50,000
Add: Costs of maintaining records	1,20,000	50,000
Add: Normal Expenses	3,00,000	3,00,000
Total Costs	54,20,000	56,00,000
Sales (inclusive of all taxes)	60,00,000	60,00,000
Less: Tax (GST = Rs. 60 lakh × 5 / 105); (Composite Tax = Rs. 60 lakh × 1%)	2,85,714	60,000
Sales (net of taxes)	57,14,286	59,40,000
Profit of the dealer (Sales, (net of taxes - Total Costs)	2,94,286	3,40,000

Conclusion: It is apparent that while cost to ultimate consumer, in both the cases remains same, the profit of the dealer is higher if the dealer opts for composition scheme. Hence, composition scheme should be opted.

Illustration:

Applicability of composition scheme: XYZ Ltd. is having two factories. One factory is located in Rajasthan is manufacturing readymade garments and another factory located in Gujarat is engaged in manufacture of auto components. The turnover details of Financial Year 2017-18 are as under:

	Particulars	***Rs.***
(1)	Intra-State supply of readymade garments in Rajasthan	28,00,000
(2)	Intra-State supply of auto- components in Gujarat	18,00,000
	Total Value of taxable supplies	46,00,000

The company wants to opt for composition scheme for factory in Rajasthan and tax at normal rates in Gujarat. Advise.

Solution:

According to Section 10(2) of CGST Act, 2017, All Registered person having same PAN have to opt for Composition Scheme. If one opts for regular levy for one registered place, others become ineligible for composition levy. Thus, XYZ Ltd. cannot opt for composition scheme in Rajasthan and pay normal tax in Gujarat.

Illustration:

Determine whether the suppliers in the following cases are eligible for composition levy, under section 10(1) & 10(2), provided their turnover in preceding year does not exceed Rs.1.5 crore:

(i) Ram Enterprises is engaged in trading of pan masala in Rajasthan and is registered in the same State.

(ii) Shyam Manufacturers has registered offices in Punjab and Haryana and supplies goods in neighbouring States.

Solution :

(i) A supplier engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY is not eligible for composition scheme under section 10(1) and 10(2). Ice cream and other edible ice, whether or not containing cocoa, Pan masala, Tobacco and manufactured tobacco substitutes and aerated waters are notified under this category. However, in the given case, since Ram Enterprises is engaged in trading of pan masala and not manufacture and his turnover does not exceed Rs.1.5 crore, he is eligible for composition scheme subject to fulfilment of specified conditions.

(ii) Since supplier of inter-State outward supplies of goods or services is not eligible for composition levy, Shyam Manufacturers is not eligible for composition levy.

LIABILITY TO PAY GST

The liability to pay GST would depend on the mechanism the transaction aligns to, as under:

a) Forward Charge Mechanism

Forward charge or direct charge is the mechanism where the supplier of goods/services is liable to pay tax. For instance, if a Company Secretary provided a service to his client, the service tax will be payable by the Company Secretary. Here the supplier is registered under GST, he issues a tax invoice, collects the GST and pays it to the Government.

b) Reverse Charge Mechanism

Generally, the supplier of goods or services is liable to pay GST. However, in specific cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse Charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply. Here the supplier is not registered under GST, hence, he cannot issue a tax invoice, and therefore the recipient pays the GST on the supply on behalf of the supplier, directly to the Government.

It must be noted although, that Input Tax Credit can be availed in both the above scenarios, subject to the fulfilment of conditions for availing Input Tax Credit.

In case of E-commerce, the E-commerce operators, who are mandatorily required to register with GST, collect tax at source at a specified percentage and pay the same to the Government.

Situations under which RCM becomes applicable:

I. Central Board of Indirect Taxes and Customs (CBIC) has notified a list of goods or services on which RCM is applicable.

II. Supply by Unregistered Dealer to Registered Dealer.

III. In case of services provided by E-commerce operators, liability to pay tax lies on the recipient of services.

As per Section 24 of the CGST Act, 2017 persons who are required to pay tax under reverse charge should register themselves compulsorily irrespective of the turnover limit.

Goods Notified under Reverse Charge under Section 9(3) by Notification No. 4/2017-Central Tax (Rate)

Sl. No.	*Description of supply of Goods*	*Supplier of goods*	*Recipient of supply*
(1)	*(2)*	*(3)*	*(4)*
1.	Cashewnuts, not shelled or peeled	Agriculturist	Any registered person
2.	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	Tobacco leaves	Agriculturist	Any registered person
3A	Following essential oils other than those of citrus fruit: a. Of peppermint (Menthapiperita) b. Of other mints: Spearmint oil (exmenthaspicata), Water mint- oil (exenthaaquatic), Horsemint oil (ex-menthasylvestries), Bergament oil (exmentha citrate)	Any unregistered person	Any registered person
4.	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A.	Raw cotton	Agriculturist	Any registered person".

5.	Supply of lottery	State Government, Union Territory or any Local Authority	Lottery distributor or selling agent. *Explanation*- For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub-section 1 of section 11 of the Lotteries (Regulations) Act, 1998 (17 of 1998).
6.	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union Territory or a Local Authority	Any registered person
7.	Priority Sector Lending Certificate	Any registered person	Any registered person

Explanation:-

(1) In this Table, "tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading or chapter, as specified in the First Schedule to the Customs Tariff Act, 1975.

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Service notified under reverse charge as per Notification No. 13/2017 Central Tax (Rate) dated 28.6.2017, as amended from time to time

(i) CGST and SGST/IGST payable under reverse charge basis by the recipient of such services- Services under reverse charge is covered under section 9(3) of the CGST Act, 2017 and Section 5(3) of the IGST Act, 2017

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
(1)	*(2)*	*(3)*	*(4)*
1.	Supply of Services by a Goods Transport Agency (GTA) who has not paid integrated tax at the rate of 12% in respect of transportation of goods by road to - (a) any factory registered under or governed by the factories Act, 1948 (63 of 1948); or	Goods Transport Agency (GTA)	(a) Any factory registered under or governed by the factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
	(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or (e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons.		(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or (e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person; located in the taxable territory.
2	"Services provided by an individual **Advocate** including a senior advocate or firm of advocates by way of legal services, directly or indirectly. *Explanation*. - "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority".	An individual advocate including a senior advocate or Firm of advocates.	Any business entity located in the taxable territory.
3	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
4	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5	Services supplied by the Central Government, State Government, Union Territory or Local Authority to a business entity excluding- (1) renting of immovable property, and (2) services specified below - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a Person other than Central Government, State Government or Union Territory or Local Authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; transport of goods or passengers.	Central Government, State Government, Union Territory or Local Authority	Any business entity located in the taxable territory.
5A	Services supplied by the Central Government, State Government, Union Territory or Local Authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.	Central Government, State Government, Union Territory or Local Authority	Any person registered under the Central Goods and Services Tax Act, 2017 read with clause (v) of section 20 of Integrated Goods and Services Tax Act, 2017.

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
5B	Services supplied by any person by way of Transfer of Development Rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter.
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter.
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory: Provided that nothing contained in this entry shall apply where, - (i) the author has taken registration under the Central Goods and Services Tax Act, 2017, and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay integrated tax on the service specified in column (2), under forward charge in accordance with Section 5(1) of the Integrated Goods and Service Tax Act, 2017 under forward charge, and to comply with all the provisions of Integrated Goods and Service Tax Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; (ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher.
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.
11	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs)	Individual DirectSelling Agents (DSAs) other than a body corporate, partnershipor limited liability partnership firm	A banking company or a non-banking financial company, located in the taxable territory.

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
12.	Services provided by **Business Facilitator (BF)** to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory.
13.	Services provided by an agent of Business Correspondent (BC) to Business Correspondent (BC)	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.
14.	Security services (services provided by way of supply of security personnel) provided to a registered person	Any person other than a body corporate	A registered person, located in the taxable territory.
15.	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging integrated tax at the rate of 12 per cent. to the service recipient	Any body corporate located in the taxable territory.
16.	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended	Lender, i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower, i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI".

(ii) Services under reverse charge is covered under IGST Act, 2017 only - Section 5(3) of the IGST Act, 2017

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non- taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
2.	Services supplied by a person located in non-taxable territory by way oftransportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, located in the taxable territory.

Explanation- For purpose of this notification-

(a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

(b) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

(c) The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

(d) The words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.

(e) A "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.

(h) Provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.

(i) The term "apartment" shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016.

(j) The term "promoter" shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016.

(k) The term "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP).

(l) "The term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

(m) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

(n) "Floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.".

Goods and Services falling under Reverse Charge if supplies are made to a registered person by unregistered person in terms of Section 9(4) CGST Act, 2017/ Section 5(4) IGST Act, 2017

The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both. Similar are the provisions under IGST Act and UTGST Act/SGST Act.

<table>
<tr><th>Category of supply of goods and services</th><th>Recipient ofgoods and services</th></tr>
<tr><td>Notification No. 07/2019- Central Tax (Rate) w.e.f. April 01, 2019 80% of the value of inputs and input services must be purchased by a promoter from a registered supplier only. Thus in respect of supply of such goods and services or both which constitute the shortfall from the minimum 80% value of goods (input) or services (input services) or both required to be purchased by a promoter for construction of project, in a financial year or part of the financial year till the date of issuance of completion certificate or final occupation, whichever is earlier tax shall be paid by the promoter under reverse charge.

However, following goods or services or both are not required to be purchased from the registered supplier by a promoter:

<table>
<tr><td>(a)</td><td>Services by way of grant of development rights</td></tr>
<tr><td>(b)</td><td>Services by way of long term lease of land (against upfront payment in the form of premium, salami, development charges etc.)</td></tr>
<tr><td>(c)</td><td>FSI (including additional FSI)</td></tr>
<tr><td>(d)</td><td>Electricity</td></tr>
<tr><td>(e)</td><td>High Speed Diesel</td></tr>
<tr><td>(f)</td><td>Motor Spirit</td></tr>
<tr><td>(g)</td><td>Natural Gas</td></tr>
</table>
</td><td>Promoter</td></tr>
</table>

Explanation. - For the purpose of this notification, -

(i) the term "promoter" shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(ii) "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(iv) "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

(v) the term "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

CASE LAWS

1. In re: Acharya Shree Mahashraman Chaturmas Pravas Vyavastha Samiti Trust, 2020 (37) G.S.T.L. 83 (App. A.A.R. - GST - Kar.)

Whether the renting of temporary units of accommodation by the applicant is under clause 13(b) of Exemption under Notification No. 12/2017-C.T. (Rate).

Religious functions conducted by appellants for the propagation of Jain Dharma and temporary accommodation facilities erected for the use of devotees during the period of religious function.

AAR Karnataka held that Appellant not renting out 'rooms' but rather renting out units of accommodation comprising of 2 bedrooms, hall, kitchen, restroom, toilet with facilities like water, electricity, cot, bed, pillow, bedspread and air-conditioner given out on rent. Cooking facility also given in this unit. Therefore, unit of accommodation of this kind termed by Appellant as a 2 BHK Category I type of accommodation cannot be considered as renting of rooms and not covered in Entry Sl. No. 13 ibid. Similarly, renting out of beds in a dormitory also not akin to renting of rooms and hence it will not qualify for exemption under clause 13(b) of Exemption under Notification No. 12/2017-C.T. (Rate)

2. IN RE : CMC Vellore Association, 2020 (39) G.S.T.L. 330 (A.A.R. - GST - A.P.)

Facts of the Case: M/s. CMC Vellore Association have a multi-specialty tertiary care hospital providing health care services and categorized the patients as out-patients and in-patients for the administrative convenience. CMC is rendering medical services with professionals like doctors, nursing staff, lab technicians etc.

Medicines, Drugs, Stents, Implants etc. are supplied through pharmacy to in-patients under the prescription of the doctors which are incidental to the health care services rendered in the hospital. The out-patients are those who visit the hospital for routine check-ups clinical visits whereas the in-patients are those who are admitted into the hospital for the required treatment. The in-patients are provided with stay facilities, medicines, consumables, implants, dietary food and other surgeries/procedures required for the treatment.

The Central store of the hospital procures stocks of medicines, implants, consumable etc. from various suppliers and distribute to its outlets such as in-patient pharmacy, operation theatre pharmacy and out-patient pharmacy based on the indent issued. The in-patient pharmacy and operation theatre pharmacy supply medicines, implants and consumables only to in-patients. Whereas the out-patient pharmacy attached to the hospital entertains the medical prescription of out-patients.

Questions raised by the applicant:

(1) Tax liability on the medicines supplied to in-patients through pharmacy.

(2) Tax liability on the medicines, drugs, stents, implants etc. administered to in-patients during the medical treatment or procedure.

Held: The applicant as stated in the application renders health care services to in-patients in the form of supply of medicines, drugs, stents, implants etc. being administered during the medical treatment or procedure. The issue at hand, i.e., whether the above-mentioned supplies to in-patients through pharmacy is liable to tax or not.

Primarily the health care services provided by the applicant are exempt under Sl. No. 74 Heading 9993 vide Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017.

The health care services as explained in (zg) of para 2 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, defines service by way of diagnosis, or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India. In common parlance, when one looks into the definition, 'the treatment or care' extended by hospital can be thought of devoid of medicines, relevant consumable, or implants, by no stretch of imagination. The supply of medicines and the consumables are

integral part of the treatment extended to the in-patients by the hospital. Hence, the services rendered by the applicant is a composite supply as defined under Section 2(30) of CGST Act, 2017 in which the principal supply is health care, being predominant and the supply of medicines, drugs, implants, stents, and other consumables, come under ancillary supplies and accordingly tax liability has to be determined under Section 8 of CGST Act, 2017. Since the entry of *"Services by way of - (a) health care services by a clinical establishment, and authorised medical practitioner or para medics;"* at Sl. No. 74 Heading 9993 vide Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 is nil rated, the supply of medicines, drugs, implants, stents, and other consumables are exempted from liability under GST.

LESSON ROUND-UP

- The taxable event is supply of goods / services for a consideration, during the course of business / for furtherance of business by a taxable person, and exceptions to this have been set out in the separate schedules.
- Key differences between a composite & mixed supply are that the supplies within a composite supply are naturally bundled whereas within a mixed supply are deliberately bundled and that in the composite supply, the principal supply is discernible, whereas that isn't the case in a mixed supply.
- The exemptions from GST are those that have been kept out of scope and have been notified separately.
- Composition scheme in GST provides an alternative method of tax payment small and medium taxpayers whose turnover is not exceeding the prescribed threshold. The tax rates under this scheme have been kept at minimal but at the same time a person opting to pay tax under composition levy scheme can neither take Input Tax Credit nor it can collect any tax from the recipient. It is a voluntary and optional scheme.
- Reverse Charge Mechanism is the process of payment of GST by the receiver instead of the supplier. In this case, the liability of tax payment is transferred to the recipient/receiver instead of the supplier.

GLOSSARY

Taxable Event: The taxable event under GST shall be the supply of goods or services or both made for consideration in the course or furtherance of business. The taxable events under the existing indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as 'supply'.

Composite supply is a supply consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are bundled in natural course and are supplied in conjunction with each other in the ordinary course of business and where one of which is a principal supply. For example, when a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.

Mixed Supply means two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. For example, a supply of package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juice when supplied for a single price is a mixed supply. Each of these items can be supplied separately and it is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions (MCQs)

1. Activities which are to be treated as "supply" even if made without consideration are specified in
    a) Schedule III of Central Goods and Services Tax Act, 2017.
    b) Schedule II of Central Goods and Services Tax Act, 2017.
    c) Schedule I of Central Goods and Services Tax Act, 2017.
    d) None of the Above
2. Licence to occupy land is treated as
    a) Supply of Services
    b) Supply of Goods
    c) Neither supply of goods not supply of services
    d) None of the Above
3. The _____ supply will be charged at the rate applicable to the supply that attracts the highest rate of tax from within the consolidated package
    a) Mixed
    b) Composite
    c) Principal
    d) None of the Above
4. Which of the following supplies of goods is subject to reverse charge ?
    a) cotton yarn
    b) silk yarn
    c) nylon
    d) books
5. For which of the following goods, the manufacturer is not allowed to opt for composition scheme
    a) ice-cream and other edible ice, whether or not containing cocoa;
    b) pan masala;
    c) tobacco and manufactured tobacco substitutes;
    d) all of the Above

Answers: 1 (c), 2 (a), 3 (a), 4 (b), 5 (d)

Descriptive Questions

1. Discuss whether the following transactions will be considered as supply or not under GST laws.
    a. An individual buys a car for personal use and after a year sells it to a car dealer.
    b. A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence.
    c. Provision of service or goods by a club or association or society to its members.
2. Discuss whether the following transactions/activities will be treated as supply of goods or supply of service
    a. Transfer of right to use goods.
    b. Works contracts and Catering services.
    c. Supply of software.
    d. Goods supplied on hire purchase basis.
3. State which of the following is composite supply or mixed supply under the GST law:
    a. Sale of car with warranty coverage.
    b. Gift pack with chocolates and books.
    c. Sale of Refrigerator with power stabilizer.
    d. Hotel Sanyasi providing accommodation with complimentary breakfast.
4. Define the Scope of supply provided under section 7 of CGST Act, 2017.
5. What are the activities which are treated as supply of goods of services as per schedule II of the CGST Act, 2017?
6. Which are the commodities which have been kept outside the purview of GST?
7. Who is he person eligible to opt for Composition Scheme?
8. What are the provisions relating to tax payable on reverse charge basis under section 9(3)? Which are the categories of supply of services on which recipient has to pay tax on reverse charge basis?
9. The aggregate turnover of Sona & Sons, a registered firm during the financial year 2022-23 is Rs. 66,00,000. During the financial year 2022-23 the aggregate turnover for the firm till 12.10.2022 is Rs. 1,49,00,000. On 13.10.2022 it issue three invoices of Rs. 1,50,000,Rs. 80,000 and Rs. 90,000. Will the firm be liable to pay GST under normal Scheme and if so on hat amount?
10. What is the meaning of exempt supply? Give some examples of goods which are exempt from GST?

LIST OF FURTHER READINGS

- Goods & Services Tax, Laws, Concepts and Impact Analysis- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- GST Ready Reckoner- Taxmann – V.S. Datey
- A complete guide to Goods & Services Tax Ready Reckoner in Q & A Format- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- Students may also visit “http://cbic.gov.in/” for regular updates on GST law.

Time, Value & Place of Supply

Lesson 17

KEY CONCEPTS

■ Taxable Event ■ Forward Charge Mechanism ■ Reverse Charge Mechanism ■ Time of Supply ■ Value of Supply ■ Place of Supply

Learning Objectives

To understand:

- Various concepts relating to supply of goods and services
- The time when supply is deemed to have been made in case of forward charge, reverse charge, continuous supply and vouchers
- The conditions for applicability of transaction value and inclusions and exclusions therefrom to arrive at the taxable value
- The methods of valuation where the transaction value is not applicable
- The principles for determining place of supply

Lesson Outline

REGULATORY FRAMEWORK

1. Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 12	Time of Supply of Goods
Section 13	Time of Supply of Services
Section 14	Change in rate of tax in respect of supply of goods or Services
Section 15	Value of Supply

2. Integrated Goods and Services Tax Act, 2017

Section	*Deals with*
Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
Section 11	Place of supply of goods imported into, or exported from India
Section 12	Place of supply of services where location of supplier and recipient is in India
Section 13	Place of supply of services where location of supplier or location of recipient is outside India

SUPPLY

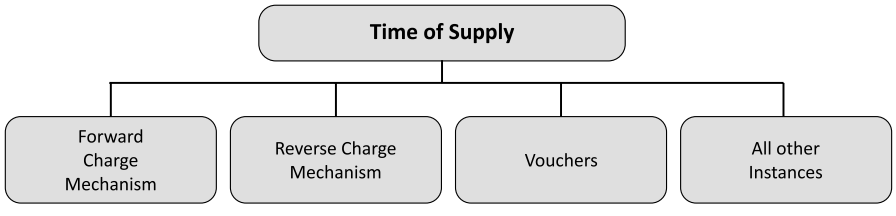
The concept of Supply has been extensively discussed in Chapter 16 which may be referred to for details. Briefly, it encompasses various transactions such as sales, barter transfer, exchange, license, rental, lease and disposal within its purview. If a person undertakes any of these transactions during the course or furtherance of business for consideration.

Taxable event means an event or situation which gives rise to tax liability.

Taxable event under GST is Supply of Goods or Services or both for Consideration.

TIME OF SUPPLY

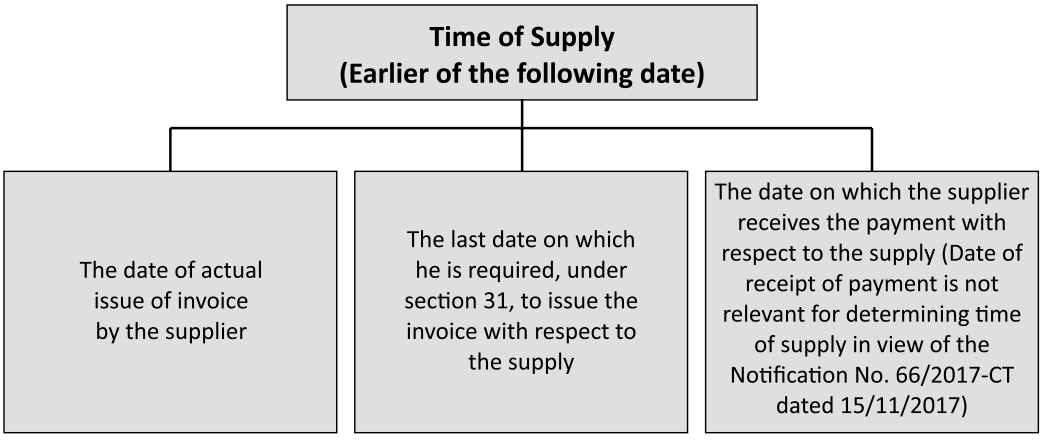
Time of supply means the point in time when goods have been deemed to be supplied or services have been deemed to be provided. The time of supply enables us to determine the rate of tax, value, and due dates for payment of taxes. Under GST, the liability to pay tax arises at the time of supply. CGST Act, 2017 states provisions to determine time of supply of goods under section 12 and time of supply of services under section 13 of the Act. The provisions relating to the time of supply of goods and services are broadly centered around the following categories, as explained by the diagram below:



TIME OF SUPPLY OF GOODS [SECTION 12 OF CGST ACT, 2017]

Section 12(1) : The liability to pay tax on goods shall arise **at the time of supply**, as determined in accordance with the provisions of this section.

Time of supply in case of Forward Charge Mechanism [Section 12(5)]



Provided that where the supplier of taxable goods receives an amount **up to one thousand rupees** in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1. – For the purposes of clauses (a) and (b), "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2. – For the purposes of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

The due date of the invoice can be deciphered from Section 31(1) of the Act which mentions that the Invoice must be issued.

S. No.	*Description*	*Invoice must be issued*
1.	Where the supply involves movement of the goods	On/before at the time of removal of the goods
2.	Where the supply doesn't involve the movement of the goods	On/before the delivery of the goods to the recipient
3.	In case of a continuous supply of goods	Before or at the time of issuance of periodical statement/receipt of periodical payment
4.	Goods supplied on "approval for sale/ return basis	Before or at the time of supply or 6 months from the date of removal, whichever is earlier

Wherever, the date of receipt of payment is relevant in determining time of supply of goods, such date would be considered to be the earlier of;

- Date of credit in the entity's bank account, as reflected in the bank statement
- Date on which the payment is recorded in the books of accounts of the supplier.

Note: Date of receipt of Payment is not relevant for determining time of supply in case of goods as Notification No. 66/ 2017-CT dated 15-11-2017 has prescribed the time of supply for goods as specified in section 12(2)(a) of the CGST Act, 2017 i.e. Date of issue of Invoice or the last date for issuance of invoice as per Section 31 CGST Act.

Further, it has been provided, if there is an excess payment received, up to INR 1000/-; the supplier can choose to take the date of the invoice issued with respect to such excess amount, as the time of supply of goods for such excess value.

Illustration:

Antra Ltd. supplied goods to Mantra Ltd., under a contract for the goods to be delivered to the factory of Antra Ltd. The goods were removed from the factory of Antra Ltd. on 9th September, 2022 and the goods were delivered to the factory of Mantra on 16th September, 2022.

The invoice was issued on 18th September, 2022 and the payment was credited to Antra's account on 20th October, 2022 although the entry in the books was made on 19th September, 2022 when the cheque was received.

Please advise on the Time of Supply.

Solution: In the above case, the relevant dates are as under:

- Date of issue of invoice: 18th September, 2022.
- Due date for issue of invoice: 9th September, 2022 (as the supply involved movement of goods).
- Date of receipt of payment: 19th September, 2022 (earlier of the entry in the books and the credit in the bank account) [Date of payment not relevant in terms of Notification No. 66/2017 - CT dated 15.11.2017]

Hence, the time of supply will be 9th September, 2022.

CASE LAW

***In Re* : Karnataka State Electronics Development Corporation Ltd. 2020 (35) G.S.T.L. 428 (A.A.R. - GST - Kar.)**

Whether the street lighting activity under the Energy Performance is to be considered as supply of goods or a supply of services

Facts of the Case:

The applicant (KEONICS), a Karnataka State Government Entity, is engaged into providing street lighting services, under the Energy Performance Contract (ESCO contract) to the Thane Municipal Corporation (TMC), Thane for a period of 7 years. The Applicant has to operate and maintain 12,000 street lighting fixtures & respective feeder panels i.e. installation of LED fixtures, smart electric panels for automation, metering & comprehensive maintenance. The role of the applicant is as under:

(a) Removal of the existing street lights and handing over the same to TMC.

(b) Installation of LED street lights on existing street light poles.

(c) Installation of new smart feeder electrical panels compatible with LED fixtures at its own cost.

(d) Operation & maintenance of the said LED street lights during the tenure of the contract.

The street light poles and the old street lights will continue to remain under the ownership of TMC. The applicant does not have any control over the electrical poles & can't object to or damage any other installations on the poles during the supply. Further the applicant is required to maintain minimum standard of operation, which requires for maintenance of minimum LUX level on road. The applicant, remains to be owner of the newly installed LED lights; is responsible for functioning of the said lights; has to replace, if required, at free of cost; shall surrender all the LED lights & system installed at no cost to TMC, at the end of the contract.

Questions Asked

(i) Whether the street lighting activity under the Energy Performance Contract dated 5-12-2016 is to be considered as Supply of goods or a Supply of Services under the CGST/KGST Act, 2017? Accordingly, whether the transaction can be sub-classified as a 'Pure Supply of Service' or 'Pure Supply of goods' or 'Composite Supply of goods and services being a works contract'?

(ii) What is the rate of tax applicable on this transaction? Whether the applicant is entitled to the benefit of exemption under Entry 3 or 3A of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, as amended? If not, what is the applicable rate of tax?

(iii) If the transaction is treated as supply of services, what is the time of supply of such services? Whether KEONICS is liable to tax only once the energy saved is certified by the energy auditor? Whether amount credited in joint ESCROW account can be termed as 'receipt' especially because the said amount is not under control of KEONICS until the conditions are met?

(iv) Without prejudice to above submissions, if the transaction is treated as a supply of goods, what is the time of supply of such supply? Whether KEONICS would be liable to tax only at the time when the possession and ownership in goods are vested to TMC at the end of tenure? What would be the value of the aforesaid taxable supply given the fact that it is based on energy savings which can be computed only when the energy auditor certifies the workings submitted by KEONICS?

Discussion

The impugned contract, in the instant case, is a composite supply where the principal supply is supply of goods. It is an accepted fact that the consideration is received on monthly basis; invoice is raised on energy savings; value of such invoice is equal to 90% of the energy savings. It is pertinent to mention here that the energy savings are directly related to the functioning and quality of the LED street lights etc., i.e. the goods supplied by the applicant. Therefore, the applicant receives the consideration, throughout the contract period i.e., 7 years, on a monthly basis, on the energy savings. Thus the monthly consideration includes the value attributable to the supply of the goods also. The time of supply of goods in terms of Section 12(2)(a) of CGST Act, 2017 is the date of issue of invoice by the supplier. Further, in terms of explanation 1 to the aforesaid Section 12(2), supply shall be deemed to have been made to the extent it is covered by the invoice. Thus the time of supply in the instant case is the date of invoice.

Ruling

(1) The street lighting activity under the Energy Performance Contract dated 5-12-2016 amounts to composite supply where the principal supply is that of supply of goods.

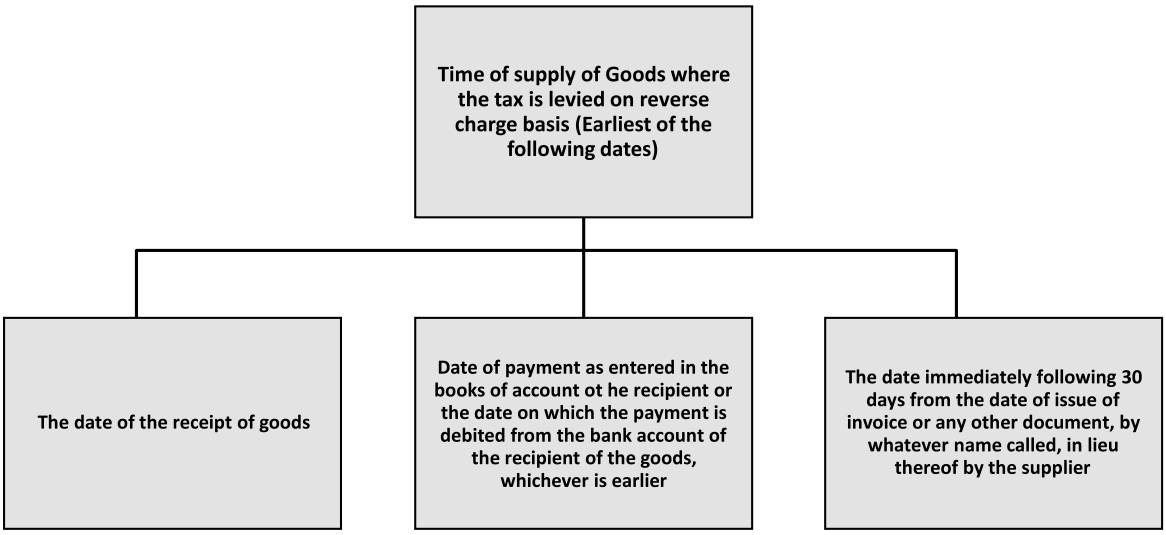
(2) The rate of tax applicable on this transaction is 12% (CGST-6% & SGST-6%), in terms of Sl. No. 226 of Schedule II to the Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, as amended. Further, the applicant is not entitled to the benefit of exemption under Entry 3 or 3A of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, as amended, as the impugned supply is not that of pure services.

(3) The instant transaction amounts to a composite supply, with supply of goods being principal supply and hence the impugned question is redundant.

(4) The time of supply is the date of invoice and the consideration is equal to the value of the invoice, the GST rate being 12%.

Time of supply in case of Reverse Charge Mechanism [Section 12(3)]

Under reverse charge mechanism, the recipient of supply is liable to pay the tax.



Reverse charge in case of goods may arise either under Section 9(3) or Section 9(4) of the CGST Act. Section 9(3) empowers the issuance of notification by the Government under which the tax will be paid by the recipient of goods as per reverse charge mechanism. Notification no. 4/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time provides the list of goods which will be subject to reverse charge mechanism subject to the category of supplier and recipient specified therein. These goods include cashew nuts (not shelled or peeled), bidi wrapper leaves (tendu), tobacco leaves, raw cotton, silk yarn, supply of lottery etc. The Government has also extended the reverse charge mechanism for real estate developers under section 9(4) under certain situations.

Time of supply in case of Vouchers [Section 12 (4)]

It is a common trade practice for the businesses to issue vouchers which can be redeemed by the purchaser or bearer against the purchase of goods / services. Vouchers are instruments that can be exchanged as payment for goods/services, of the designated value therein. Hence, per definition, these are instruments, that the potential suppliers, are obliged to accept as consideration in lieu of the goods/services so supplied, in part or full. These vouchers set out clearly, the terms & conditions of use, validity, goods/services covered, identity of the potential suppliers etc.

Clauses	*Situation*	*Time of Supply*
(a)	Where the supply is identifiable at the time of the issue of the voucher, the date of issue of the voucher would be construed as the time of supply	The date of issuance of the voucher
(b)	Where the supply is not identifiable at the time of issue of the voucher, the date of redemption of the voucher would be construed as the time of supply	The date of redemption of voucher

Illustration

Mr. A, an agriculturist supplies raw cotton (under reverse charge) to Mr. B who manufactures cotton shirts. The date wise turnout of events is given below:

01.04.2022- Mr. B approaches Mr. A and places an order for 1 ton of cotton

10.05.2022- Mr. B receives the goods

15.05.2022- Mr. A issues an invoice

20.05.2022- Mr. B makes a payment by cheque and accordingly records it in his books of accounts.

25.05.2022- The payment gets debited from Mr. B' s bank account

Solution:

In this case, the time of supply shall be the earlier of the following dates:

a) The date of receipt of goods i.e. 10.05.2022

b) The date of payment as recorded in the books of Mr. B i.e., 20.05.2022 or the date when the payment gets debited in the books of the recipient i.e. 25.05.2022 whichever is earlier

c) The date immediately following thirty days from the date of issue of invoice, i.e. 15.05.2022 + 30 days + 1 day = 15.06.2022

Therefore, the time of supply will be 10.05.2022.

Illustration:

ABC Ltd., enters in to an arrangement with "Hush Puppies", buys the vouchers, these vouchers were issued on 14th December, 2022. The Company then distributes these vouchers with denomination INR 4,000/- to all its employees on 24th December, 2022 valid until 31st January, 2023, so that they can use these vouchers for buying shoes of their choice. The employees make the most of it and redeem these vouchers on the New Year's, i.e., on 1st January, 2023.

Solution:

In this case, the supply is identifiable at the point of issue of the voucher and hence the time of supply would be construed as 14th December, 2022.

Illustration :

Nisha buys a voucher from Shoppers Stop for INR 10,000 and gifts it to Tarun on 14th February. The voucher was valid until 29th February. Tarun redeems the vouchers at the nearby Shoppers Stop store on 29th February.

Solution:

In this case, the supply was not identifiable at the point of issue of the voucher as Tarun was open to purchase anything from Shoppers Stop, therefore the time of supply would be construed as the date of redemption of the voucher, that is 29th February.

CASE LAW

In Re : Premier Sales Promotion Pvt. Ltd.

Facts of the Case:

The applicant is mainly involved in the business of providing Marketing Services. The nature of services provided to each customer depends on the requirement and depends on the tailored agreement with each customer.

During the course of business the applicant receives orders for supply of e-vouchers wherein the applicant sources e-vouchers for such customers as per the order received and acts as an intermediary for buying and supplying of e-vouchers.

Types of Transactions undertaken by the applicant :

(a) Supply of Gift Vouchers

In this scenario, the applicant receives orders for supply of Gift Vouchers.

(i) For example, the Hong Kong and Shanghai Banking Corporation Ltd. has given a Work Order for supply of Amazon Gift Vouchers of various denominations.

(ii) The applicant therefore enters into an agreement with Amazon for supply of e-vouchers.

(iii) Once the order is received, the applicant places an order with Amazon and buys the e-vouchers for an agreed consideration and in turn supplies the e-vouchers purchased from Amazon to HSBC for an agreed consideration.

(b) Supply of Cash Back Vouchers :

In this scenario, the applicant receives an order from Customer "A" stating that it needs e-Cash Back Vouchers of specified denominations to be distributed to final consumer "B" of its goods, wherein the final consumer "B" who buys the goods of the Customer A will receive these vouchers and scratch the card. The final consumer B has to feed these details into specified website by virtue of which he will receive the Cash Back in respect of goods brought by him from Customer A.

(c) Supply of e-Vouchers with multiple options :

In this scenario, the applicant receives an order from Customer A with multiple options given to its Final Consumer B. For Example, the Final Consumer B is entitled to receive a Voucher say for Rs. 500/- with multiple options, *i.e.,* the Final Consumer can redeem the Voucher either for payment of his taxi bill, or to receive a Specified Saloon Service or to buy a Movie Ticket.

Questions Asked

The applicant is a Private Limited Company registered under Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following questions :

(i) Whether the vouchers themselves, or the act of supplying them is taxable, and at what stage, for each of the three categories of transactions undertaken by the applicant?

(ii) If the answer to the above question is in the affirmative, what would be the rate of tax at which this would be taxable, i.e. which category would this be taxed under?

Discussion

It is observed on application of Place of Supply principle to the three types of vouchers issued by the applicant, that in case of Gift Vouchers, the applicant is supplying the vouchers which are issued by third parties to his customers, who in turn issue the same to their customers, who will redeem them and the third party who has issued the voucher would consider them to provide deduction in the amount payable by the claimant. In the instant case neither the applicant nor their customer is aware of the transaction or the purpose for which the voucher would be redeemed. Hence the time of supply would be governed by the clause (a) of sub-section (5) of Section 12 of the CGST Act.

In case of Cash Back Vouchers, the applicant is not aware of the date of redemption and these vouchers are redeemed by way of cash back and are not identifiable with any particular goods/services and hence the time of supply would be governed by the clause (a) of sub-section (5) of Section 12 of the CGST Act.

In the case of Multiple Option Vouchers, the applicant is not aware for what purpose and when the voucher would be redeemed, hence the time of supply would be governed by the clause (a) sub-section (5) of Section 12 of the CGST Act.

Ruling

(i) Whether the vouchers themselves, or the act of supplying them is taxable, and at what stage, for each of the three categories of transactions undertaken by the applicant?

Answer : The supply of Vouchers are taxable as goods and the time of supply in all three cases would be governed by Section 12(5) of the CGST Act, 2017.

(ii) If the answer to the above question is in the affirmative, what would be the rate of tax at which this would be taxable, *i.e.,* which category would this be taxed under?

Answer : 18% GST as per Entry No. 453 of Schedule 3 of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017.

Time of supply in all other instances [Section 12(5)]

In all other instances, the time of supply as per Section 12(5) is fixed as under:

Clauses	*Situation*	*Time of Supply*
(a)	Where a periodic return has to be filed	The date on which such return is required to be filed
(b)	In any other case	Date on which GST is paid

Time of Supply for recovery of interest, late fee, etc. [Section 12(6)]

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Illustration :

Shiva Supplies goods to Ramesh for Rs. 4,00,000 on 01.03.2022 on one month credit. It is also specified in the invoice that if the recipient fails to make payment within one month, then interest @Rs. 4,000 shall be charged for every delay of one month or part thereof. Ramesh makes the payment of Rs. 4,00,000 on 22.04.2022. However, in respect of interest, he requests Shiva for complete waiver , but Shiva agrees for waiving only 50% of Rs. 4,000. Consequently, Ramesh makes payment of Rs. 2,000 as interest on 30.04.2022.

Determine the time of supply of goods and time of supply in relation to value of supply by way of interest.

Solution:

(1) Time of supply of goods

Date of invoice is 01.03.2022

Date of receipt of payment is 22.04.2022

Whichever is earlier

Thus the time of supply of goods shall be 01.03.2022.

(2) Time of supply in relation to value of supply by way of interest

It shall be 30.04.2022 i.e. the date of receipt of the interest amounting to Rs. 2,000.

Time of supply of Services [Section 13 of CGST Act, 2017]

Section 13 covers the time of supply for services, under Forward Charge Mechanism, Reverse Charge Mechanism, Vouchers and all other instances.

Time of supply of Services in case of Forward Charge Mechanism [Section 13(2)]

(a) In cases where the invoice **has been issued on time**, as per Section 31, earlier of the

– date of invoice

or

– the date of receipt of payment,

(b) In cases where the invoice **has not been issued on time**, per Section 31, earlier of the

– date of provision of service

or

– the date of receipt of payment,

(c) Date of receipt of payment would be the earlier of the of the following in a case where the provisions of clause (a) or clause (b) do not apply:

– date of credit in the bank account

or

– the date of entry in the books of account, whichever is earlier.

Time line for issuing invoice under section 31

(d) Section 31 mandates that the time limit for issue of invoice is that the invoice must be issued either before the provision of service, or within 30 days from the date of supply of service (45 days for BFSI companies & NBFC's).

(e) In case of insurance companies/banking companies/financial institutions including NBFCs/telecom companies/notified supplier of services making taxable supplies between distinct person as specified in section 25, invoice may be issued before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made.

(f) Additionally, where the supply involves continuous supply of services, the invoice must be issued on/ before the due date of payment (where the contract specifies the date) OR on/ before the date of actual receipt of payment (where the due date is not ascertainable from the Contract) OR on/before the date of completion of milestone event where the payment is linked to completion of a milestone event.

Illustration:

Determine the time of supply from the following particulars:

15th October, 2022	The marriage hall was fixed and the advance of INR 25,000 was paid (amount agreed was INR 1,00,000)
20th October, 2022	Invoice issued for INR 25,000
30th November, 2022	The marriage ceremony took place in the hall
14th December, 2022	The invoice was issued for balance INR 75,000 indicating & adjusting the advance paid earlier
31st December, 2022	The balance payment was received

Solution:

In the above case, the invoice was issued within the prescribed time (that is within 30 days of the event) and hence the time of supply would be the earlier of:

a) Date of invoice: which is 14th December, and

b) The date of receipt of payment: which is 31st December

Therefore, for the amount of INR 75,000, the time of supply would be 14th December. For the advance of INR 25,000, the date of payment precedes the invoice and hence the time of supply for that amount would be 15th October.

As per Section 13(2), if there is an excess payment received, up to INR 1000/-; the supplier can choose to take the date of the invoice issued with respect to such excess amount, as the time of supply of services for such excess value.

Time of supply of Services in case of Reverse Charge Mechanism [Section 13(3)]

The time of supply of services under the reverse charge mechanism would be the earliest of:

a) 60 days from the date of invoice, or

b) Date of payment, which is the earlier of the date of debit in the bank account as reflected in the bank statement and the date of recording the payment in the books of account, by the recipient.

In case of transactions between 'associated enterprises' where the supplier of service is located outside India, the date of recording the supply in the books of the recipient or the date of payment whichever is earlier, will be the time of supply.

Illustration:

Mr. A provides legal services as an advocate to Mr. B which fall under reverse charge basis. 10.04.2022

The services are provided to Mr. B

12.04.2022 – Mr. A issues an invoice to Mr. B

10.07.2022 – The payment is made by Mr. B through a cheque and recorded in his books of accounts

15.07.2022 – The payment gets debited from Mr. B's bank account

In this case, the time of supply shall be earlier of the following dates:

- The date of payment i.e. 10.07.2022 (earlier of 10.07.2022 and 15.07.2022)
- The date immediately following sixty days from the date of issue of invoice i.e. 12.06.2022 (12.04.2022 + 60 days+ 1day).

Therefore, the time of supply shall be 12.06.2022.

Time of supply of Services in case of Vouchers [Section 13(4)]

The term, "vouchers" has been explained earlier in the chapter. The time of supply of vouchers that are exchangeable for services, is as under:

a) If the supply is identifiable at the point of issue, the date of issue of voucher

b) The date of redemption of voucher in all other cases.

Illustration:

M/s ABC Dry Cleaners issues vouchers of Rs. 40,000 to M/s XYZ on 22.11.2022. M/s XYZ distributes the vouchers amongst its employees who shall get it redeemed in due course of time.

Determine the time of supply of vouchers.

Solution:

In above case, the time of supply shall be 22.11.2022 for the supply of vouchers made by M/s ABC Dry Cleaners to M/s XYZ because the vouchers are identifiable with particular supply of dry cleaning service. Tax liability can be determined at the time of issue of vouchers.

Time of supply of Services in case of all other instances [Section 13(5)]

In all other instances, the time of supply as per Section 13(5) is fixed as under:

a) Due-date for filing periodic returns or

b) In other cases, the date of payment of GST.

Time of Supply for recovery of interest, late fee, etc. [Section 13(6)]

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Illustration:

BA Telecommunications Ltd. charges Rs. 100 as late fees from the customer on account of non-payment of bill on due date for the month of February 2022. The customer paid such late fee on 05.04.2022.

Determine the time of supply of late fees.

Solution:

The time of supply of such late fees will be the date on which BA Telecommunications Ltd. receives the amount of late fees from the customer which is 05.04.2022.

TIME OF SUPPLY IN CASE OF CHANGE IN RATE OF TAX [SECTION 14 OF CGST ACT, 2017]

Section 14 of the CGST Act, 2017 defines the time of supply, where there is a change in the rate of tax in respect of goods or services or both.

Section 14(a): In case the goods or services or both have been supplied **before** the change in rate of tax, the time of supply can be determined as follows:

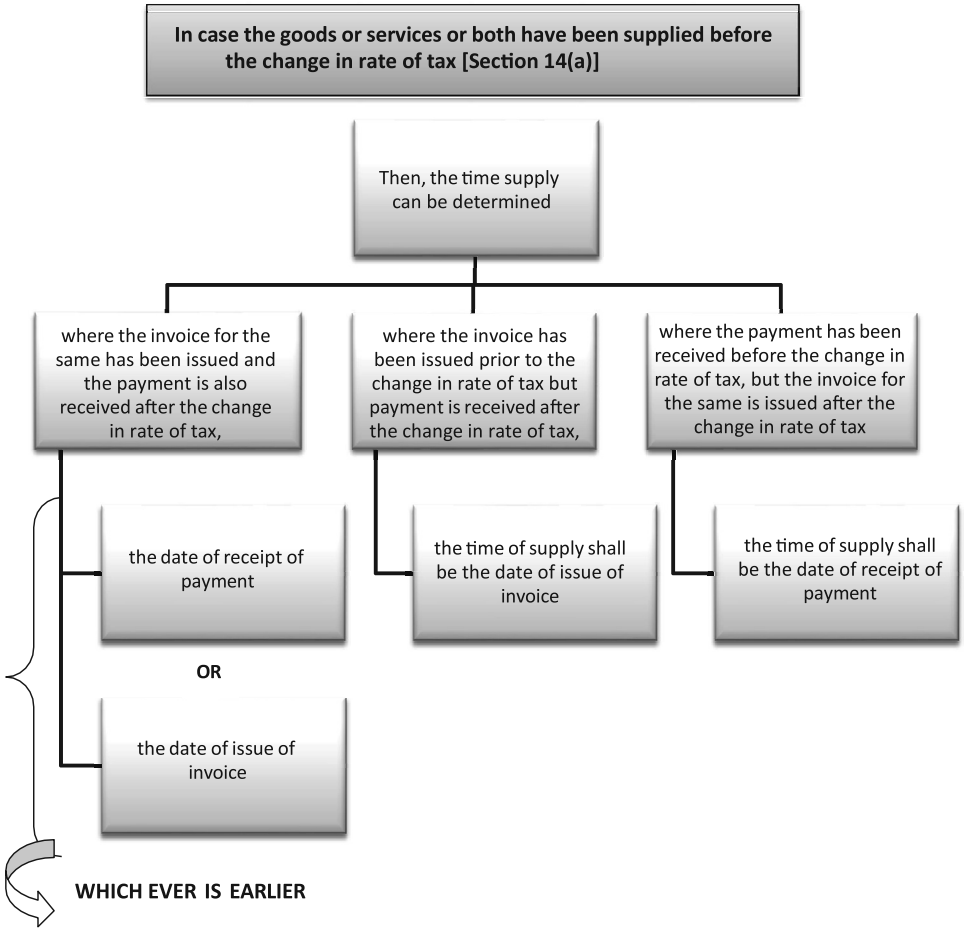
1. where the invoice for the same has been issued and the payment is also received **after** the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
2. where the invoice has been issued **prior** to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
3. where the payment has been received **before** the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment.

Example:

The rate of GST on one particular product had decreased from 18% to 12% w.e.f. 01.06.2021.

What is the tax rate applicable when services provided and invoice issued before change in rate in April 2022, but payment received after change in rate in June 2021?

Then the old rate of 18% shall be applicable as services are provided prior to 01.06.2021.



Section 14(b): In case the goods or services or both have been supplied **after** the change in rate of tax, the time of supply can be determined as follows:

1. where the payment is received **after** the change in rate of tax but the invoice has been issued **prior** to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
2. where the invoice has been issued and payment is received **before** the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
3. where the invoice has been issued **after** the change in rate of tax but the payment is received **before** the change in rate of tax, the time of supply shall be the date of issue of invoice.

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Example:

The rate of GST on one particular product had decreased from 18% to 12% w.e.f. 01.06.2021. What is the tax rate applicable when goods are supplied and invoice issued after change in rate in June 2021, but full advance payment was already received in April 2021?

In this case the new rate of 12% shall be applicable as goods are supplied and invoice issued after 01.06.2021.

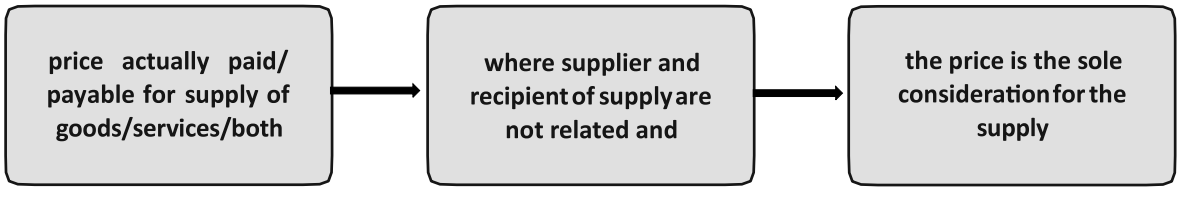
VALUE OF TAXABLE SUPPLY [SECTION 15 OF CGST ACT, 2017]

Value of taxable supply of goods or services or both is base for computing the value of GST payable. Value of supply and rate of applicable tax are pre-requisites to calculate the tax liability. In this section, we will study the facets of valuation, transaction value, inclusions and exclusions there from. Section 20 of the ICGST Act, 2017 and Section 21 of UTGST Act, 2017 provide, amongst other things, that provisions of the CGST Act relating to value of supply shall apply with necessary changes, in relation to integrated tax or union territory tax as they apply in relation to central tax as if they are enacted under IGST Act.

Section 15 of the CGST Act when read in conjunction with Chapter IV: Determination of Value of Supply of the CGST rules, states that the value of taxable supply under GST is the transaction value. Transaction value is defined as the price actually paid or payable for the said supply of goods or services or both, where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply.

Section 15 is equally applicable to inter-State supplies under IGST.

Transaction value means



The concept of transaction value places trust on the assessee and accepts the price as agreed between the supplier and recipient under open market conditions. The supplier and the recipient should not be related to each other, and the agreed price should be the sole consideration of supply.

Illustration:

Mr. X residing in Noida, purchase 40,000 Markers @ Rs. 20 each from Anika & Stationary, wholesalers at Delhi. Mr. X's sister working as Manager in Anika & Stationary. Open Market Value of Marker is Rs. 23. Anika & Stationary additionally charges Rs. 15,000 for transporting markers to Mr. X's business place.

Solution: The transaction Value includes ancillary expenses borne by Anika & Stationary in regard of supply till the time of delivery of goods to the recipient. The transaction value will be Rs. 8,00,000 (40,000*20) + 15,000 = 8,15,000.

Mr. X and Anika & Stationary Wholesaler are not related persons solely as Mr. X 's sister is an employee in Anika & Stationary, whereas Mr. X 's sister and Anika & Stationary are not to be considered as related persons. Therefore, the transaction value taken as value of supply.

Inclusions in determination of Value of Supply [Section 15(2)]

Section 15(2) of the CGST Act, 2017, lists few elements which have been mandated to be included in the transaction value, if not already included.

(a) any taxes, duties, cess, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

The taxes, fee, etc. leviable under legislations other than GST are sought to be included in the transaction value for the purpose of charging GST.

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

It sought to include all such expenses which the suppler was contractually liable to incur but incurred by the recipient.

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

It further obliges the supplier to include all such expenses incurred until the delivery of supply of goods or services or both which may be in the nature of freight, packing expenses, commission, etc. provided such expenses are incurred by the supplier.

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

It is a common trade practice to charge penalty for delayed payment by the recipient. In such cases, the penalty so charged has been sought to be included in the value and charged to GST.

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments;

Explanation.– For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Lastly, the subsidies received by the supplier are sought to be included in the value. However, the subsidies granted by Central Government and State Government have been excluded.

Clarification by the Government on the includability of penal interest in the value

Situation - 1 : X sells a mobile phone to Y. The cost of mobile phone is Rs. 40,000/-. However, X gives Y an option to pay in installments, Rs. 11,000/- every month before 10th day of the following month, over next four months (Rs. 11,000/- *4 = Rs. 44,000/-). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/penal interest amounting to Rs. 500/- per month for the delay. In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/penal interest amounting to Rs. 500/- per month for each delay in payment.

Clarification : As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

Situation - 2 : X sells a mobile phone to Y. The cost of mobile phone is Rs. 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/penal interest @ 1.25% per month for any delay in payment.

Clarification: The additional/penal interest is charged for a transaction between Y and X , and the same is getting covered under Sl. No. 27 of notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and X would not be subject to GST, as the same would be covered under notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST (Rate), dated 28-6-2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

Exclusions in determination of Value of Supply [Section 15(3)]

Discounts that are allowed as deduction from the value of supply can be of the following two types:

(a) Any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) any discount given after the supply has been affected, if –

- such discount was known and agreed at the time of supply, that is, established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

In effect, section 15(3) strengthens the concept of transaction value wherein it permits the supplier to reduce the element of discount, if any, given in the price originally agreed between the parties. The only condition to such exclusion is that the discount should be either given on the face of the invoice or atleast agreed between the parties prior to the incidence of supply.

Where the value cannot be determined under the above provisions [Section 15(4)]

Finally, section 15(4) of the CGST Act, 2017, provides that where the value of the supply of goods or services or both cannot be determined under section 15(1), the same shall be determined in accordance with the rules as may be prescribed.

Illustration:

Mr. Rama Swami a manufacturer provides the following particulars:

Price of the machine	2,00,000
Packing charges	20,000
Designing charges	40,000
Transit insurance	2,000
Freight outward	16,000
Cash discount to customer	2%

Compute the value of machine when Rama Swami has to deliver machine to factory of recipient.

Solution:

Also, assume that the buyer has paid cash and availed cash discount.

Price of the machine	2,00,000
Add : Packing charges	20,000
Add : Designing charges	40,000
Add : Transit insurance	2,000
Add : Freight outward	16,000
Less [Cash discount to customer 2,00,000* 2%]	(4,000)
Total value	**2,74,000**

VALUATION RULES- CGST RULES, 2017

Rule 27: Value of supply of goods or services where the consideration is not wholly in money

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall-

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

For example :

1. Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty-four thousand rupees, the open market value of the new phone is twenty-four thousand rupees.
2. Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty-four thousand rupees.

Analysis: Where, the consideration for a supply is not wholly in money [which means there is portion of consideration payable in kind], open market value of the underlying goods or services shall be the value for the purpose of calculating tax liability. However, where, open market value is also not available, then one may monetize the consideration which is in kind and add in the consideration in money to arrive at the value of supply. In case, the methodologies cannot be applied, then, one may find the value of goods or services of like kind or quality and adopt such value. In any of the above methodologies are not applicable, Rule 30 and Rule 31 be applied to arrive at the value of additional consideration not in money to finally arrive at the value of supply.

Rule 28: Value of supply of goods or services or both between distinct or related persons, other than through an agent

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order.

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Analysis: Where the supplier and recipient are related or distinct, the statute book refuses to accept the transaction value as there is every possibility of collusion to reduce the value. Thus, **Rule 28** provides for adoption of open market value of the same supply or if not available, open market value of the goods of like kind and quality. Where the recipient intends to make further supply of goods or services, the provision permits the supplier to value the goods at 90% of the price intended to be charged by the recipient while making further supply. It is also provided that where the recipient is eligible to avail full input tax credit, the value, whatever, is declared by the supplier, shall be accepted as the correct value.

Illustration:

M/s XYZ an event management company for organizing large scale events like marriages, birthday parties etc. owned by Mr. Sharma. Another Event organizer M/s ABC Ltd. in Gurugram contracts with M/s XYZ to arrange a celebrity concert charging Rs. 16,00,000. The company sub-contract the same work to M/s Well Events Management Company which were also controlled and managed by Mr. Sharma for Rs. 12,00,000. M/s Well Events Management Company charges Rs. 12,40,000 from market for the same work.

Answer: M/s. XYZ and M/s Well Events Management Company are managed and controlled by Mr. Sharma so both the businesses will be considered as related persons. The value of service will be the open Market Value being Rs. 12,40,000 rather than sub-contract price of Rs. 12,00,000.

Rule 29: Value of supply of goods made or received through an agent

The value of supply of goods between the principal and his agent shall,

(a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety

percent (90%) of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.

Illustration:

A is principal and supplies groundnuts to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of Rs. 5,000 per quintal on the day of the supply.

Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of Rs. 4,550 per quintal.

Determine the value of supply of groundnuts.

Solution:

The value of the supply made by the principal shall be Rs. 4,550 per quintal or where he exercises the option, the value shall be 90 per cent of Rs. 5,000 i.e., Rs. 4,500 per quintal.

(b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

Rule 30: Value of supply of goods or services or both based on cost

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Rule 31: Residual method for determination of value of supply of goods or services or both

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Rule 31A: Value of supply in case of lottery, betting, gambling and horse racing

1. Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.
2. The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

   Explanation:- For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.
3. The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

Rule 32: Determination of value in respect of certain supplies

Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.

1. The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely: -

   (a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the

difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Value = Difference in the buying rate or the selling rate and Reserve Bank of India reference rate for that currency at that time x Total units of currency

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent (1%) of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent (1%) of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India (RBI).

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

(b) at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be :

(i) **one per cent** of the gross amount of currency exchanged for an amount **up to one lakh rupees**, subject to a minimum amount of two hundred and fifty rupees;	**Up to 1,00,000:** 1% of the gross amount of currency exchanged or Rs. 250 whichever is **higher**
(ii) **one thousand rupees and half of a per cent** of the gross amount of currency exchanged for an amount **exceeding one lakh rupees and up to ten lakh rupees; and**	**Exceeding Rs. 1,00,000 and up to Rs. 10,00,000:** Rs. 1,000 + 0.5 % of the gross amount of currency exchanged
(iii) **five thousand and five hundred rupees and one tenth of a per cent** of the gross amount of currency exchanged for an amount **exceeding ten lakh rupees,** subject to maximum amount of sixty thousand rupees.	**Above Rs. 10,00,000:** **Rs. 5,500** + 0.1 % of the gross amount of currency exchanged or **Rs. 60,000** whichever is lower

2. The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five percent (5%) of the basic fare in the case of domestic bookings, and at the rate of ten per cent (10%) of the basic fare in the case of international bookings of passage for travel by air.

Explanation. - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

3. The value of supply of services in relation to life insurance business shall be, -

(a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;

(b) in case of single premium annuity policies other than (a) ten per cent of single premium charged from the policy holder; or

(c) in all other cases, twenty-five per cent of the premium charged from the policy holder in the first year and twelve and a half per cent of the premium charged from the policy holder in subsequent years:

Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

4. Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

5. The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

6. The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

Illustration:

Mr. X is planning to visit California, USA to meet his cousin and want some foreign currency (i.e. US$) for his travel. He converted US$500 from the authorised money changer @ 82 per US$ and receive Rs. 41,000. RBI reference rate for US$ is 82.50 for that day. Compute the value of taxable supply.

Solution:

As per RBI reference rate the amount should have been 500 x 82.50 = 41,250.

Thus the difference of Rs. 250 (i.e. Rs. 41,250 - Rs.41,000) will be treated as taxable value of the service in relation to exchange of money.

If the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian rupees provided by the person changing the money. Thus it shall be 1% of Rs. 41,000= Rs. 410

Rule 33: Value of supply of services in case of pure agent

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation - For the purposes of this rule, the expression "pure agent" means a person who,

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

For example: Corporate services Firm M/s ABC is engaged to handle the legal work pertaining to the incorporation of Company XYZ Pvt. Ltd. Other than its service fees, M/s ABC also recovers from XYZ Pvt. Ltd. registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on XYZ Pvt. Ltd. M/s ABC is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by M/s ABC to XYZ Pvt. Ltd.

Rule 34: Rate of exchange of currency, other than Indian rupees, for determination of value

(1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.

(2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

Rule 35: Value of supply inclusive of integrated tax, Central tax, State tax, Union territory tax

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely, –

Tax amount = (Value inclusive of taxes X Tax Rate in % of IGST / CGST/ SGST / UTGST) ÷ (100+ sum of tax rates)

Explanation - For the purposes of the provisions of this Chapter, the expressions,

(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the Integrated tax, Central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

(b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

Illustration:

Nisha Enterprises had made supplies of INR 7,50,000 to Tee Kay Services. There was a tax levied by Municipal Authorities on such sale of INR 75,000/-. CGST and SGST chargeable on the supply was 37,500/-. Packing charges, not included in the price above amounted to INR 15,000.

Nisha Enterprises received a subsidy of INR 30,000/- from an NGO on the sale of such goods, and the price mentioned above is after taking in to account the subsidy.

Discount offered is @ 1% and that's mentioned on the Invoice. Determine the Value of Supply.

	Price Charged	7,50,000
Add:	Tax charged by Municipal Authorities	75,000
	Packing Charges	15,000
	Subsidy from NGO	30,000
	Total after all inclusions	8,70,000
Less:	Discount @ 1%	7,500

Notes

1. CGST and SGST is not included in the determination of value of supply, rather taxed post determination on the same.
2. Subsidy since received from a non-governmental body is added back to determine the value of supply.
3. Discount on basic price is an exclusion.

PLACE OF SUPPLY

While determining the nature of supply i.e. whether it is inter-State or intra-State, the basic factor is the 'place of supply'. As such, the expression 'place of supply' has not been defined in Act, however, the collective reading of various provision makes us understand the purpose and relevance thereof in the GST law. The prime purpose of Place of Supply is to further the cause of determining whether a supply is intra-State or inter-State and consequentially to determine whether IGST to be charged or CGST+SGST or UTGST to be charged.

Place of Supply is also relevant for the authorities to determine which State/ Union Territory will get the tax revenue. We have read earlier that GST is a consumption-based tax unlike the previous tax regime which was origin based. The state which consumes or deemed to have consumed goods and/ or services in a particular transaction is called as a 'place of supply' and becomes entitled to receive the tax charged on such transaction.

Place of Supply also determines the eligibility of the recipient to input tax credit as the location of the recipient of supply has to be in the state which has been reported by the supplier as 'Place of Supply' for such supply.

Thus, we have understood the importance of the expression 'place of supply'. Now, the GST law has sufficiently prescribed rules to determine 'place of supply' separately for goods and services. IGST Act contains such provisions. Section 10 and 11 of the IGST Act prescribes such rules for goods and Section 12 and 13 prescribes such rules for services.

Place of Supply of Goods other than supply of goods imported into, or exported from India [Section 10 of IGST Act, 2017]

Section 10 prescribes the provisions for determining the place of supply of goods in domestic transactions.

A. Where the Place of Supply can be determined

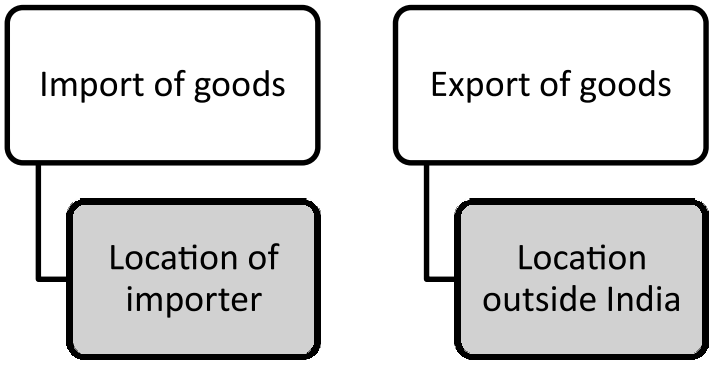
Sr. No.	*Situation*	*Place of Supply of Goods*
a	Supply involves movement of goods whether by the supplier or the recipient or by any other person,	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient. **Example:** Mr. X of Mumbai sells refrigerators to M/s Y of Ahmedabad and the refrigerators are transported to the premises of M/s Y located in Ahmedabad. The place of supply would be Gujarat as the movement of refrigerators terminated in Ahmedabad, Gujarat. Accordingly, since the location of supplier (Maharashtra) and the Place of Supply (Gujarat) are in different states, IGST would be charged, being inter-State supply.
b	Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise,	Place of Supply of such goods shall be the principal place of business of third party. **Example:** A having registered place of business at Pune, placed an order on B Ltd. in New Delhi, for delivering a parcel to C who is in Ludhiana. This being a 'Bill to Ship to' transaction covered under section 10(1)(b) of the IGST Act, [for transaction between B Ltd. and A] the Place of Supply would be Maharashtra as the principle place of business of A is in Pune, Maharashtra. Since the location of supplier (New Delhi) and Place of Supply (Maharashtra) are different, IGST would be charged. However, the place of supply for a second leg of the transaction i.e. between A and C would be Ludhiana, Panjab as the movement of goods terminates at Ludhiana, Panjab. Here, since the location of supplier (Pune, Maharashtra) and Place of Supply (Ludhiana, Panjab) are in the different states, IGST would be charged.

c	Where the supply does not involve movement of goods, whether by the supplier or the recipient,	Location of such goods at the time of delivery to the recipient. **Example:** Srinivasan from Bangalore travelled to Chennai for a vacation and purchased few essential toiletries from B Bazar at Chennai. In this case, the Place of Supply would be Tamil Nadu as the transaction does not involve movement and the goods have been made available to Srinivasan in Chennai, Tamil Nadu. Since the location of supplier and Place of Supply are same, CGST + SGST would be charged, being an intra-State supply.
d	Where the goods are assembled or installed at site,	Place of such assembly or installation. **Example:** Surya Narayan from Mumbai ordered a machine to be installed in his factory at Jamshedpur. The supplier, from Kolkata, sourced the parts from various states across the country after which the machine was successfully installed at the factory of Surya Narayan at Jamshedpur. In this case, the Place of Supply would be Jamshedpur (Jharkhand) as the place of installation is at Jharkhand. Since the location of the supplier (West Bengal) and the Place of Supply (Jharkhand) are different, IGST would be charged.
e	Supply on board a conveyance including a vessel, an aircraft, a train or a motor vehicle,	Location where goods are taken on board. **Example:** Air Asia flight from Delhi to Chennai sells gift items to in-flight passengers which were taken on board at Delhi Airport. The Place of Supply of such gift items between Indigo and the passengers would be Delhi.

B. Where the Place of Supply cannot be determined

Sr. No.	***Situation***	***Place of Supply of Goods***
a	Where the Place of Supply cannot be determined	To be determined in such a manner as may be prescribed.

Place of Supply in case of import into, export from India [Section 11 of IGST Act, 2017]



Examples:

1. A Ltd. of Vadodara, Gujarat supplies steel structures to Mahmud Rehman of Bangladesh. The goods were transported through land customs station in West Bengal and consigned to Dhaka. In this case, the place of supply is Bangladesh and accordingly IGST would be charged on such supply.
2. T Ltd. of Nasik supplies dying chemicals to L Ltd. of Mumbai but on the directions of L. Ltd. Consigns the goods directly to its customer Rama Co. in Sri Lanka. In this case, [for the first leg of transaction as between T Ltd. and L Ltd., place of supply is Maharashtra being a principal place of business of L Ltd. However, for the second leg of transaction as between L Ltd. and Rama Co., the place of supply is Sri Lanka being the location outside India.
3. A Ltd. Located in Jaipur imported goods from G Inc. of Germany and the goods entered India through Chennai Port. and finally transported to Jaipur. In this case, the place of supply is Rajasthan being the location of the importer.

Place of Supply of Services [Section 12 & 13 of IGST Act, 2017]

Section 12 covers the situation where both Location of Supplier and Location of Recipient are located in India.

Services	***Place of Supply***	
	Recipient is Registered	**Recipient is Unregistered**
Section 12(2): General Principle (All services, except the services specified in sub-section (30 to (14).	Location of recipient. **Example:** A Ltd, located in Alleppy, provides M&A services to B Ltd located in Delhi. In this case Place of Supply would be Delhi.	Where the address of the recipient exists on records- Location of recipient. Where the address of the recipient does not exists on records - Location of supplier.

Section 12(3): Service in relation to an immovable property – (a) Where service is directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co- ordination of construction work; or (b) Lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or (c) Accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or (d) Any services ancillary to the services referred to in clauses (a), (b) and (c).	Place of supply would be the location where the immovable property or boat or vessel, as the case may be, is located or intended to be located: If the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient. If the immovable property or boat or vessel, as the case may be, is located at more than one state or union territory, place of supply shall be all such states/ union territories to the extent of the value as attributed to each such state / union territory as per contract or agreement entered into in this regard or in the absence of such contract or agreement, as per Rules. **Example:** Mr. Ram Kumar is a Company Secretary registered at Mumbai and travels to Bangalore for business purpose and stays at a hotel there. In this case, the place of supply would be Karnataka i.e. place of immovable property.

Illustration:

Mr. X is civil contractor is located in different States in India providing services to Mr. Y for his factories and offices located around the world. Determine the place of supply and the nature of GST payable in the following cases:

Location of supplier	*Location of receiver of services*	*Location of immovable properties*
(1) Delhi	Punjab	Orissa
(2) Haryana	Punjab	West Bengal
(3) Delhi	Uttar Pradesh	Italy
(4) Delhi	Rajasthan	Delhi
(5) Delhi	France	Canada

Solution:

Place of Supply	*Nature of GST*
(1) Orissa	IGST
(2) West Bengal	IGST
(3) Uttar Pradesh (Location of the recipient of services)	IGST
(4) Delhi	CGST & Delhi GST
(5) France (Location of the recipient of services)	Zero rated supply as it is export of services

<table>
<tr><td>Section 12(4) : Beauty treatment, fitness, restaurant and catering services, personal grooming, health service including cosmetic and plastic surgery.</td><td colspan="2">Place of actual performance of service.
Example:
Rajaram resident of Bhopal engaged a cosmetic surgeon, resident of Delhi for plastic surgery. The surgery was conducted in a private hospital located in Mumbai.
In this case, the place of supply would be Maharashtra.</td></tr>
<tr><td>Section 12(5) : Training & Performance Appraisal.</td><td>Registered Person - Location of registered person.
Example:
XYZ Consultants (registered at Bangalore) provides training to its client's employees at Mumbai. The clients are registered at Chennai.
In this case, if the client (recipient) is registered, the place of supply would be the location of recipient, that is Chennai (Tamil Nadu) and consequently IGST would be charged as the location of Supplier (State of Karnataka) and the Place of Supply (State of Tamil Nadu) are different. (Training & Performance Appraisal Services).</td><td>Person other than registered Person - Location of actual performance.
Example:
If the client was unregistered, the place of supply would have been Mumbai/ Maharashtra [location of the recipient] and again IGST would be charged. (Training & Performance Appraisal Services).</td></tr>
<tr><td>Section 12(6) : Admission to cultural, artistic, sporting, scientific, educational, entertainment event, amusement park or any other place and services ancillary thereto.</td><td colspan="2">Place where the event is actually held or where the park or such other place is located.
Example:
Radha is a resident of Mumbai and travelled to Bangalore for a vacation and booked tickets for an event at the water park.
In this case, the place of supply would be Bangalore/Karnataka (Admission to events).</td></tr>
</table>

Section 12(7) : (a) Organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or (b) Ancillary to organisation of any of the events or Services referred to in clause (a), or assigning of sponsorship of such events.	Location of such person.	• Location where the event is actually held. • Location of recipient if the event is held outside India.
Explanation: Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, place of supply shall be determined for respective value assigned to each State or Union territory on proportionate basis.		
Example Mr. X based in Ahmedabad, solicits the services of an event management company based in New Delhi, for a business conference at a palace in Udaipur. In this case, if Mr. X is registered, the place of supply would be Ahmedabad (Gujarat) and IGST would be charged, but if he is unregistered the place of supply would be Udaipur (Rajasthan) and IGST would be charged.		

Nature of supply of Services	***Status of Recipient***	
	Registered person	**Unregistered person**
Section 12(8) : Transport of goods, including Courier/ mail.	Location of recipient. **Example:** Nagendra Kumar is relocating from Bangalore to Chennai and calls for packers and movers for packing and relocation and shipping of household effects. In this case the place of supply would be Bangalore i.e. where the goods have been handed over to the transporter. Assuming the packers are also from Bangalore, CGST + SGST would be applicable.	Location where goods are handed over for transportation. Where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

Section 12(9) : Transportation of passengers.	Location of recipient. **Example:** Tarun books a round trip for Ahmedabad – Pune – Bangaluru – Pune – Ahmedabad, with a stopover at Bangalore. The tickets are booked with a Bangalore based airline. In this case, this would be treated as a continuous journey with a stopover. For the first leg, the place of supply would be Ahmedabad and since the Location of Supplier (BLR) and the Place of Supply (AHM) are different, IGST would be charged. For the second leg of the journey, the place of supply would be Bangalore, and since the Location of Supplier (BLR) and the place of supply are same, CGST + IGST would be charged. (Passenger Transportation Services).	Place where the passenger embarks on the conveyance for a continuous journey. Where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be • Where the recipient is registered - the location of recipient. • Where the recipient is not registered – address of the recipient ton record and where no address is on record, the location of the supplier. • For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.
Section 12(10) : On board a conveyance including a vessel, an aircraft, a train or a motor vehicle.	Location of first, scheduled point of departure of that conveyance for the journey. **Example:** Indigo Flight SG2123 from Delhi to Pune took meals from XYZ catering company at Delhi for onboard serving to its passengers. In this case the place of supply is Delhi.	
Section 12(11) : Telecommunication services including data transfer, broad casting, cable and direct to home television services to any person shall,-		
(a) fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna,	Place of such installation;	
(b) mobile connection for telecommunication and internet services provided on post- paid basis,	Location of billing address of recipient of services on the record of the supplier of services;	

(c) mobile connection for telecommunication, internet service and direct to home television services are provided on pre- payment basis through a voucher or any other means,	
(i) through a selling agent or a re-seller or a distributor of subscriber identity module card or recharge voucher,	Address of selling agent, or re- seller or distributor as per the record of the supplier at the time of supply; or
(ii) by any person to the final subscriber.	The location where such pre-payment is received or such vouchers are sold;
(d) In other cases	The address of recipient as per records of the supplier of services and where the such address is not available- Place of supplier of services will be the place of supply. If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.
Explanation: Where leased circuit is installed in more than one state/union territory and a consolidated amount is charged for supply of services relating to such circuit place of supply shall be determined for respective value assigned to each state or union territory on proportionate basis as per contract.	
Section 12(12) : Banking & other Financial services including Stock broking services to any person	If address exists on records of supplier - Location of recipient. In other cases - Location of supplier. **Example:** Priya, an unregistered person, from New Delhi, has an account with a Bank at New Delhi. She is on a vacation in Nainital, and visits a bank for getting a Demand Draft made. In this case, since the address of the recipient will be available in the records of the supplier, the place of supply would be New Delhi. In case she went to a branch at Nainital for availing currency exchange services which isn't linked to her account in New Delhi, the address of the recipient would not be available in the records of the supplier, and hence the place of supply would be Nainital.

Section 12(13) : Insurance services	Location of recipient. **Example:** XYZ Limited having its Head Office in Mumbai took general insurance from Bajaj Allianze for its factory located in Coimbatore. The insurance company issued invoice in favour of XYZ Limited, Mumbai. In this case, the place of supply is Maharashtra.	Location of recipient of services as on the records of the supplier.
Section 12(14) : advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement.	Place of supply shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed. **Example:** Central Government issued an advertisement in the Hindu newspaper for publishing in its editions printed at Chandigarh, Delhi, Chennai and Ahmedabad. The total contract price is Rs. 20,00,000 for all 4 editions. The Hindu Newspaper charge uniform rate for all its editions. In this case, the place of supply would be Chandigarh, Delhi, Tamilnadu and Gujarat and the value shall be Rs. 5,00,000 for each such place.	

Section 13 determines the place of supply where either the location of supplier or location of recipient is outside India

Nature of Supply of Services	***Place of Supply***
Section 13(2) - General scenario [where the situation does not fall in any of the cases spelt in Section 13(3) to Section 13(12)	Location of recipient. However, place of supply shall be the location of supplier, if location of recipient is not available. **Example:** A Ltd. located in Bhopal procured IPR from L Inc of Germany. In this case, the place of supply shall be India, being a place where recipient is located.
Section 13(3) – Services involving actual performance	
Where, service is in relation to goods required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services	Location of actual performance. **Example:** ATL Inc. of USA contracted with L Ltd. of Kochi to digitize old manuscripts lying in their library in USA. L. Ltd. deputed its personal in USA and carried out the contracted work. In this case, Place of Supply is USA.

such services are provided from a remote location by way of electronic means.	Location of goods at the time of supply of services. **Example:** Wipro has awarded contract to Lousi Inc. of France to modify certain specialized software installed in its systems at its facility in Mysore. Lousi Inc. completed the task through electronic means. In this case Place of Supply is India.
The above stated rules shall not be applicable in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.	
Where, service is in relation to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which requires physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	Location of actual performance. **Example:** Priyanka Desai hired a beautician from France for special make-up. Payments were made in USD. The beautician came to Mumbai and completed the task. In this case, the Place of Supply is Mumbai/India.
Section 13(4) Services in relation to Immovable Property	
Services in relation to Immovable Property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co- ordination of construction work, including that of architects or interior decorators.	Location of immovable property. **Example:** L&T Ltd. got a contract to construct a gas based thermal power plant in Bangladesh. It hired a German company Marine Ventures to complete soil testing and geological surveys at the project site in Bangladesh. Payments were made in INR. In this case, the Place of Supply is Bangladesh.
Section 13(5) Admission to, organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization	Location where event is actually held. **Example:** Toyota from Japan has booked a stall in International Trade Fair to be held in New Delhi. Payment of stall fee is payable in USD. In this case, Place of Supply is India.
Section 13(6) Services covered under Section 13(3), Section 13(4) and Section 13(5) provided at multiple locations and one or more location falls in taxable territory :	Location in the taxable territory. **Example:** M&M has entered into a contract with James and Co. of Canada to avail training of its employees located in Mumbai and Dhaka. In this case, the Place of Supply shall be Mumbai.

Section 13(7) - Services mentioned in section 13(3), section 13(4) and section 13(5) as provided at previous page multi locations involving more than one State/ UT.	Each such State/ union territory to the extent of value attributed/ pro-rated to each such State/ union territory in terms of the contract or agreement entered into in this regard in each State/UT or, in the absence of such contract or agreement, on such other basis as may be prescribed.
Section 13(8) - – Banking company, or a financial institution, or a non-banking financial company to account holders, – intermediary services – hiring of means of transport including yatchs but excluding aircraft or vessel, ***up to a period of one month.***	Location of supplier. **Example:** a. Radhey Shyam resident of Germany availed a home loan from Axix Bank Branch at Chennai. Place of Supply is Chennai. b. Raman Ltd., Delhi based company, acting as Recruitment Agent of foreign universities, facilitating recruitment of prospering students in foreign academy or university and get specified fee from such universities for providing such services. In this case, the Place of Supply would be location of supplier of such services i.e. India. c. Tyota, Japan set up a stall during International Trade Fair at Delhi and hired three tempo travellers for a period of 45 days. Payment to be made in USD. In this case, the Place of Supply is India.
Section 13(9) - Goods transport other than mail/courier.	Destination of Goods. **Example:** LNT Ltd., a Chennai based company, hired a Malaysian righter to transport its equipment to Malaysia. In this case, the Place of Supply would be Malaysia.
Section 13(10) Passenger transport services.	Location where the passenger embarks on the conveyance for a continuous journey. **Example:** Mohammad Hafiz took a train ticket from Kolkata to Dhaka. Payment is made in INR. In this case, the Place of Supply is West Bengal/ India.
Section 13(11) Services on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board,	First scheduled point of departure of that conveyance for the journey. **Example:** Emirates took meals from TAJ SATS for its flight departing from Mumbai International Airport to the destination in USA. Such meals were consumed during the flight. Place of Supply is Maharashtra/ India.

Section 13 (12) on line information and database excess or retrieval services shall be the :	Location of recipient of services. Person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely :- (a) the location of address presented by the recipient of services through internet is in the taxable territory; (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory; (c) the billing address of the recipient of services is in the taxable territory; (d) the internet protocol address of the device used by the recipient of services is in the taxable territory; (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory; (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory; (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory. **Example:** Harpreet Kaur downloaded a software from the website of a German company through its Indian IP address and paid USD 100 from its bank account in Patiala, Panjab. In this case, the Place of Supply is Panjab/ India.
Section 13(13) : In order to prevent double taxation or no-taxation of the supply of a service or for the uniform application of rules the Government shall have the power to notify any description of service or circumstance in which the Place of Supply shall be the place of effective use and enjoyment of a service.	

Clarifications issued by the Government regarding determination of Place of Supply in certain cases

1. Clarification on Place of Supply when specified research and development services related to pharmaceutical sector by a person located in taxable territory to a person located in the non-taxable territory.

S. No.	*Nature of Supply*	*General Description of Supply*	*Place of Supply*
1.	Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.	Location of recipient of services subject to the fulfillment of the following conditions: (i) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory. (ii) Such supply of services fulfills all other conditions in the definition of export of services, except that the supplier of service and the recipient of service are not merely establishments of a distinct person.
2.	Integrated development		
3.	Evaluation of the efficacy of new chemical/ biological entities in animal models of disease	This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.	
4.	Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions.	
5.	Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.	
6.	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.	

7.	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.	
8.	Bio-equivalence and Bio-availability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bio-availability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.	
9.	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism,	
10.	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.	

2. B2B maintenance, repair and overhaul services of aircrafts or aircraft engines/components/parts :

S. No.	***Description of Services or circumstances***	***Place of Supply***
1.	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	Location of the recipient of service.

3. Services provided by Ports –

Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.

Doubts were raised about determination of place of supply for such services i.e. whether the same would be

determined in terms of the general rule as contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, or be treated as in relation to immovable property as per sub-section (3) of Section 12 of the IGST Act.

It is clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

4. Services rendered on goods temporarily imported in India

Doubts have been raised about the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?

Place of supply in case of performance-based services is to be determined as per the provisions contained in clause (a) of sub-section (3) of Section 13 of the IGST Act and generally the place of services is where the services are actually performed. But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

In view of the above, it is clarified that in case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.

5. Place of Supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry

A number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.

In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.

The clarification was sought on whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider".

In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.

It was accordingly clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

LESSON ROUND-UP

- Point of taxation means the point in time when goods have been deemed to be supplied or services have been deemed to be provided.
- Vouchers are instruments that can be exchanged as payment for goods/services, of the designated value therein.
- Section 31 mandates that the time limit for issue of invoice is that the invoice must be issued either before the provision of service, or within 30 days from the date of supply of service (45 days for BFSI companies & NBFCs).
- Section 15 of the CGST Act, 2017 when read in conjunction with Determination of Value of Supply of the CGST rules, states that the value of taxable supply under GST is the transaction value.
- The term "person" also includes legal persons and persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.
- Place of supply is important to determine the nature of sale (inter-state, intra-state, import or export) and the State where state component of GST will accrue.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.*)

Multiple Choice Questions (MCQs)

1. PQR Consultants, registered at Delhi provides GST training to employees of Pankaj & Co. of Noida, UP at their filed location in the state of Manipur. Pankaj & Co. is unregistered under GST Act. In this case, which is the place of supply?
   a) Uttar Pradesh
   b) Delhi
   c) Manipur
   d) None of the Above
2. Which section of CGST Act 2017 deals with Time of supply of goods?
   a) Section 11 of IGST Act
   b) Section 12 of IGST Act
   c) Section 11 of CGST Act
   d) Section 12 of CGST Act

3. Which of the following discounts shall be excluded to determine the value of supply?
   a) Staggered discount
   b) post supply discounts established at the time of supply
   c) volume discounts established before the time of supply
   d) All of the Above
4. Mr. Dhairya having a registered place of business in Jaipur, placed an order to HAM Ltd. in New Delhi, for delivering a parcel to Mr. Lucky who is at Kanpur. What will be the place of supply in the present case?
   a) Jaipur
   b) New Delhi
   c) Kanpur
   d) None of the Above
5. What will be the value of goods, if consideration paid is not wholly in money and open market value of such goods are also known?
   a) Actual value paid in money
   b) Open market value of such goods
   c) 90% of open market value of such goods
   d) None of the Above

Answers: 1 (c), 2 (b), 3 (d), 4 (a), 5 (b)

Descriptive Questions

1. When Invoice will be issued in given cases;
   a. Supply involve moment of goods
   b. Supply Don't involve moment of goods
   c. Continuous Supply of goods
   d. supply don approval for sale/return basis
2. Mr. Foreigner is planning to visit USA to meet his Friend and want some Foreign currency (i.e. US $) for his travel. He converted US$ 12000 from the authorized money changer @ 90 per US$ and receive Rs. 10.80 lacs. RBI reference rate for US$ is 90.50 for that day. Compute the value of taxable supply.
3. What do you understand by place of supply of goods? Explain the same for Import and export in preview of IGST Act, 2017.
4. Explain the value of Supply of goods or services where consideration in not wholly in money.
5. In case of Reverse charge Mechanism what will be the time of supply of services?

LIST OF FURTHER READINGS

- Goods & Services Tax, Laws, Concepts and Impact Analysis- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- GST Ready Reckoner- Taxmann – V.S. Datey
- A complete guide to Goods & Services Tax Ready Reckoner in Q & A Format- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- Students may also visit "http://cbic.gov.in/" for regular updates on GST law.

Input Tax Credit & Computation of GST Liability

Lesson 18

KEY CONCEPTS

■ Goods ■ Services ■ Input ■ Input Service ■ Capital Goods ■ Input Tax ■ Input Tax Credit ■ Input Service Distributor

Learning Objectives

To understand:

- Concept of Input Tax Credit (ITC)
- Eligibility and conditions for taking ITC
- Transitional Provisions in ITC
- Ineligible Credits
- Input Service Distributor (ISD)
- Order of Utilisation of ITC

Lesson Outline

- Overview
- Eligibility and Conditions for taking Input Tax Credit
- Transitional Provisions in ITC
- Ineligible Credits
- Input Service Distributor (ISD)
- Order of Utilisation of Input Tax Credit
- Lesson Round-Up
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK

The Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 2(59)	Input
Section 2(60)	Input Service
Section 2(61)	Input Service Distributor (ISD)
Section 2(62)	Input Tax
Section 2(63)	Input Tax Credit (ITC)
Section 16	Eligibility and Conditions for taking ITC
Section 17	Apportionment of Credit and Blocked Credits
Section 18	Availability of Credit in Special Circumstances
Section 19	Taking Input Tax Credit in respect of Inputs and Capital Goods sent for Job Work
Section 20	Manner of Distribution of Credit by Input Service Distributor
Section 21	Manner of Recovery of Credit Distributed in Excess
Section 39	Furnishing of Returns
Section 41	Availment of Input Tax Credit
Section 49	Payment of Tax, Interest, Penalty and Other amounts
Section 49 A	Utilisation of input tax credit subject to certain conditions
Section 49 B	Order of utilisation of input tax credit

OVERVIEW

Input Tax Credit (ITC) has its origin in the system of VAT (Value Added Tax), which is common in West European Countries. Concept of VAT was developed to avoid cascading effect of taxes. Any tax is related to selling price of product. In modern production technology, raw material passes through various stages and processes till it reach the ultimate stage.

Input Tax Credit is considered as a cornerstone of GST. In the previous tax regime, there was non-availability of credit at various points in supply chain, leading to a cascading effect of tax, i.e., tax on tax and therefore increasing the cost of goods and services. This flaw has been removed under GST and a seamless flow of credit throughout the value chain is therefore available consequently doing away with the cascading effect of taxes.

For example, let us assume that tax paid on a product is 10% of selling price. Manufacturer Amit supplies his output to Barun at Rs. 1000. Thus, Barun got the material at Rs. 1100, inclusive of tax @ 10%. He carried out further processing and sold his output to Chinmay at Rs.1500. While calculating his cost, Barun has considered his purchase cost of material as Rs. 1100 and added Rs. 400 as his conversion charges. While sold product to Chinmay, Barun charged tax again @ 10%. Thus Chinmay got the item at Rs. 1650 (1500+10% tax). As stages of production and/ or sales continue, each subsequent purchase has to pay tax again and again on the material which has already suffered tax. This is called cascading effect.

Taxes paid on inward supply of inputs, capital goods and services are called input taxes. These may be Integrated GST, Central GST, State GST or Union Territory GST. Taxes paid under reverse charge mechanism are also input taxes.

The credit of the above taxes is called input tax credit, that is, the taxes paid on inputs are available as a set off against the taxes payable on outward taxable supplies.

CGST Act, 2017 contains the provisions relating to Input Tax Credit (ITC), its availment, utilization and conditions and restrictions.

Definitions

The Central Goods and Services Tax Act, 2017

Section 2(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Section 2(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation.––The expression "services" includes facilitating or arranging transactions in securities.

Section 2(59) "Input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

Section 2(60) "Input Service" means any service used or intended to be used by a supplier in the course or furtherance of business.

Section 2(19) "Capital goods" means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

Section 2(62) "Input Tax" in relation to a registered person, means the Central tax, State tax, Integrated tax or Union Territory tax charged on any supply of goods or services or both made to him and includes –

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but **does not** include the tax paid under the composition levy.

Section 2(63) "Input Tax Credit" means the credit of input tax.

Section 2(82) "Output tax" in relation to a taxable person, means the IGST chargeable under the Act on taxable supply of goods and/or services by him or his agent and excludes tax payable by him on reverse charge basis.

Section 2(34) "Conveyance" includes a vessel, an aircraft and a vehicle.

ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT [SECTION 16]

To avail the benefit of ITC, it is required that the person availing such benefit is registered under GST. An unregistered person is not eligible to take the benefit of ITC. Section 155 of the CGST Act, 2017 states that where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

The Registration under GST and goods or services or both to be used for business purpose is mandatory for taking Input Tax Credit.

Every **registered person** shall,

- Subject to such conditions and restrictions as may be prescribed and, in the manner, as specified in section 49,
- Be entitled to take credit of input tax charged on,
- Any supply of goods or services or both to him,
- Which are used or intended to be used in the course or furtherance of his business, and
- The said amount shall be credited to the electronic credit ledger of such person.

Conditions for Taking ITC

(a) notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,- he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other **tax paying documents** as may be prescribed;

ITC can be availed on the basis of any of the following documents:

i) Invoice issued by the supplier of goods and / or services;

i) Invoice issued by the recipient receiving goods and/or services from unregistered supplier along with proof of payment of tax, in case of reverse charge;

iii) Debit note issued by the supplier;

iv) Bill of entry or similar document prescribed under the Customs Act, 1962;

v) Revised invoice;

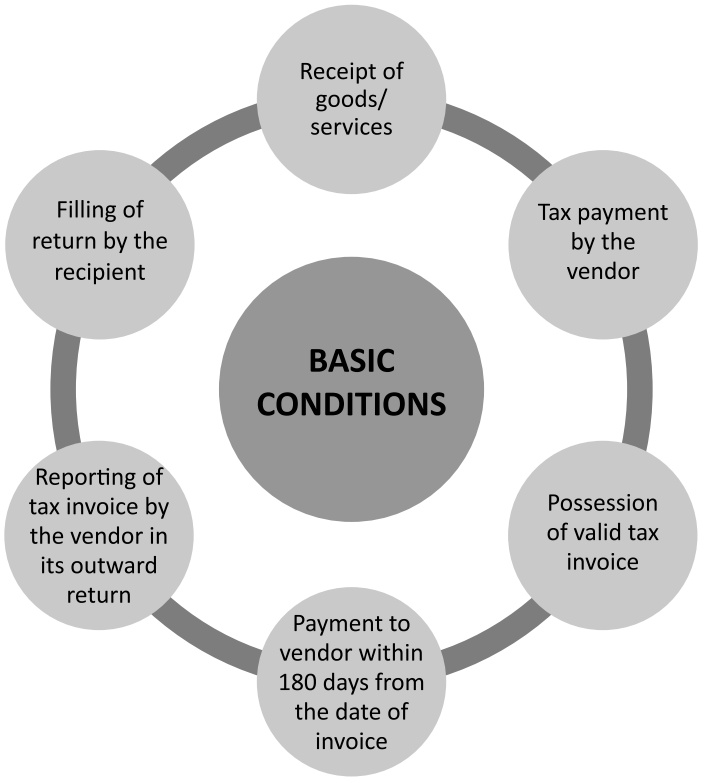
vi) Document issued by the input service distributor.

Content of Document:

The documents on the basis of which ITC is being taken should contain at least the following details:

- Amount of tax charged;
- Description of goods or services;
- Total value of supply of goods and / or services;
- GSTIN of the supplier and recipient;
- Place of supply in case of inter-State supply.

No ITC to be taken on tax paid towards demand involving fraud, willful misrepresentation or suppression of facts [Rule 36(3)].



As per section 16 (2) (*aa*) the details of the invoice or debit note referred to in clause (*a*) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37. Thus, a registered person shall be entitled to the credit of any Input Tax in respect of any supply of goods or services or both to him if the details of the invoice or debit note have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** and further such details have been communicated to the recipient of such invoices or debit note. We can also say that availment of ITC by the recipient in the **FORM GSTR-3B** has been linked with furnishing of such details in **Form GSTR-1** by the supplier.

(b) Receipt of goods or services or both: The registered person must have received the goods or services or both.

"Bill to Ship to transaction"

The registered person need not receive the goods himself. It is sufficient even if the goods are delivered to some other person on his direction.

Similarly, services may also be provided to a third party by the service provider (supplier) on the direction of the service recipient (registered person). In this case also, though the service recipient (registered person) does not receive the service, by virtue of explanation to section 16(2)(b), it is deemed that the registered person (service recipient) has received the service.

In other words, service provided to any person on the direction of and on account of the registered person, is deemed to have been received by such registered person. So, ITC will be available to the registered person, on whose direction the services are provided to a third person.

Explanation. – For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services –

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted [Inserted vide Section 100 of the Finance Act, 2022 w.e.f., 01.10.2022 vide Notification No. 18/2022 dated 28.09.2022];

(c) Tax must be actually paid to Government: subject to the provisions of section 41 the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

CASE LAWS

1. M/s LGW Industries Ltd. vs. Union of India (2021) – Calcutta High Court

Constitutional validity of Section 16(2)(c) of the CGST Act, 2017

In this case constitutional validity of Section 16(2)(c) of the CGST Act, 2017 was challenged and petitioner submitted that he paid the price of goods or services including the amount of applicable tax to a supplier of goods or services had no means to verify the fact whether the supplier of goods or services had deposited the GST collected from it and therefore denying ITC to the buyer of goods or services for default of the supplier of goods or services would be arbitrary, irrational and unduly harsh.

Court held that the respondents to consider afresh the cases of the petitioners on the issue of their entitlement of benefit of input tax credit by considering the documents the petitioners want to rely in support of their claim of genuineness of the transactions and shall also consider as to whether payments on purchases in question along with GST were actually paid or not to the suppliers and also as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers - If it is found that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers, the petitioners shall be given the benefit of input tax credit in question- writ petition is allowed by remand.

2. M/s D.Y.Beathel Enterprises vs. The State Tax Officer (Data Cell) (2021) - Madras High Court

No GST can be demanded from Buyer for the fault of Seller of non-payment of taxes to the Government.

In this case it has been held that when it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him. That apart in the enquiry in question, the Person who supplied / sold the goods, ought to have been examined.

Petitioner challenged the vires of Section 16(2)(c) being violative of Articles 14, 19(1)(g) and 300A of the Constitution of India.

The Court analyzed th provision of Section 16 of CGST Act, and noted that the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer.

(d) Furnishing of return: he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days (180 days) from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Exceptions

The condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

(a) Supplies on which tax is payable under reverse charge

(b) Deemed supplies without consideration

(c) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply under situations given in points (b) & (c), the value of supply is deemed to have been paid.

Depreciation claimed on Tax Component, ITC not allowed

Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed. Thus, in respect of the tax paid on such items, dual benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously.

Further, if Capital goods are used partly for business purpose and partly for effecting exempted supply or other purposes, input tax credit shall be available to the extent that these capital goods are used for business purposes.

Due date to claim ITC

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

*Substituted (w.e.f., 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by Section 100 of The Finance Act, 2022 (No. 6 of 2022) for ''due date of furnishing of the return under section 39 for the month of September".

At this juncture it is important to understand Provisions of Section 41 of CGST Act, it deals with availment of input tax credit:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

Illustration:

Mr. A orders 30,000 tonnes of goods which are to be delivered by the supplier via 3 lots of 10,000 each. The lots are sent under a single invoice with the first lot and the payment is made by the recipient for Value of Supply plus GST and the supplier has also deposited the tax with the Government.

The 3 lots are supplied in May, June and July 2020. The ITC is available to Mr. A only after the receipt of the 3rd lot. The reason is simple, one of the conditions to avail ITC is the receipt of goods which is completed only after the last lot is delivered.

Illustration:

For an Invoice dated 31st July, 2021, the same pertains to the financial year 2021-22.

Last date of claiming ITC in this example is 30th November 2022 or actual filing of annual return whichever is earlier.

Let's say that the annual return is filed on 12th September, 2022.

Thus ITC needs to be claimed before 12th September, 2022.

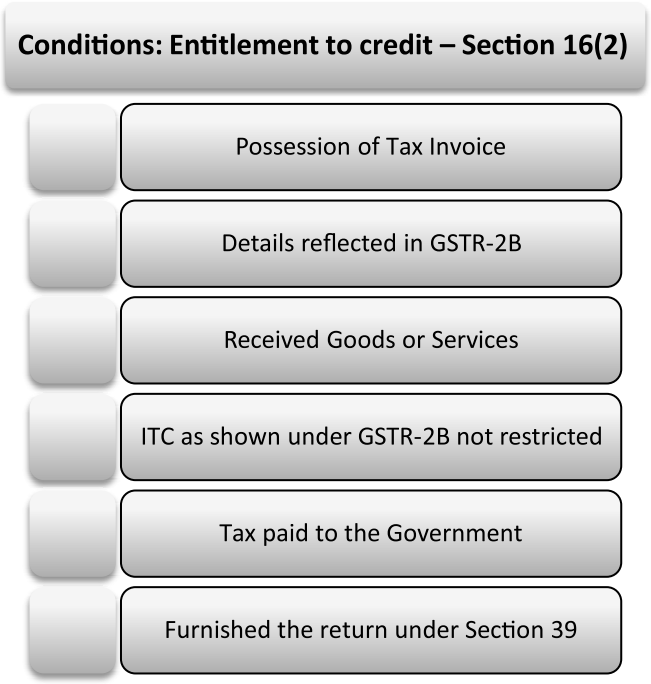
Restriction on availment of ITC Rule 36(4)

As per Rule 36(4), No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and

(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60.

Presently as per Notification No. 40/2021 (Central Tax) dated 29th December 2021, no Input Tax Credit can be availed unless details are populated in **GSTR-2B**. Furnishing of details of invoice/credit note in **GSTR-1** or through IFF by the supplier is now mandatory to take credit. A self-policing mechanism for claiming validated ITC has been introduced. Thus From 1st January 2022, registered person can avail ITC only if it is reported by the supplier in **GSTR-1/IFF** (Invoice Furnishing Facility) and it appears in their **GSTR-2B**.



TRANSITIONAL PROVISIONS IN ITC

Transition provisions are incorporated under GST to enable existing taxpayers to migrate to GST in a transparent and exact manner. Elaborate provisions have been made to avail/carry forward the ITC earned under the pre-GST taxes which are subsumed in GST (Central Excise, Service Tax, VAT, etc.). Such credit should be permissible under the GST law subject to conditions and timelines.

The transitional provisions in relation to input tax credit are contained in Section 140 of the CGST Act, 2017 which are reproduced herein below:-

Section 140. Transitional arrangements for input tax credit -

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of **eligible duties** carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed :

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of **six months** immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day within such time and in such manner as may be prescribed :

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation. - For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to the following conditions, namely:-

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months (12 months) immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act :

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger, -

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, within such time and in such manner as may be prescribed, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days (30 days) from the appointed day :

Provided that the period of thirty days (30 days) may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days (30 days).

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to the following conditions, namely:-

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act, within such time and in such manner as may be prescribed, even if the invoices relating to such services are received on or after the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day [within such time and in such manner as may be prescribed].

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day **within three months** of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier :

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act :

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration **within a period of three months**, such credit can be reclaimed within such time and in such manner as may be prescribed, subject to the condition that the registered person has made the payment of the consideration for that supply of services **within a period of three months** from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1. - For the purposes of sub-sections (1), (3), (4)] and (6), the expression "eligible duties" means-

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;

(iv) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and

(v) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2. - For the purposes of sub-section (1) and (5), the expression "eligible duties and taxes" means-

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;

(iv) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;

(v) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and

(vi) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994), in respect of inputs and input services received on or after the appointed day.

Explanation 3. - For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 in respect of input services received on or after the appointed day.

Operational Mechanism under CGST Rules, 2017 to give effect to the Transitional provisions relating to ITC

Rule 117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day -

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days (90 days) of the appointed day, submit a declaration electronically in **FORM GST TRAN-1**, duly signed, on the common portal specifying therein, separately, the amount of input tax credit of eligible duties and taxes, as defined in *Explanation 2* to section 140, to which he is entitled under the provisions of the said section :

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days (90 days) by a further period not exceeding ninety days (90 days):

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in **FORM GST TRAN-1** by a further period not beyond 31st March, 2020, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.

(2) Every declaration under sub-rule (1) shall -

(a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day -

(i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and

(ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day.

(b) in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or sub-section (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day;

(c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely :-

(i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;

(ii) the description and value of the goods or services;

(iii) the quantity in case of goods and the unit or unit quantity code thereof;

(iv) the amount of eligible taxes and duties or, as the case may be, the value added tax or entry tax charged by the supplier in respect of the goods or services; and

(v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

(3) The amount of credit specified in the application in **FORM GST TRAN-1** shall be credited to the electronic credit ledger of the applicant maintained in **FORM GST PMT-2** on the common portal.

(4) (a) (i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent (60%) on such goods which attract Central tax at the rate of nine per cent (9%) or more and forty per cent (40%) for other goods of the Central tax applicable on supply of such goods after the appointed date and shall be credited after the Central tax payable on such supply has been paid :

Provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of 30% and 20% respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The credit of Central tax shall be availed subject to satisfying the following conditions, namely :-

(i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;

(ii) the document for procurement of such goods is available with the registered person;

(iii) the registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in **FORM GST TRAN 2** by 31st March, 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;

Provided that the registered persons filing the declaration in **FORM GST TRAN-1** in accordance with sub-rule (1A), may submit the statement in **FORM GST TRAN-2** by 30th April, 2020.

(iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in **FORM GST PMT-2** on the common portal; and

(v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

Rule 118. Declaration to be made under clause (c) of sub-section (11) of section 142. - Every person to whom the provision of clause (c) of sub-section (11) of section 142 applies, shall within the period specified in rule 117 or such further period as extended by the Commissioner, submit a declaration electronically in **FORM GST TRAN-1** furnishing the proportion of supply on which Value Added Tax or Service Tax has been paid before the appointed day but the supply is made after the appointed day, and the Input Tax Credit admissible thereon.

Rule 119. Declaration of stock held by a principal and job worker. - Every person to whom the provisions of section 141 apply shall, within [the period specified in rule 117 or such further period as extended by the Commissioner, submit a declaration electronically in **FORM GST TRAN-1**, specifying therein, the stock of the inputs, semi-finished goods or finished goods, as applicable, held by him on the appointed day.

Rule 120. Details of goods sent on approval basis. - Every person having sent goods on approval under the existing law and to whom sub-section (12) of section 142 applies shall, within the period specified in rule 117 or such further period as extended by the Commissioner, submit details of such goods sent on approval in **FORM GST TRAN-1.**

Rule 120A. Revision of declaration in FORM GST TRAN-1. - Every registered person who has submitted a declaration electronically in **FORM GST TRAN-1** within the time period specified in Rule 117, Rule 118, Rule 119 and Rule 120 may revise such declaration once and submit the revised declaration in **FORM GST TRAN-1** electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.

Rule 121. Recovery of credit wrongly availed. - The amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

INELIGIBLE CREDITS

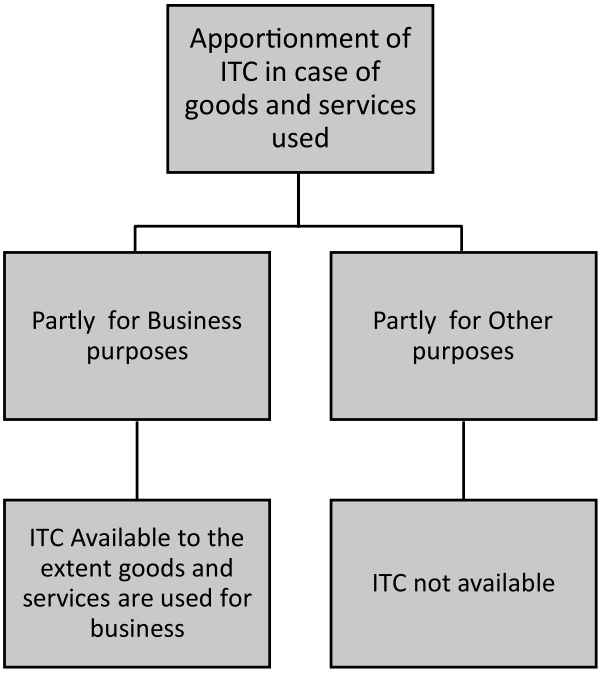
Apportionment of credit and blocked credits [Section 17]

Goods and Services Tax aims at providing seamless flow of credit throughout the supply chain.

However, there are certain situations as mentioned in section 17 of Central GST Act, 2017 where input tax credit will not be available.

Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of CGST Rules]

(1) Where the goods or services or both are used by the registered person **partly for the purpose of any business and partly for other purposes**, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.



Meaning of Business

As per Section 2(17) of CGST Act, 2017 "Business" includes :

a. any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

Examples

i. Bank providing financial services to its customers.

ii. Company manufacturing turbines for export and local sale.

iii. CS providing GST consultancy.

iv. An artist earning income for dance performances.

v. Gambling in a Derby.

vi. Charitable hospital providing free medicines to farmers.

Note: pecuniary benefit means monetary benefits. It's a benefit or compensation that is quantifiable in monetary terms. The primary significance of this term is economic gain by the entity.

b. any activity or transaction in connection with or incidental or ancillary to (a) above;

Examples

i. Bank providing lockers for rent to customers in the Bank premises as Banks have high security.

ii. Turbine Manufacturing company letting out R&D facilities to research units towards improvement of product and expansion.

c. any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

Examples

i. Mr. X gambles for the first time in Derby and wins.

ii. Sale of mangoes by a farmer during summer in flea market.

iii. Sale of old newspapers by a CS firm.

d. supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

Examples

i. Services rendered by a Company Secretary to incorporate a Company.

ii. Real estate agent helping Company to acquire factory godown for a commission.

e. provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;

Examples

i. Cooperative society formed for supply of milk.

ii. Recreation club formed by apartment owners.

f. admission, for a consideration, of persons to any premises; and

Examples

i. PVR selling movie tickets.

ii. entry / Admission fee collected by Art exhibitions to display artifacts, paintings and sculptures made by artists.

iii. Museums run by Governments for an entry fee to public to display objects of historical significance.

g. services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

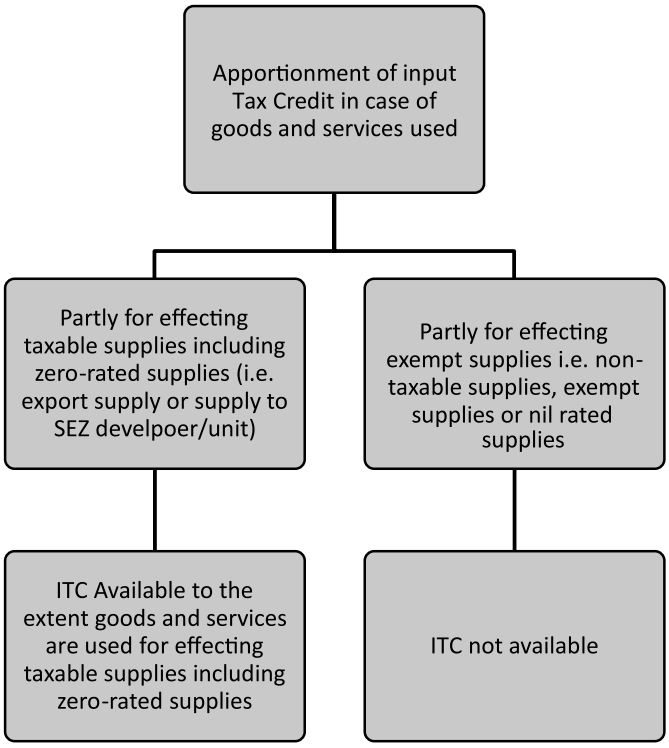
Example

i. Director of the company providing specialized technical consultancy.

h. services provided by a race club by way of totalisator or a licence to bookmaker in such club;

i. any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

(2) Where the goods or services or both are used by the registered person partly for effecting **taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts**, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.



Meaning of Taxable Supply:

As per section 2(108) of CGST Act "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

Meaning of Exempt Supply:

As per Section 2(*47*) of CGST Act "exempt supply" means supply of any goods or services or both which attracts *nil* rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Meaning of Zero rated Supply:

As per section 16(1) of IGST Act "*zero rated supply" means any of the following supplies of goods or services* or both, namely: –

a) export of goods or services or both; or

b) supply of goods or services or both ***to*** *a Special Economic Zone (SEZ) developer or a Special Economic Zone (SEZ) unit.*

(3) The **value of exempt supply** under sub-section (2) shall be such as may be prescribed, and **shall include** supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of **Schedule II**, sale of building.

Explanation. – For the purposes of this sub-section, the expression **"value of exempt supply" shall not include** the value of activities or transactions specified in **Schedule III**, except those specified in paragraph 5 of the said Schedule.

(4) **A banking company or a financial institution including a Non-Banking Financial Company (NBFC)**, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the

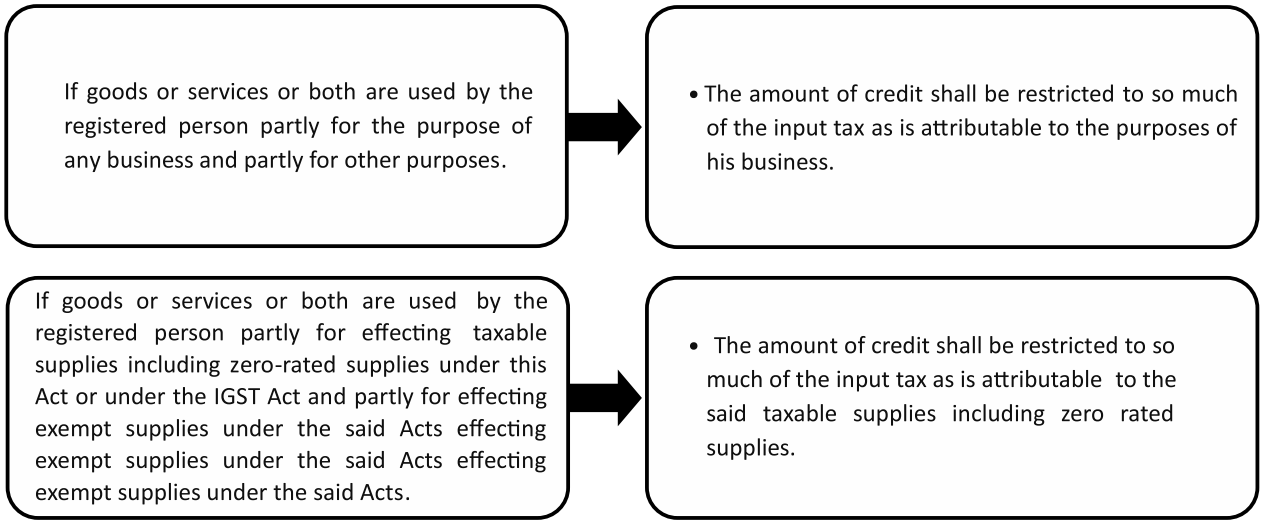
option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to 50 % of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number (PAN).

Input Tax Credit is available only on those goods and services used for business. Exports and supplies to SEZ fall under the category of zero-rated supplies. ITC is available on zero rated supplies and taxable supplies but not on exempt supplies.

Note:



Illustration

Input X is used to produce and supply output Y which is exempt, no ITC is available on input X because it was used for exempt supply.

In the above example if the output Y is exported or supplied to an SEZ unit, ITC is available on Input X as the out-ward supply is zero rated.

Blocked Credits [Section 17(5)]

Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:

(a) Motor vehicles and other conveyances and related services (insurance, servicing and repair and maintenance)

Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), **except** when they are used for making the following taxable supplies, namely:–

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles.

(aa) vessels and aircraft except when they are used

(i) for making the following taxable supplies, namely: –

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft.

(ii) for transportation of goods.

(ab) the following supply of goods or services or both

services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available –

(I) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(II) where received by a taxable person engaged –

(i) in the manufacture of such motor vehicles, vessels or aircraft; or

(ii) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him.

(b) the following supply of goods or services or both

Food & beverages, outdoor catering, health services and other services

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) **except when used for the purposes specified therein, life insurance and health insurance:**

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

> *Example*: Pooja is running a unisex saloon in Delhi for providing Beauty Treatment Services to males and females. During the month of November due to marriage seasons in Delhi she availed the beauty treatment services from her friend Garima. Garima raised invoice for the services provide to Pooja with applicable GST on it. Pooja used the services provided by Garima for making outward supply of services of the same category of services. Pooja shall be eligible to avail Input Tax Credit (ITC) of the Beauty treatment services.

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) **Works contract services for construction of immovable property**

works contract services when supplied for construction of an immovable property **(other than plant and machinery)** except where it is an input service for further supply of works contract service;

(d) **Self-construction of immovable property**

goods or services or both received by a taxable person for construction of an immovable property **(other than plant or machinery)** on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation. – For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10; (Composition Supply Scheme)

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail the ITC.

(i) No credit for any tax paid in accordance with the provisions of sections 74, 129 and 130.

These sections prescribe the provisions relating to the tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

ITC in the hands of the supplier in respect of sales promotional schemes

Circular No. 92/11/2019 GST dated 28.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of various sales promotional schemes as under :

A. Samples and free gifts

Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of **Schedule I** of the CGST Act.

ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in **Schedule I** of the said Act, the supplier would be eligible to avail the ITC.

B. Buy one get one free offer

This is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including 'Buy more, save more' offers

Discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

However, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

A. *Secondary discounts*

These are the discounts which are not known at the time of supply or are offered after the supply is already over. Such discounts shall not be excluded while determining the value of supply. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

Section 17(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation. – For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

CASE LAW

M/s ARS Steels & Alloy International Pvt. Ltd. vs. The State Tax Officer, (W.P. No. 2885 of 2021) Madras High Court

Loss of inputs inherent to manufacturing Process: Is reversal of ITC required under section 17(5)(h)?

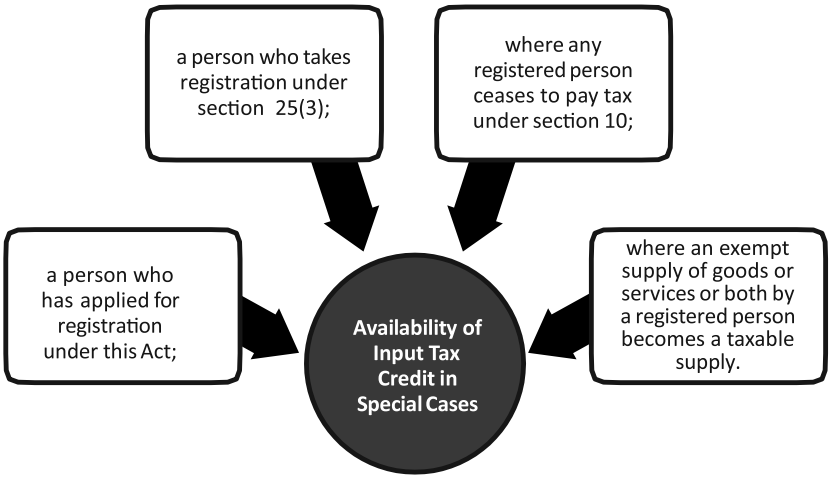
Facts of the Case : The petitioners are engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars. There is a loss of a small portion of the inputs, inherent to the manufacturing process. The impugned orders seek to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act.

Decision:

- To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product', 'contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.'
- The reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h).

Availability of Input Tax Credit in Special Cases [Section 18]

This section deals with eligibility of credit in special cases.



(1) Subject to such conditions and restrictions as may be prescribed –

(a) a person who has applied for registration under this Act **within thirty days (30 days)** from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

Time Limit to claim ITC

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

Note: Here, the maximum time limit for availing ITC is **one year**. Invoices more than one year old are not eligible for taking credit.

ITC in case of sale, merger, demerger, amalgamation, lease or transfer of the business

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, or due to the death of the sole proprietor, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Note:

Circular No. 96/15/2019 GST dated 28.03.2019 has clarified that transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.

Reversal of ITC on switching to composition levy or exit from tax-paying status [Section 18(4) read with rule 44 of CGST Rules]

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed [5% per quarter of a year or part thereof from the date of issue of invoice for such goods [i.e., ITC pertaining to remaining useful life of the capital goods (in quarters)], on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall **lapse**.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

Amount payable on supply of capital goods or plant and machinery on which ITC has been taken [Section 18(6) read with rule 40(2) & rule 44(6) of CGST Rules]

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount.

- equal to the input tax credit taken on the said capital goods or plant and machinery reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods [i.e., ITC pertaining to remaining useful life of the capital goods (in quarters)].

  OR

- the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

The table below summarizes the entitlement of Input Tax Credit (ITC):

Case	*Persons eligible*	*Goods entitled as on*	*Conditions*
1.	Person who has applied for registration within 30 days from the date on which he becomes liable to registration, and has been granted such registration.	He can claim the ITC on inputs held in the form of Raw Materials / WIP / Finished Goods as on the day immediately preceding the date from which he becomes liable to pay tax.	ITC must be availed within 1 year from the date of issue of tax invoice by the supplier.
2.	Person who isn't liable to register *per se*, but obtains voluntary registration.	He can claim the ITC on inputs held in the form of Raw Materials/ WIP/ Finished Goods as on the day immediately preceding the date of registration.	ITC must be availed within 1 year from the date of issue of tax invoice by the supplier.
3.	Registered person who ceases to be under composition levy and switches to the regular scheme.	He can claim the ITC on inputs held in the form of Raw Materials/ WIP / Finished Goods & Capital Goods as on the day immediately preceding the date from which he becomes liable to pay tax under the regular scheme.	ITC on Capital Goods will be reduced by 5% per quarter of year / part thereof of usage from the date of invoice.
4.	Registered person whose exempt supplies become taxable.	He can claim the ITC on inputs held in the form of Raw Materials/WIP/ Finished Goods & Capital Goods relatable to such exempt supply as on the day immediately preceding the date from which the supply becomes taxable.	ITC on Capital Goods will be reduced by 5% per quarter of year / part thereof of usage from the date of invoice.

Illustration:

Mr. B becomes liable to pay tax on 1st August 2022 and has obtained registration on 17th August 2022.

He will hence be entitled to take ITC effective 31st July 2022 in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock.

It must be noted that if the application is not made within 30 days, then he will be able to claim ITC effective the date of grant of such registration.

Illustration:

Mr. C acquired a Capital Asset on 1st April, 2020 and used it for production of exempt supplies only. Now, in November 2021, his supplies become taxable. The cost of the asset was INR 2,50,000 and GST 18% was charged on it.

Hence the ITC applicable is INR 250,000*18%, which is INR 45,000.

Now, number of quarters of usage that have elapsed between April 2020 to November 2021 are seven. Hence, there would be a reduction of 5% per quarter for 7 quarters, that is 35%.

Therefore, ITC available would be as under.

Total ITC	45,000
Less: Reduction for 7 quarters	15,750
Net ITC available	29,250

Note that this ITC would be available from the date immediately preceding the date from which the supply becomes taxable.

Rule 40(2) of Rules , 2017, states that the amount of credit shall be calculated by reducing the input tax @ 5% for every quarter or part thereof. It shall be calculated from the date of issue of invoice for the capital goods.

Illustration:

Mr. Z applies for voluntary registration on 1st September and is granted such registration on 9th September. He will hence be entitled to take ITC effective 8th September on inputs (Raw Material/Work in process / Finsihed Goods).

Clarification in respect of Input Tax Credit in case of change of Constitution of registered person/ death of sole proprietor

S. No.	*Issue / Question*	*Clarification*
1.	In case of demerger, proviso to rule 41(1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.	Proviso to sub-rule (1) of rule 41 of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to sub-rule (1) of rule 41 of the CGST Rules states that "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under sub rule (1) of rule 41 of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.

S. No.	Issue / Question	Clarification
		Illustration: A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P are Rs. 60 crore and Rs. 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs. 30 Crore are transferred to company ABC in State of M.P, while assets amounting to Rs. 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs. 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e., 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e., 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e., 10/40 = 0.25.
2.	Is the transferor required to file **FORM GST ITC-02** in all States where it is registered?	No, the transferor is required to file **FORM GST ITC-02** only in those States where both transferor and transferee are registered.
3.	The proviso to rule 41 (1) of the CGST Rules explicitly mentions 'demerger'. Other forms of business reorganization where part of business is hived off or business in transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?	Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.
4.	Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit *viz*. CGST/ SGST/ IGST/ Cess?	No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized Input Tax Credit (ITC) of the transferor, i.e., sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/ SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee. **Illustration:** The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh

S. No.	Issue / Question	Clarification
		and 10 lakh respectively. pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit), i.e., 12 lakh.
5.	How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/ CGST/SGST) while filing of FORM GST ITC– 02 by the transferor?	The total amount of ITC to be transferred to the transferee (i.e., sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under sub-rule (1) of rule 41 of the CGST Rules [refer 3 (c) (i) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.
6.	In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.	According to sub-section (3) of section 18 of the CGST Act, "Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."
7.	Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?	According to section 232 (6) of the Companies Act, 2013, "The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date". The said legal provision appears to indicate that the "appointed date of demerger" is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger". In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC balance of the transferor on the date of filing **FORM GST ITC-02** to calculate the amount to transferable ITC.

The registered person should furnish the details of change in constitution on the common portal and submit a certificate from practicing Chartered Account/Cost Accountant certifying that the change in constitution has

been done with a specific provision for transfer of liabilities. Upon acceptance of such details by the transferee on the common portal, the unutilized ITC gets credited to his electronic credit ledger. The transferee should record the inputs and capital goods so transferred in his books of account. Transfer of ITC on obtaining separate registrations for multiple places of business within a State/ Union Territory [Rule 41A of CGST Rules].

Section 25 enables a taxpayer to obtain separate registrations for multiple places of business in a State/ union territory The registered person (transferor), having separate registrations for multiple places of business within a State/Union Territory, can transfer the unutilised ITC (wholly or partly) lying in his electronic credit ledger to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration. Here, the 'value of assets' means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the prescribed details on the common portal **within a period of 30 days** from obtaining such separate registrations. Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC gets credited to his electronic credit ledger.

Illustration:

Baani Agro Traders located at Jaipur and engaged in the business as retail traders provides the following details of its inward and outward supplies made during the month of July, 2022:

Sr. No.	***Items***	***(Amount in Rupees)***	
		Inward Supply	***Outward Supply***
(i)	Sugar Candies	1,00,000	1,20,000
(ii)	Chocolate Bars	80,000	1,00,000
(iii)	Wafers Packets	75,000	60,000
(iv)	Biscuits	50,000	50,000

The rate of tax under IGST on the items are 5%, 12%, 12% and 18% respectively. Your are required to calculate the amount of IGST payable and the date by which the due tax is to be paid by the trader for the month of July, 22 after availing the Input Credit.

Note:

Since GST statutes require that GST is to be charged separately, hence, all prices are taken as ex-tax values.

It is assumed that both purchase and sales are inter-state transactions.

Solution:

Calculation of outward tax payable by Baani Agro Traders on the sales during July, 2022.

Item	***Value in Rs.***	***Rate***	***Tax in Rs.***
Sugar Candies	1,20,000	5%	6,000
Chocolates Bars	1,00,000	12%	12,000
Wafers Packets	60,000	12%	7,200
Biscuits	50,000	18%	9,000
			34,200

Calculation of Input Tax available on Inward Supplies

Item	*Value in Rs.*	*Rate*	*Tax in Rs.*
Sugar Candies	1,00,000	5%	5,000
Chocolates Bars	80,000	12%	9,600
Wafers Packets	75,000	12%	9,000
Biscuits	50,000	18%	9,000
Total Input Tax Credit			32,600

Total tax payable - Rs. 34,200

Mode of payment

By debiting electronic credit ledger - Rs. 32,600 and By debiting electronic cash ledger Rs. 1600

Due date for payment of tax shall be 20th of August 2022.

Goods sent to Job Worker

A large number of industries depend upon outside support for completing manufacturing activity.

Section 2(68): "Job Work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression **"job worker"** shall be construed accordingly.

The person who undertakes the job of treatment or process for another person is called job worker. The owner of the goods who engages the job worker is called principal. Inputs and capital goods can be sent to a job worker and the principal can avail ITC on them. The goods can be sent directly from the job worker's place without bringing them to the premises of the principal.

Inputs should be brought back to the principal **OR** alternatively sold from the job worker's premises on behalf of the principal:

- within one year in case of normal goods;
- and within 3 years in case of capital goods.

The period of **1 year and 3 years** may, on sufficient cause being shown, be extended by the commissioner for a further period not exceeding **1 year and 2 years** respectively.

If the goods are not sold / brought back within the stipulated time, the supply between the principal and the job worker is treated as "deemed supply" and tax is payable thereon by the principal.

Notes: Moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work need not be brought within 3 years' time (Capital Goods excludes moulds and dies, jigs and fixtures, or tools.)

Section 143 of CGST Act, 2017 states that a principal under intimation and subject to such conditions as may be prescribed can send inputs or capital goods to a job worker without payment of tax for further process or treatment and from there subsequently to another job worker(s) and shall either bring back such inputs/capital goods after completion of job work or otherwise, within **1 year / 3 years** of their being sent out, or supply such inputs / capital goods after completion of job work or otherwise within **1 year / 3 years** of their being sent out, from the place of business of a job worker on payment of tax within India or with or without payment of tax for export.

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case –

(i) where the job worker is registered under section 25; or

(ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

"Provided further that the period of **one year and three years** may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding **one year and two years** respectively."

The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Taking ITC in respect of inputs and capital goods sent for job work [Section 19]

Section 19 of the CGST Act, 2017 states that the principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

Although Section 16 of the CGST Act, 2017 specifically states that ITC will be provided only when goods are actually received, but under Job work this condition is not applicable and ITC can be availed even if inputs or capital goods are directly sent to the job worker without being first brought to the place of business of principal.

Taking ITC in respect of inputs and capital goods sent on job work:

(1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(3) Where the normal goods sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 **within one year** of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(6) Where the capital goods sent for job work are not received back by the principal within a period of **three years** of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

Provided that where the capital goods are sent directly to a job worker, the period of **three years** shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation. –For the purpose of this section, "principal" means the person referred to in section 143.

It is imperative to note that the principal can claim ITC in Inputs / Capital Goods and can send these to the Job Worker for further processing without payment of GST under the cover of a prescribed challan but where these are not either sold by the job worker **OR** returned by the job worker **within 1 or 3 years** as above, then the supply between them is construed as Deemed Supply and tax with interest has to be discharged by the supplier.

Input Tax Credit Rules

Rule 36: Documentary requirements and conditions for claiming input tax credit

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document.

Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and

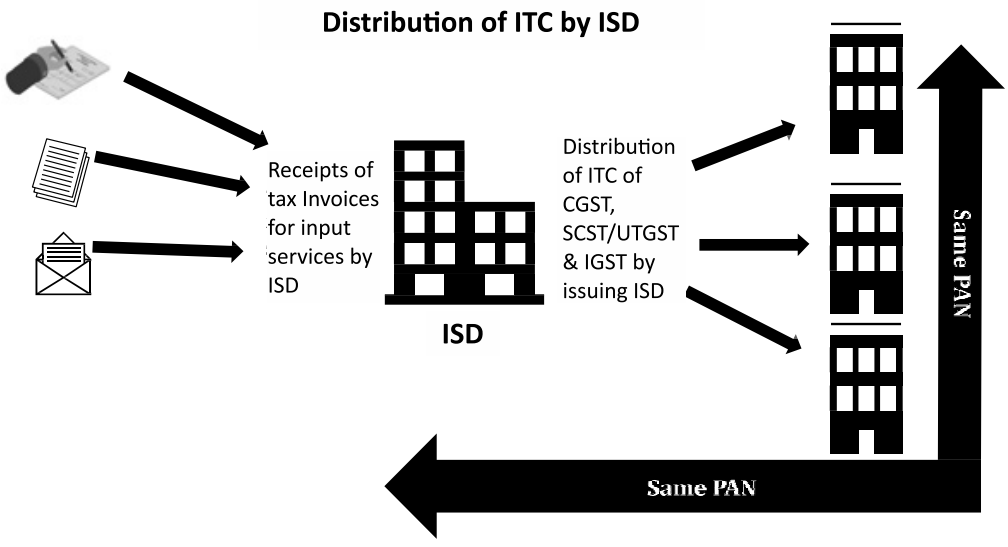
(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60.

INPUT SERVICE DISTRIBUTOR

The concept of Input Service Distributor is not new in taxation law. It was existing under the erstwhile service tax law which was brought to cater the situations where a registered person receives goods and services at its head offices, branch offices which are not providing any output service or goods directly but does through its factories or other premises located elsewhere. In order to avoid loss of input tax credit, the concept of input

service distributor was established wherein such Head Office, etc. as permitted to take registration as Input Service Distributor and avail and distribute input tax credit to its taxable units for utilizing such credit.

Section 2(61): "Input Service Distributor" (ISD) means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;



Required Documents for availing the Input Tax Credit including the Input Service Distributor (These documents shall be finished in E-FORM GSTR-2)

- An invoice issued by the supplier of goods or services or both in accordance with the provisions of section31;
- An invoice issued in accordance with the Provisions of section 31(3)(f);
- A debit note Issued by a supplier in accordance with the provisions of section 34;
- A bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- An Input Service Distributor in voice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1)of Rule 54.

Manner of distribution of credit by Input Service Distributor [Section 20]

(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:

(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation. – For the purposes of this section, –

(a) the "relevant period" shall be –

(i) if the recipients of credit have turnover in their States or Union Territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union Territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

(b) the expression "recipient of credit" means the supplier of goods or services or both having the same permanent Account number as that of the Input Service Distributor;

(c) the term ''turnover'', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

***Illustration*:** Aqua Limited has taken registration as an Input Service Distributor and has received following invoices of input services in relation to its three locations (A , B & C) wherein IGST charge is as follows:

Invoice no. 1: Rs. 10,00,000 (IGST) attributable solely to A location

Invoice no. 2: Rs. 6,00,000 (IGST) attributable solely to B & C location

Invoice no. 3: Rs. 12,00,000 (IGST) attributable solely to all locations

The Turnover of each location is as follows:

Turnover of A : Rs. 80,00,000

Turnover of B: Rs. 70,00,000

Turnover of C: Rs. 50, 00,000

Compute the amount of ITC attributable to each location.

Solution:

Particulars	*A*	*B*	*C*
Turnover	80,00,000	70,00,000	50,00,000
ITC Distributed of Invoice no. 1	10,00,000	0	0
ITC Distributed of Invoice no. 2 Location B : Rs. 6,00,000*70,00,000/1,20,00,000 Location C : Rs. 6,00,000*50,00,000/1,20,00,000	0	3,50,000	2,50,000
ITC Distributed of Invoice no. 3 Location A : Rs. 12,00,000*80,00,000/2,00,00,000 Location B : Rs. 12,00,000*70,00,000/200,00,000 Location C : Rs. 12,00,000*50,00,000/2,00,00,000	4,80,000	4,20,000	3,00,000
Total ITC Distributed	**14,80,000**	**7,70,000**	**5,50,000**

Manner of recovery of credit distributed in excess [Section 21]

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Illustration:

M/s X Ltd., a registered supplier from Maharashtra is engaged in the manufacturing of passenger auto. The company provides the following details of purchase made/services availed by it during the month of March 2021:

S. No.	Particulars	Amount (Rs.)
i)	Purchase of iron which is used as a raw material (Goods were received in two instalments, first on in March 2021 and the second instalment was received in April 2021).	2,50,000
ii)	Purchase of accessories which were delivered directly to the dealers of the company. Only invoice was received by X Ltd.	90,000
iii)	Purchase of Bus (seating capacity 15) for the transportation of employees from their residence to company and back.	1,97,000
iv)	Input tax credit on general insurance taken on a car used by Executives of the company for official purposes.	5,200
v)	Payment made to M/s XYZ Caterers for providing daily breakfast & lunch to the employees of the company, as voluntary staff welfare measure.	54,700

You are required to determine the eligible Input Tax Credit available to M/s X Ltd. for the month of March 2021, by giving brief explanations for treatment of various items.

Subject to the information given above, all the other conditions necessary for availing input tax credit have been fulfilled.

Solution:

Computation of eligible tax credit to M/s X Ltd. for the month of March, 2021

S. No.	Particulars	Amount (Rs.)
i)	Purchase of iron which is used as a raw material (Refer Note (i))	Nil
ii)	Purchase of accessories which were delivered directly to the Dealers of the company. Only invoice was received by X Ltd. (ITC is allowed)	90,000
iii)	Purchase of Bus (seating capacity 15) for the transportation of employees from their residence to company and back (ITC is allowed) (Refer Note (ii))	1,97,000
iv)	Input tax credit on general insurance taken on a car used by Executives of the company for official purposes.	Nil
v)	Payment made to M/s XYZ Caterers for providing daily breakfast & lunch to the employees of the company, as voluntary staff welfare measure. [Refer Note (iii)]	Nil
	Total	**2,87,000**

Notes:

(i) As per Section 16(2) of the CGST Act, 2017, If the goods are received in instalments, tax credit shall be allowed only when last instalment has been received. In the given case last instalment is received in April 2021 hence credit shall be allowed in the month of April.

(ii) As per Section 17(5) of the CGST Act, 2017, ITC of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) is not allowed in the given case bus is of 15 seating capacity.

(iii) As per Section 17(5) of the CGST Act, 2017, ITC of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance is not allowed.

ORDER OF UTILISATION OF INPUT TAX CREDIT

Input Tax Credit (ITC) is credited to a person's electronic credit ledger. The person may use this to pay his output tax liability.

Section 49A

Utilisation of input tax credit subject to certain conditions

Notwithstanding anything contained in section 49, the input tax credit on account of Central Tax, State Tax or Union Territory Tax shall be utilised towards payment of Integrated Tax, Central Tax, State Tax or Union Territory Tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

Section 49B

Order of utilisation of input tax credit

Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub- section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

Payment of Tax of the CGST Rules Rule 88A: Order of utilization of input tax credit

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order.

Provided that the input tax credit on account of Central Tax, State tax or Union Territory Tax shall be utilised towards payment of Integrated Tax, Central Tax, State Tax or Union Territory Tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

Utilization of Input Tax Credit

Input Tax Credit (ITC) is credited to a person's electronic credit ledger. The person may use this to its output tax liability.

Input tax credit on account of Integrated tax	**Input tax credit on account of CGST to be utilised only after exhausting all the credit on account of IGST**	**Input tax credit on account of SGST/ UTGST to be utilised only after exhausting all the credit on account of IGST**
First for the payment of IGST	First for the payment of CGST	First for the payment of SGST/UTGST
Section 49A seeks to specify that a taxpayer would be able to utilise the input tax credit on account of Central tax, State tax or Union territory tax **only after exhausting all the credit on account of Integrated tax available to him towards payment or Integrated Tax, Central Tax, State Tax or Union territory Tax**	Then payment for IGST	Then payment for IGST
---	In case there is further balance it shall not be utilised for payment of SGST/UTGST	In case there is further balance it shall not be utilised for payment of CGST

Therefore, it is clear that there is no offset available between the CGST and the SGST.

Clarification of CBIC: The CBIC has now clarified that the IGST credit can be used in payment of CGST or SGST in any order or proportion.

So, After setting off the payment of IGST from IGST credit , remaining IGST credit, if any, can be utilised towards payment of CGST and SGST/UTGST in any order and in any proportion, i.e. remaining ITC of IGST can be utilised:

- first towards payment of CGST and then towards payment of SGST; or
- first towards payment of SGST and then towards payment of CGST; or
- towards payment of CGST and SGST simultaneously in any proportion.

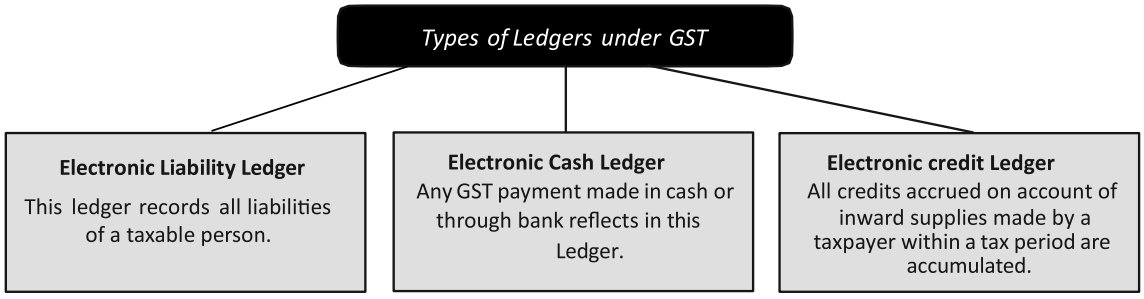
Computation of GST Liability

Every registered person is required to compute his tax liability on a monthly basis by setting off the Input Tax Credit (ITC) against the Outward Tax Liability. If there is any balance tax liability the same is required to be paid to the government.

For the **calculation of GST**, the taxpayer should know the GST rate applicable to various categories.

Example : If goods or services are sold at Rs. 1,000 and the GST rate applicable is 12%, then the net price calculated will be = 1,000+ (1,000X(12/100)) = 1,000+120 = Rs. 1,120

There are 3 ledgers prescribed under GST Act/Rules that is required to be maintained by every tax payer –



1. Electronic Liability Ledger

The electronic liability register specified under sub-section (7) of section 49 shall be maintained in **FORM GST PMT-01**

This ledger records all liabilities of a taxable person including:

- The tax, interest, late fees, or any other amount payable per the return furnished by the taxpayer or per any proceedings;
- The tax and interest payable arising out of any mismatch of ITC or output tax liability;
- Any interest that may accrue from time to time;
- The reversal of ITC or interest.

Tax payers should settle their liabilities in the following order:

(i) Self-assessed tax and other dues, such as interest, penalty, fees, or any other amount relating to previous tax period returns;

(ii) Self-assessed tax and other dues relating to the current tax period return;

(iii) Any other amount payable under the act/rules (liability arising out of demand notice, proceedings, etc.)

2. Electronic Cash Ledger

The electronic liability register specified under sub-section (7) of section 49 shall be maintained in **FORM GST PMT-05.**

Any amount paid by the taxpayer will be reflected in the electronic cash ledger. The amount available in this ledger may be used for making any payment towards tax, interest, penalty, fees, or any other amount due under the Act/ Rules in the time and manner prescribed. (It is reiterated that any credit in the electronic credit ledger can be utilized only for payment of output tax.

To initiate a payment, taxpayers should generate a challan online using form **GST PMT-06**, which will be valid for a period of **15 days**. Payment can then be remitted through any of the following modes:

- Internet banking (authorized banks only);
- Unified Payment Interface (UPI) from any bank;
- Immediate Payment Services (IMPS) from any bank;
- Credit or debit card (authorized banks only);
- National Electronic Fund Transfer (NEFT) or real-time gross settlement (RTGS) (any bank, authorized or unauthorized);
- Over-The-Tounter (OTC) payment (authorized banks only) for deposits up to ten thousand rupees per challan and per tax period by cash, cheque or demand draft.

The payment date shall be recorded as the date the payment is credited to the appropriate Government account.

3. Electronic Credit Ledger

The electronic liability register specified under Section 49 shall be maintained in **FORM GST PMT-02.**

Every claim of Input Tax Credit self-assessed by the taxpayer shall be credited to this ledger. The amount available in this ledger may be used for payment towards output tax only. Under no circumstance can an entry be made directly in the electronic credit ledger.

This ledger may include the following:

- ITC on inward supplies from registered tax payers;
- ITC available based on distribution from input services distributor (ISD);
- ITC on input of stock held/semi-finished goods or finished goods held in stock on the day immediately preceding the date on which the taxpayer became liable to pay tax, provided he applies for registration **within 30 days** of becoming liable;
- permissible ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day of conversion from composition scheme to regular tax scheme;
- ITC eligible on a payment made on a reverse charge basis.

LESSON ROUND-UP

- Taxes paid on inward supply of inputs, capital goods and services are called input taxes which include Integrated GST, Central GST, State GST or Union Territory GST.

  The credit of these taxes is called input tax credit.
- Under GST, a seamless flow of credit throughout the value chain is available removing the cascading effect of taxes.
- The office of the company which distributes the credit to the beneficiary units on the basis of their previous year turnover is called input service distributor.
- Input Tax Credit (ITC) is a provision of reducing the tax already paid on inputs, to avoid the cascading effect of taxes.
- It is one of the cutting edge features available under the GST Law, unavailable in previous regime of indirect taxation.
- Certain conditions need to be fulfilled in order to avail the Input Tax Credit.
- Basic condition for availing Input Tax Credit amounts to payment of GST by the supplier.
- When another person (job worker) undertakes the work of a manufacturer, to whom the goods belong (principal), is known as job work.
- GST law lays down the conditions for ITC in the case of a job worker.
- There is no offset of ITC available between the CGST and the SGST.
- General exemption is granted by notification and is available to all persons which may be absolute or conditional and may be total or partial.
- Specific, also known as ad hoc exemption is granted to persons under circumstances of an exceptional nature by a special order communicated to the party seeking exemption.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions (MCQs)

1. Input Tax Credit is not available in respect of .....
   a) Free samples,
   b) Services on which tax has been paid under composition levy,
   c) Goods used for personal consumption,
   d) All of the above
2. Inputs should be either brought back to the principal OR alternatively sold from the Job-worker's premises within ---------- in case of capital goods.
   a) 36 months
   b) 18 months
   c) 24 months
   d) 12 months
3. Which section of CGST Act 2017 deals with eligibility and conditions for taking ITC?
   a) Section 39
   b) Section 16
   c) Section 10
   d) Section 20
4. The biggest benefit of ITC is:
   a) Eliminating the cascading effect of taxes
   b) Reducing the cost of goods and services
   c) Paradigm shift from individuals paying more taxes to more individuals paying taxes
   d) All of the above
5. A shirt manufacturing company sends semi-finished shirts (without collars and pockets) to job workers who will complete the remaining work. In such a situation, the ..... would be allowed to take the credit of the tax paid on purchases of the goods sent for job work.
   a) Job Workers
   b) Principal Manufacturer
   c) Both of the Above
   d) None of the Above

Answers: 1 (d), 2 (a), 3 (b), 4 (d), 5 (b)

Descriptive Questions

1. Reeta is engaged in providing Beauty Treatment Services. On a particular day, with a view to cater to the demand of large number of customers, She availed the Beauty Treatment Services from Geeta. Accordingly, Geeta raised an invoice on Reeta for Rs. 20,000 along with applicable GST.

   Will Reeta be allowed Input Tax Credit?

2. Pratham has a sum of Rs. 3,60,000 on account of Input Tax Credit of CGST in the electronic credit ledger, He has to pay the following tax liability:

Particulars	***Amount (Rs.)***
CGST payable for the month of November, 2022	1,31,400
IGST payable for the month of November, 2022	1,72,800
SGST payable for the month of November, 2022	54,000

   Determine, how would you utilize ITC on account of CGST available in the Electronic Credit Ledger.

3. Explain the following terms;
   a. Blocked Credit
   b. Electronic Liability Ledger
   c. Ineligible Credits
4. What do you understand by Zero Rated Supply? How it is different from Exempt supply? Explain.
5. What is Input Service Distributer (ISD)? Explain the manner of Distribution of credit by ISD.

LIST OF FURTHER READINGS

- Goods & Services Tax, Laws, Concepts and Impact Analysis-Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- GST Ready Reckoner- Taxmann – V.S. Datey
- A complete guide to Goods & Services Tax Ready Reckoner in Q & A Format- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- Website: www.cbic.gov.in

Procedural Compliance under GST

Lesson 19

KEY CONCEPTS

■ GSTIN ■ Registration ■ E-Way Bills ■ Returns under GST ■ Tax Payments ■ Refunds ■ Tax Invoices ■ Debit & Credit Notes

Learning Objectives

To understand:

- Provisions related to:
  - Registration
  - Tax Invoices
  - Debit & Credit Note
  - Accounts and Records
  - Electronic-Way Bill
  - Returns under GST
  - Payment of Tax
  - Refund Procedures
  - Demand, Recoveries and Litigation under GST

Lesson Outline

REGULATORY FRAMEWORK

Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 22	Persons Liable for Registration
Section 23	Persons not Liable for Registration
Section 24	Compulsory registration in certain cases
Section 25	Procedure for Registration
Section 29	Cancellation of Registration
Section 31	Tax Invoice
Section 34	Credit and Debit Notes
Section 35	Accounts and Other Records
Section 36	Period of Retention of Accounts
Section 37	Furnishing details of Outward Supplies
Section 38	Furnishing details of Inward Supplies
Section 39	Furnishing of Returns
Section 40	First Return
Section 41	Claim of Input Tax Credit and provisional acceptance thereof
Section 44	Annual Return
Section 45	Final Return
Section 46	Notice to Return Defaulters
Section 49	Payment of Tax, Interest, Penalty and Other Amounts
Section 51	Tax Deducted at Source (TDS)
Section 54	Refund of Tax
Section 56	Interest on Delayed Refunds
Section 57	Consumer Welfare Fund
Section 58	Utilisation of Fund
Section 65	Audit by Tax Authorities

Section 66	Special Audit
Section 146	Common Portal
Section 171	Anti-Profiteering Measure

RULES FOR REGISTRATION [CHAPTER III]

CHAPTER III of Central Goods & Services Tax Act, 2017 deals with the registration provisions.

Rules of CGST Act, 2017	***Description***
Rule 8	Application for Registration
Rule 9	Verification of the Application and Approval
Rule 10	Issue of Registration Certificate
Rule 10A	Furnishing of Bank Account Details
Rule 11	Separate Registration for multiple places of business within a State or a Union territory
Rule 12	Grant of Registration to persons required to Deduct Tax at Source or to Collect Tax at Source
Rule 13	Grant of Registration to non-resident taxable person
Rule 14	Grant of Registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient
Rule 15	Extension in period of operation by casual taxable person and non-resident taxable person
Rule 16	Suo-moto Registration
Rule 17	Assignment of Unique Identity Number to certain Special Entities
Rule 18	Display of registration certificate and Goods and services Tax Identification Number on the name board
Rule 19	Amendment of Registration
Rule 20	Application for cancellation of Registration
Rule 21	Registration to be cancelled in certain cases
Rule 21A	Suspension of Registration
Rule 22	Cancellation of Registration
Rule 23	Revocation of Cancellation of Registration
Rule 24	Migration of persons registered under the existing law

Rule 25	Physical verification of business premises in certain cases
Rule 26	Method of Authentication

REGISTRATION

In any tax system, Registration is the most fundamental requirement for identification of taxpayers and ensuring tax compliance to support our developing economy. Registration of a business entity under the GST Law implies obtaining a unique number from the concerned tax authority. Section 22 of Central Goods & services Tax (CGST) Act, 2017 mandates that every person who has an aggregate turnover of more than Rs. 20 Lacs in the relevant financial year, is liable to be registered under the Act.

Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him.

However, where such person makes taxable supplies of goods or services or both from any of the special category states, he shall be liable to be registered if his aggregate turnover in a financial year exceeds Rs. 10 lacs.

Note : As per Notification No. 10/2019-Central tax dated March 07, 2019 any person, who is engaged in exclusive supply of goods and whose aggregate turnover is more than **forty lacs** rupees, is liable to be registered under the act.

GSTIN

The registration under GST is Permanent Account Number (PAN) based and State-specific. GST Identification Number (GSTIN) is a 15-digit number and a certificate of registration, incorporating the GSTIN is made available to the applicant upon registration.

For example if GSTIN is 22AAAAA0000A1Z5, then the details of each digit is as follows:

22	AAAAA0000A	1	Z	5
State Code	PAN number	Entry number of the same PAN number holder in the State	Alphabet "Z" by default	Check sum digit

- The first two digits of this number is the State code,
- The next ten digits are PAN number of the taxpayer,
- The thirteenth digit is assigned based on the number of registrations within a State,
- The fourteenth digit is Z by default,
- The last digit is for check code.

Please note that the registration under GST is not tax specific, which means that there is single registration for all the taxes, i.e., CGST, SGST/UTGST, IGST and cesses.

Persons liable for Registration [Section 22]

Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lacs rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special

category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lacs rupees:

Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lacs rupees to such amount, not exceeding twenty lacs rupees and subject to such conditions and limitations, as may be so notified:

Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lacs rupees to such amount not exceeding forty lacs rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation :- For the purpose of this sub-section a person shall be considered to be engaged in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Registration is mandatory at every place of business from wherein a taxable supply is made.

Special Category States

Explanation (iii) to section 22 of the CGST Act defines the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution [except the State of Jammu and Kashmir] [and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.]

Article 279A (4)(g) of the Constitution lists the special category States as Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim, Uttarakhand, Manipur, Mizoram, Nagaland, Jammu and Kashmir and Tripura.

Thus, for the purpose determining threshold under GST, the four States viz. Manipur, Mizoram, Nagaland and Tripura only are Special Category States

Enhanced threshold for suppliers of goods

Vide Notification No. 10/2019-C.T., dated 7-3-2019, the threshold in case of intra-State supply of goods was increased from Rs. 20 lacs to Rs. 40 lacs. Such revised threshold however is not applicable in the States / Union Territories of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

The enhanced exemption however is not applicable to the intra-State supplier of goods engaged in the supply of Ice cream and other edible ice, whether or not containing cocoa; Pan masala; Tobacco and manufactured tobacco substitutes, Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks; Bricks of fossil meals or similar siliceous earths; Building bricks and Earthen or roofing tiles.

The enhanced threshold shall also be not available for suppliers requiring compulsory registration under section 24 and also the suppliers taking voluntary registration.

Threshold Limit for Registration for Intra-State Suppliers of Goods		
Rs. 10 Lacs	***Rs. 20 Lacs***	***Rs. 40 Lacs***
Mizoram, Manipur, Nagaland and Tripura	Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana, Uttarakhand	Remaining 21 states and 5 union Territories.

Notes:

1. In case of inter-State supply of goods registration is mandatory under section 24 of the CGST Act, 2017 but the exemption is granted to person making inter-State taxable supplies of handicraft goods upto an aggregate turnover of Rs. 20 lacs as long as the person has a PAN and the goods move under the cover of an e-way bill, irrespective of the value of the consignment.
2. The enhanced exemption of Rs. 40 lacs is not applicable to the intra-State supplier of goods engaged in the supply of Ice cream and other edible ice, whether or not containing cocoa; Pan masala; Tobacco and manufactured tobacco substitutes, Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks; Bricks of fossil meals or similar siliceous earths; Building bricks and Earthen or roofing tiles.
3. A person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Threshold Limit for Registration for Suppliers of Services	
Rs. 10 Lacs ***[Special category States]***	***Rs. 20 Lacs*** ***[other than special category States/ UTs]***
Manipur, Mizoram, Nagaland, Tripura	Remaining 27 States and 5 Union Territories.

Notes:

1. All service providers, whether supplying intra-State, inter-State or through e-commerce operator, will be exempt from obtaining GST registration, provided their aggregate turnover doesn't exceed Rs. 20 lacs (Rs. 10 lacs in case of Manipur, Mizoram, Nagaland & Tripura).

Mandatory registration is required for only those E-Commerce Operators (ECOs) who are required to collect tax at source.

Special Situations:

- If a person has taxable and exempt supplies as a part of the turnover, the turnover from both would be added to determine whether the aggregate exceeds the threshold, and if it exceeds, then registration become mandatory for such supplier.
- The supplies by the agents on behalf of the principal would be included in the aggregate turnover of both, the principal and the agent.
- the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

***Illustration*:** M is located in Delhi. He provides the following information

Particulars	*Amount in Rs.*
Value of taxable supply of goods in Delhi	23,00,000
Value of supply of exempt supply	18,00,000

Does M require any registration?

Solution :

M require registration since the aggregate turnover exceed the threshold limit of Rs. 40,00,000 (i.e. 41,00,000= 23,00,000+18,00,000) by including the value of taxable supply of goods and value of services.

***Illustration*:** L Pvt Ltd. Having its factory in Hyderabad is engaged in the manufacture and supply of goods. It has following turnover

i) Taxable turnover within Telangana Rs. 5 lacs

ii) Inwards supplies liable to tax under reverse charge Rs. 8 lacs

iii) Exempt turnover Rs. 16 lacs

Does L Pvt. Ltd. require any registration?

Solution :

For computing aggregate turnover, items (i) and (iii) shall be considered which comes to Rs. 21 lacs. For Telengana, the threshold for goods is Rs. 20 lacs, Thus, L Pvt. Limited is liable to take registration.

Liability to get registered in case of succession, Amalgamation or Demerger:

Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

In a case of transfer of business pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

In effect, the existing registration in the above Stated scenarios shall lapse / liable to be surrendered and the transferee shall take fresh registration.

Persons not liable for Registration [Section 23]

1. The following persons shall not be liable to registration, namely: –

   (a) **any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax** under this Act or under the Integrated Goods and Services Tax Act;

   (b) an **agriculturist**, to the extent of supply of produce out of cultivation of land.

   Meaning of Agriculturist:

   "agriculturist" has been defined under sub-section (7) of section 2 of the CGST Act, 2017, means an individual or a Hindu Undivided Family who undertakes cultivation of land –

   (a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Following category of persons have been notified:

1. Persons making only reverse charge supplies:

   Persons who are only engaged in making supplies of taxable goods or services or both the total tax on which is liable to be paid on reverse charges basis by the recipient of such goods or services or both under section 9(3) have been exempted from obtaining registration, [Notification No. 5/2017 CT dated 19.06.2017].

2. Job workers engaged in making inter-State supply of services to a registered person, except the following:

   (a) A job worker who is otherwise required to take registration if his turnover crosses the threshold limit in the normal course i.e. Rs. 20 Lacs/ Rs. 10 Lacs.

   (b) A job worker who opts to take registration voluntarily under section 25(3).

   (c) A job worker who is involved in making supply of services in relation to the jewellery, 'goldsmith and silversmith' articles (Chapter 71) wares and other Articles.

3. Persons making inter-State supplies of taxable services in a financial year (except in case of special category States of Mizoram, Tripura, Manipur and Nagaland the limit is Rs. 10,00,000).

4. Persons making inter-State taxable supplies of notified handicraft goods until their turnover does exceed the threshold as applicable to them under section 22(1).

5. Persons making supplies of services through an E-Commerce Operator who is required to collect tax at source under section 52 and having aggregate turnover not exceeding the threshold as applicable.

6. Casual Taxable person making inter-State taxable supplies of notified handicraft goods in a financial year (except in case of special category States of Mizoram, Tripura, Manipur and Nagaland the limit is Rs. 10,00,000).

Compulsory Registration in certain cases [Section 24]

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,–

(i) Persons making any inter-State taxable supply. However, the threshold limit of Rs. 20 Lacs (Rs. 10 Lacs in case of special category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of inter-State supply of taxable services and of notified handicraft goods;

(ii) Casual taxable persons making taxable supply. However, the threshold limit of Rs. 20 Lacs (Rs. 10 Lacs in case of special category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of inter-State supplies of notified handicraft goods and availing the benefit of exemption from registration as mentioned in point (i) above;

(iii) Persons who are required to pay tax under reverse charge;

(iv) Persons who are required to pay tax under sub-section (5) of section 9;

(v) Non-resident taxable persons making taxable supply;

(vi) Persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

(vii) Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) Persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

(x) Every electronic commerce operator who is required to collect tax at source under section 52;

(xi) Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and

(xii) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Compulsory Registration		• For a supplier who makes inter-State supplies; • Casual taxable person; • Non-resident taxable person; • E-Commerce Operators; and • Persons discharging liabilities under reverse charge mechanism; • Person who are required to pay tax under sub-section (5) of section 9; • Persons who are required to deduct tax under section 51, whether or not separately registered under this Act; • Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise; • Input Service Distributor (ISD); • Persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52; • Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; • Any other notified by the Government on the recommendations of the Council. All service providers, whether supplying intra-State, inter-State or through E-Commerce Operator, will be exempt from obtaining GST registration, provided their aggregate turnover doesn't exceed Rs.20 lacs (Rs.10 lacs in case of Manipur, Mizoram, Nagaland & Tripura).

Persons not liable to register	}	• Engaged exclusively in the supply of goods/ services/ both which are not liable to tax; • Engaged exclusively in the supply of goods/ services/ both which are wholly exempt from tax; • Agriculturalist to the extent of supply of produce from land cultivation; and • Specified categories as may be notified by the Government.

Procedure for Registration [Section 25]

Time Limit to apply for registration [Section 25(1)]

- Every person who is liable to be registered under section 22 or 24 must do so within thirty days from the date when he becomes first liable in every such State/UT in which he is so liable.
- Casual / Non- Resident taxable person: **at least five days (5 days)** prior to commencement of business in every such State/UT in which he is so liable.
- a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, ad distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.

Deemed Registration:

If the proper officer doesn't take any action **within seven days** of submission of application along with necessary details and documents, or **within seven days of receiving the clarifications** so solicited, the application for grant of registration is deemed to be approved.

However, where -

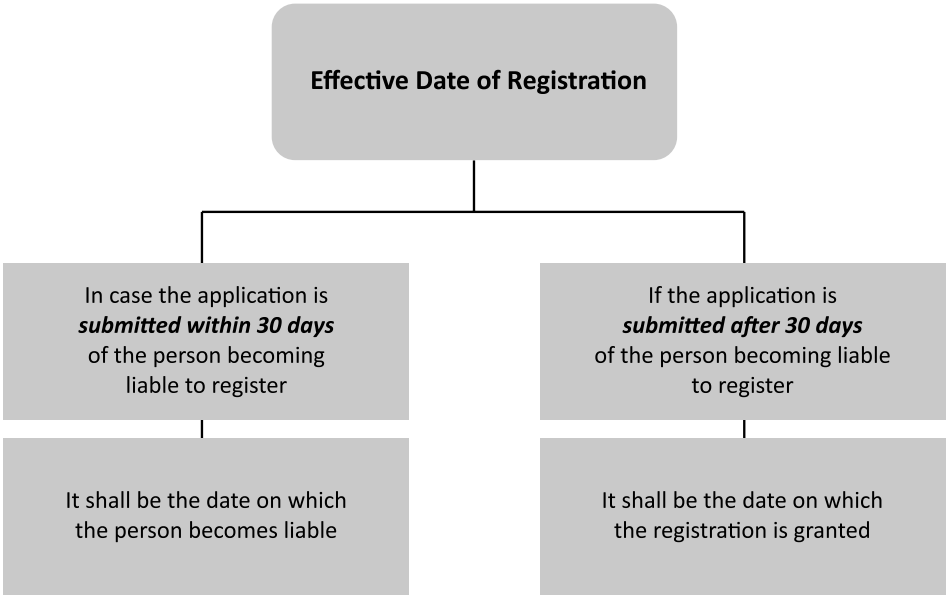
(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be deemed to have been granted if the proper officer fails to take any action within a period of thirty days from the date of submission of the application.

Effective date of registration:

- In case the application is submitted **within 30 days of the person becoming liable to register**, it shall be the date on which the person becomes liable.
- And if the application is submitted **after 30 days of the person becoming liable to register**, it shall be the date on which the registration is granted.



Casual and Non-Resident Persons

Section 2(20) of Central Goods & Services Tax Act, 2017 defines "Casual Taxable Person" as a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

Thus, a casual taxable person is someone who has a business in a different State, but comes to a different State for a business purpose temporarily.

Section 2(77) of Central Goods & services Tax Act, 2017 defines "non-resident taxable person" as any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

Hence, a non-resident taxable person is someone who has a business outside India, but comes to a different State for a business purpose temporarily.

For example, a person from Paris, comes to participate in an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a non-resident tax- able person at Mumbai and he will be granted registration for a maximum period of 90 days.

Registration State wise [Section 25(2) read with rule 11]

Ordinarily, a person seeking registration under this Act shall be granted a single registration in a State or Union territory. However, a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business.

Registration for a Unit in SEZ [Second Proviso to section 25(1)]

A person having a unit in a Special Economic Zone (SEZ) or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the special Economic Zone in the same State or Union territory.

Registration in case of Supply from Territorial water [Explanation to section 25(1)]

Where, a person makes a supply from the territorial waters of India, it shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Voluntary Registration [Section 25(3)]

A person who is not liable to registered under section 22 or under section 24 may get himself registered voluntarily and all provisions of this Act as are applicable to registered person shall apply to such person. However once a person obtains voluntary registration he has to pay tax even his aggregate turnover does not exceed Rs. 40 Lacs/20 Lacs/10 Lacs, as the case may be.

Distinct Person for each registration [Section 25(4)]

A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Registration of Establishment [Section 25(5)]

Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

Eligibility for Registration [Section 25(6)]

Every person shall have a Permanent Account Number (PAN) issued under the Income- tax Act, 1961 in order to be eligible for grant of registration. However, a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

Authentication Process [Section 25(6A)]

Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed;

Provided that if Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council prescribe:

Provided further that in case of failure to undergo authentication or furnish possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of the Act shall apply as if such person does not have registration.

Section 25(6B): on and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such a manner, as the Government may, on the recommendation of the Council, specify in the said notification;

Provided that if Aadhaar is not assigned to such individual, such individual shall be offered alternate viable means of identification in such a manner, as the Government may, on the recommendation of the Council, in the said notification.

Section 25(6C): On and from the date of notification, every person, other than individual,

Analysis: Every existing registered dealer shall have to get himself verified with help of Aadhaar number or by alternate viable means within specified time or it shall be deemed as if he does not have any registration.

Analysis:- For fresh registration every individual shall have to authenticate himself with Aadhaar number. In case Aadhaar number is not assigned to him, then the registration shall be Granted only after physical verification of the principle place of business in the presence of the said person, not later than 60 days from the date of application, and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the Common portal within a period of 15 working days following the date of such verification.

shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of Karta, Managing Director, Whole Time Director, such Member as Partners, Members of Managing Committee of Association, Board of Trustees, Authorised Representative, Authorised Signatiory, and such other class of persons, in such a manner, as the Government may, on the recommendation of the Council, specify in the said notification.

Provided that where such person or class of persons have not been assigned Aadhaar Number, such person or class of persons shall be offered alternate viable means of identification in such a manner as the Government may, on the recommendation of the Council, in the said notification.

Section 25(6D): The Provisions of sub-section 6A and 6B or 6C shall not apply to such person or class of persons or any State or Union territory or Part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Registration of Non-resident Taxable person [Section 25(7)]: Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

Registration by Proper Officer [Section 25(8)]: Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

Unique Identity Number [Section 25(9)]:

Notwithstanding anything contained in sub-section (1),–

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

Analysis:- Provisions of section 25(6B/6C) shall not be applicable to :

a) A person who is not a citizen of India.

b) Class of persons other than following class of persons

Individual, Authorised signatory of all types, Managing and Authorised partners, Karta of HUF.

Rejection or Grant of Unique Identity Number [Section 25 (10)]: The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

Section 25(11): A certificate of registration shall be issued in such FORM and with effect from such date as may be prescribed.

Section 25(12): A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

Application for Registration [Rule 8]

Rule 8(1): Every person other than:

- a non-resident taxable person
- a person required to deduct tax at source under section 51
- a person required to collect tax at source under section 52
- a person supplying online information & database access or retrieval services from place outside India to non-taxable online recipient

Who is liable to be registered under section 25(1) and every person seeking registration under section 25(3) shall, before applying for registration, declare his:

- Permanent Account Number
- Mobile Number
- e-mail Address
- State or Union Territory

In Part A of **FORM GST REG-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

Rule 8(2): It lays down the verification of details entered for registration:

- Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes (CBDT)
- Mobile number declared shall be verified through a one-time password sent to the said mobile number
- E-mail address declared shall be verified through a separate one-time password sent to the said e-mail address

Rule 8(3) lays down that on successful verification of the Permanent Account Number, mobile number and email address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

Rule 8(4) - Using the reference number generated, the applicant shall electronically submit an application in Part B of **FORM GST REG-01,** duly signed or verified through electronic verification code, along with the documents specified in the said FORM at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Rule 8(4A) Every application made under Rule (4) shall be followed by -

(a) biometric-based Aadhaar authentication and taking photograph of the applicant, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number; or

(b) taking biometric information, photograph and verification of such other KYC documents, as notified,

unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done,

where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in **FORM GST REG-01** at one of the Facilitation Centres notified by the Commissioner.

Rule 8(5) - on receipt of an application, an acknowledgement shall be issued electronically to the applicant in **FORM GST REG-02.**

Rule 8(6) - A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) shall be issued electronically only after the said deposit.

Verification of the Application and Approval [Rule 9]

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant **within seven working days** from the date of submission of application.

Provided that where -

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under Rule 25 and verification of such documents as the proper officer may deem fit.

(2) Where the application submitted under Rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in **FORM GST REG-03** within seven working days from the date of submission of application and the applicant shall furnish such clarification, information or documents sought electronically, in **FORM GST REG-04**, **within seven working days** from the date of receipt of such intimation.

Provided that where -

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business.

The notice in **FORM GST REG-03** may be issued not later than thirty days from the date of submission of the application.

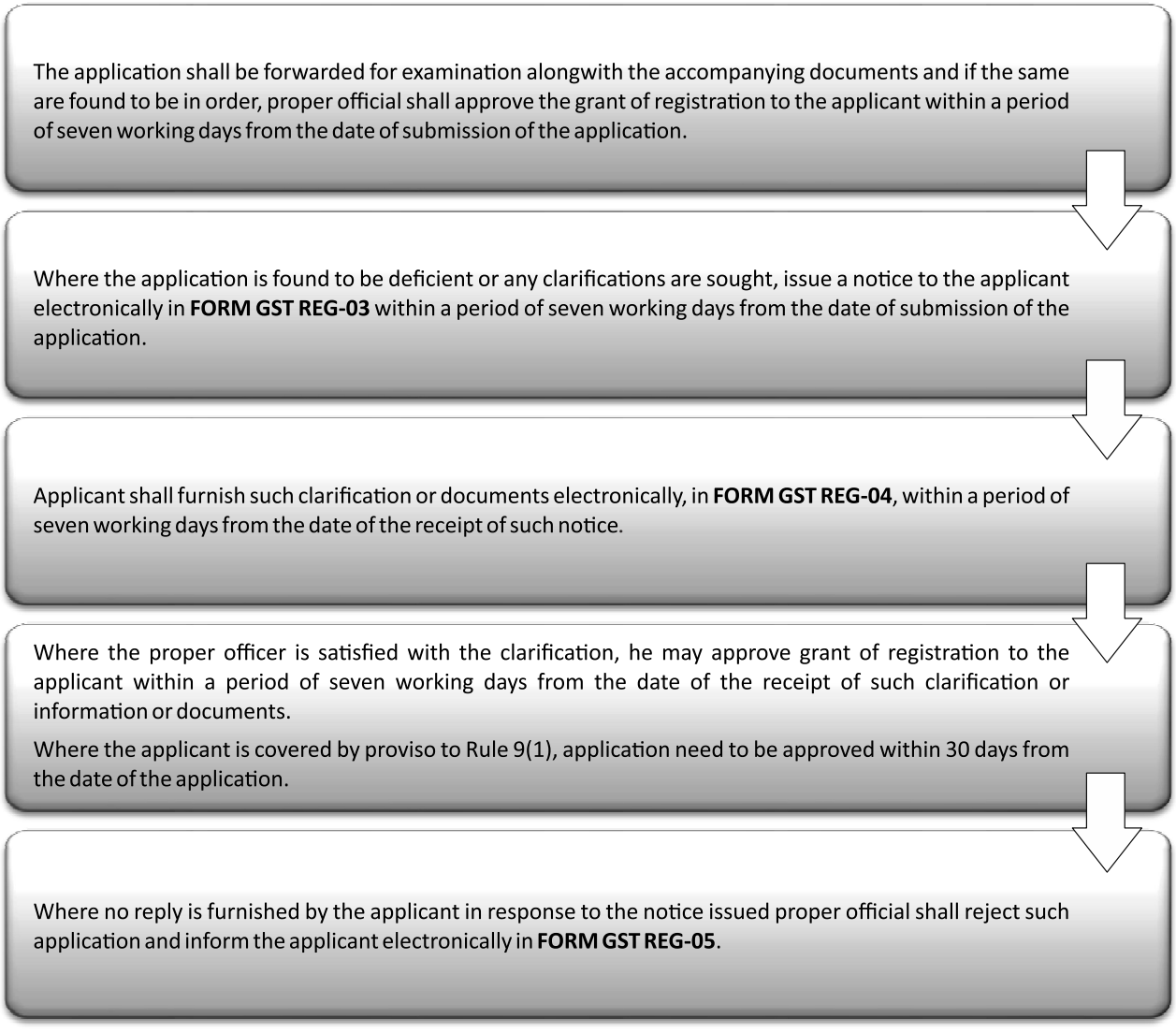
Explanation. – For the purposes of this sub-rule, the expression– "clarification" includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in Part A of **FORM GST REG-01.**

(3) Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant **within seven working days** from the date of receipt of such clarification or information or documents.

(4) Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) within the prescribed period or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05.**

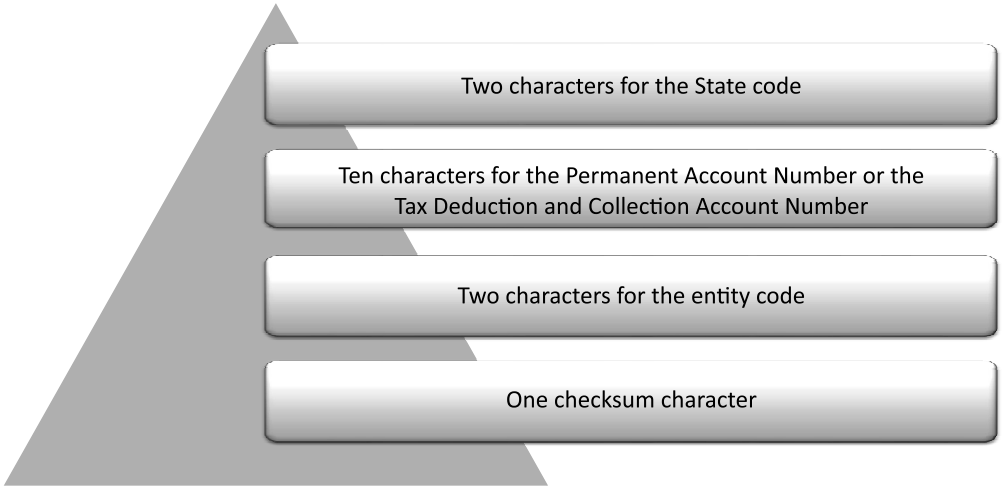
(5) If the proper officer fails to take any action - (a) **within seven working days** from the date of submission of application, or (b) within seven working days from the date of receipt of clarification, information or documents furnished by the applicant under sub-rule (2), or (c) within a period of thirty days from the date of submission of the application in cases where a person is covered under proviso to sub-rule (1); the application for grant of registration shall be deemed to have been approved.

Rule 9 of CGST Rules, 2017 can thus be summarised as under:



Issue of Registration Certificate [Rule 10]

(1) Subject to the provisions of sub-section (12) of section 25, where the application for grant of registration has been approved under Rule 9, a certificate of registration in **FORM GST REG-06** showing the principal place of business and additional place(s) of business shall be made available to the applicant on the Common Portal and a Goods and Services Tax Identification Number (hereinafter in these rules referred to as "GSTIN") shall be assigned in the following Format:



(2) The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within thirty days from such date.

(3) Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration under sub-rule (1) or sub-rule (3) or sub-rule (5) of Rule 9.

(4) Every certificate of registration shall be duly signed or verified through electronic verification code by the proper officer under the Act.

(5) Where the registration has been granted under sub-rule (5) of Rule 9, the applicant shall be communicated the registration number and the certificate of registration under sub-rule (1), duly signed or verified through electronic verification code, shall be made available to him on the common portal within three days after expiry of the period specified in sub-rule (5) of Rule 9.

Furnishing of Bank Account Details [Rule 10A]

After a certificate of registration in **FORM GST REG-06** has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under Rule 12 or, as the case may be Rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, which is in name of the registered person and obtained on Permanent Account Number of the registered person or any other information, as may be required on the common portal in order to comply with any other provision.

In case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

Aadhaar authentication for registered person [Rule 10B]

The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued

a certificate of registration under Rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu Undivided Family, or of the Managing Director or any Whole Time Director, in the case of a Company, or of any of the Members of the Managing Committee of an Association of Persons or Body of Individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the purposes as specified in Column (2) of the Table below :-

S. No.	***Purpose***
1.	For filing of application for revocation of cancellation of registration in **FORM GST REG-21** under Rule 23
2.	For filing of refund application in **FORM RFD-01** under Rule 89
3.	For refund under Rule 96 of the integrated tax paid on goods exported out of India

Provided that if where Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely :-

(a) Her/his Aadhaar Enrolment ID slip; and

(b) (i) Bank passbook with photograph; or

(ii) Voter identity card issued by the Election Commission of India; or

(iii) Passport; or

(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988.

However, such category of person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.

Separate Registration for multiple places of business within a State or a Union territory [Rule 11]

(1) Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under sub-section (2) of section 25 shall be granted separate registration in respect of each such place of business subject to the following conditions, namely:-

a. such person has more than one place of business as defined in clause (85) of section 2;

b. such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;

c. all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

Explanation. - For the purposes of clause (b), it is hereby clarified that where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section.

(2) A registered person opting to obtain separate registration for a place of business shall submit a separate application in **FORM GST REG-01** in respect of such place of business.

(3) The provisions of Rule 9 and Rule 10 relating to the verification and the grant of registration shall, *mutatis mutandis*, apply to an application submitted under this rule.

Grant of Registration to persons required to Deduct Tax at Source or to Collect Tax at Source [Rule 12]

The procedure is as under :

Any person required to deduct tax under section 51 or a person required to collect tax at source under section 52 shall electronically submit an application, duly signed or verified, in **FORM GST REG-07** for the grant of registration through the common portal [Rule 12(1)]

A person applying for registration to collect tax in accordance with the provisions of section 52 or deduct tax in accordance with section 51 , in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in PART A of the application in **FORM GST REG- 07** and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A. [Rule 12(1A)]

The proper officer may grant registration after due verification and issue a certificate of registration in **FORM GST REG-06** within a period of three working days from the date of submission of the application. [Rule 12(2)]

Where, upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in **FORM GST REG-06** has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in **FORM GST REG-08.** Provided that the proper officer shall follow the procedure prescribed in rule 22 for cancellation of registration. [Rule 12(3)]

Grant of registration to non-resident taxable person [Rule 13]

(1) A non-resident taxable person shall electronically submit an application, along with a valid passport, for registration, duly signed, in **FORM GST REG-09**, at least five days prior to the commencement of business at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

Provided that in the case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its Permanent Account Number, if available.

(2) A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) of Rule 8 shall be issued electronically only after the said deposit in his electronic cash ledger.

(3) The provisions of Rule 9 and Rule 10 relating to the verification and the grant of registration shall, *mutatis mutandis,* apply to an application submitted under this rule.

(4) The application for registration made by a non-resident taxable person shall be duly signed or verified through electronic verification code by his authorised signatory who shall be a person resident in India having a valid Permanent Account Number.

RULE 14-Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient

- Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient shall electronically submit an application for registration, duly signed or verified through electronic verification code, in **FORM GST REG-10**
- The applicant shall be granted registration, in **FORM GST REG-06**, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council

RULE 15-Extension in period of operation by casual taxable person and non-resident taxable person

- Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in **FORM GST REG-11** shall be submitted electronically through the common portal by such person before the end of the validity of registration granted to him
- The application under sub-rule (1) shall be acknowledged only on payment of the amount specified in sub-section (2) of section 27

Suo moto Registration [Rule 16]

(1) Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in **FORM GST REG-12.**

(2) The registration granted under sub-rule (1) shall be effective from the date of order granting registration.

(3) Every person to whom a temporary registration has been granted under sub-rule (1) shall, within ninety days from the date of the grant of such registration, submit an application for registration in the Form and manner provided in Rule 8 or Rule 12 unless the said person has filed an appeal against the grant of temporary registration, in which case the application for registration shall be submitted within thirty days from the date of issuance of order upholding the liability to registration by the Appellate Authority.

(4) The provisions of Rule 9 and Rule 10 relating to verification and issue of certificate of registration shall, *mutatis mutandis*, apply to an application submitted under sub-rule (3).

(5) The GSTIN assigned pursuant to verification under sub-rule (4) shall be effective from the date of order granting registration under sub-rule (1).

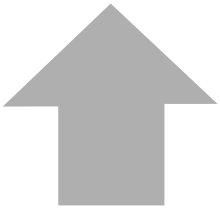
Assignment of Unique Identity Number to certain special entities [Rule 17]

(1) Every person required to be granted a Unique Identity Number under sub-section (9) of section 25 may submit an application, electronically in FORM GST REG-13, duly signed, in the manner specified in Rule 1 at the Common Portal, either directly or through a Facilitation Centre, notified by the Board or Commissioner.

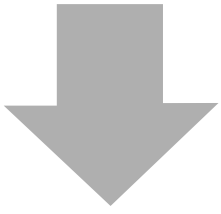
(1A) The Unique Identity Number granted under sub-rule (1) to a person under clause (a) of sub-section (9) of section 25 shall be applicable to the territory of India.

(2) The proper officer may, upon submission of an application in **FORM GST REG-13** or after filling up the said FORM or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a Unique Identity Number to the said person and issue a certificate in **FORM GST REG-06** within three working days from the date of submission of application.

Display of registration certificate and GSTIN on the name board [Rule 18]



Every registered person shall display his certificate of registration in a prominent location at his principal **place of business** and at every **additional place or places of business**.



Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his **principal place of business** and at every **additional place or places of business**.

Amendment of Registration [Rule 19]

(1) Where there is any change in any of the particulars furnished in the application for registration in **FORM GST REG-01 or FORM GST REG-07 or FORM GST REG-09 or FORM GST REG10 or FORM GST- REG-13**, as the case may be, either at the time of obtaining registration or as amended from time to time, the registered person shall, within fifteen days of such change, submit an application, duly signed, electronically in **FORM GST REG- 14**, along with documents relating to such change at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

Provided that –

(a) Where the change relates to –

(i) legal name of business;

(ii) address of the principal place of business or any additional place of business; or

(iii) addition, deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive officer or equivalent, responsible for day to day affairs of the business,–

which does not warrant cancellation of registration under section 29, the proper officer shall approve the amendment within fifteen working days from the date of receipt of application in

FORM GST REG-14 after due verification and issue an order in **FORM GST REG-15** electronically and such amendment shall take effect from the date of occurrence of the event warranting amendment.

(b) The change relating to sub-clause (i) and sub-clause (iii) of clause (a) in any State or Union territory shall be applicable for all registrations of the registered person obtained under these rules on the same PAN.

(c) Where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in **FORM GST REG 14** on the Common Portal.

(d) Where a change in the constitution of any business results in the change of the Permanent Account Number of a registered person, the said person shall apply for fresh registration in **FORM GST REG-01**.

Provided that any change in the mobile number or e-mail address of the authorised signatory submitted under Rule 1, as amended from time to time, shall be carried out only after online verification through the Common Portal in the manner provided under sub-rule (2) of Rule 8.

(1A) Notwithstanding anything contained in sub-rule (1), any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in **FORM GST REG-14** on the common portal except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify.

(2) Where the proper officer is of the opinion that the amendment sought under sub-rule (1) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within fifteen working days from the date of receipt of the application in **FORM GST REG-14**, serve a notice in **FORM GST REG-03**, requiring the registered person to show cause, within seven working days of the service of the said notice, as to why the application submitted under sub-rule (1) shall not be rejected.

(3) The taxable person shall furnish a reply to the notice to show cause, issued under sub-rule (2), in **FORM GST REG-04** within seven working days from the date of the service of the said notice.

(4) Where the reply furnished under sub-rule (3) is found to be not satisfactory or where no reply is furnished in response to the notice issued under sub-rule (2) within the period prescribed in sub-rule (3), the proper officer shall reject the application submitted under sub-rule (1) and pass an order in **FORM GST REG -05**.

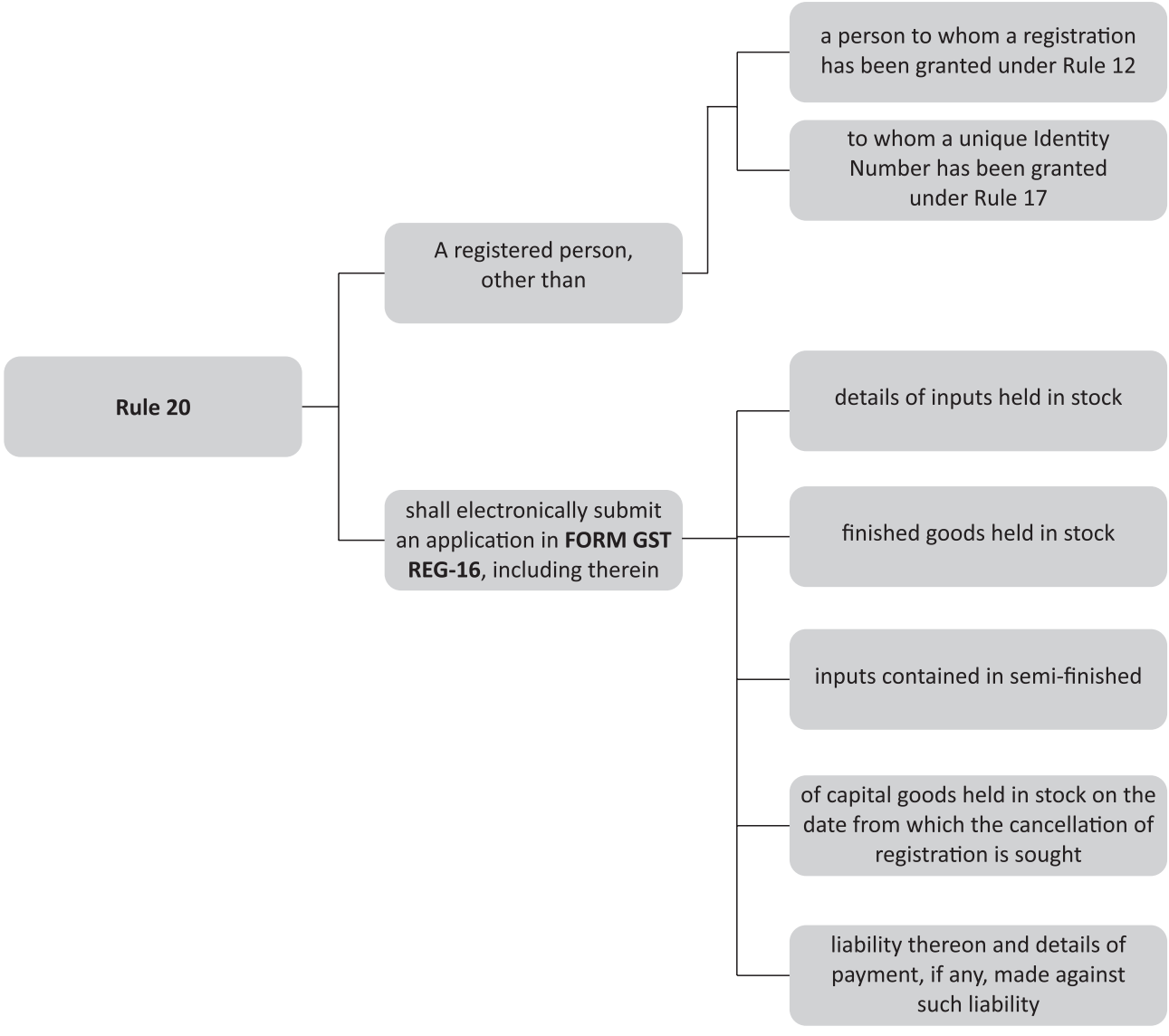
(5) If the proper officer fails to take any action-

(a) within fifteen working days from the date of submission of application, or

(b) within seven working days from the date of receipt of reply to the notice to show cause under sub- rule (3), the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the Common Portal.

Application for cancellation of Registration [Rule 20]

A registered person, other than a person to whom a registration has been granted under Rule 12 or a person to whom a Unique Identity Number has been granted under Rule 17, seeking cancellation of his registration under sub-section (1) of section 29 shall electronically submit an application in **FORM GST REG-16**, including therein the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of thirty days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner.



Registration liable to cancellation in certain cases [Rule 21]

The registration granted to a person is liable to be cancelled, if the said person-

- (a) does not conduct any business from the declared place of business; or
- (b) issues invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder; or
- (c) violates the provisions of section 171 of the Act or the rules made thereunder; or
- (d) violates the provision of rule 10A; or
- (e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
- (f) furnishes the details of outward supplies in **FORM GSTR-1** under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
- (g) violates the provision of rule 86B.

Suspension of Registration [Rule 21A]

(1) Where a registered person has applied for cancellation of registration under Rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under Rule 22.

(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under Rule 21, he may, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under Rule 22.

(2A) Where, a comparison of the returns furnished by a registered person under section 39 with -

(a) the details of outward supplies furnished in **FORM GSTR-1**; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1**,

Or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be

suspended and the said person shall be intimated in **FORM GST REG-31**, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.

(3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2) or sub-rule (2A), shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

Explanation.- For the purposes of this sub-rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.

(4) The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer under Rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.

Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

(5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Cancellation of Registration [Rule 22]

(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in **FORM GST REG-17**, requiring him to show cause within seven working days from the date of service of such notice as to why his registration should not be cancelled.

(2) The reply to the show-cause notice issued under sub-rule (1) shall be furnished in **FORM REG–18** within the period prescribed in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in **FORM GST REG-19**, within thirty days from the date of application submitted under Rule 20 or, as the case may be, the date of reply to the show cause issued under sub-rule (1), or under sub-rule (2A) of Rule 21A cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section(5) of section 29.

(4) Where the reply furnished under sub-rule (2) or in response to the notice issued under sub-rule (2A) of Rule 21A to the is found to be satisfactory, the proper officer shall drop the Proceedings and pass an order in **FORM GST REG –20.**

Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in **FORM GST-REG 20.**

(5) The provisions of sub-rule (3) shall, *mutatis mutandis*, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

Revocation of Cancellation of Registration [Rule 23]

(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in **FORM GST REG-21**, to such proper officer, within thirty days from the date of service of the order of cancellation of registration or within such time period as extended by the Additional Commissioner or the joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30 at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner :

Provided that no application for revocation shall be filed if the registration has been cancelled for the failure of the taxable person to furnish returns, unless such returns are filed and any amount due as tax, in terms of such returns has been paid along with any amount payable towards interest, penalties and late fee payable in respect of the said returns.

Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.

(2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in **FORM GST REG-22** within thirty days from the date of receipt of the application and communicate the same to the applicant.

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in **FORM GST REG-05**, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in **FORM GST REG-23** requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within seven working days from the date of the service of notice in **FORM GST REG-24**.

(4) Upon receipt of the information or clarification in **FORM GST REG-24**, the proper officer may proceed to dispose of the application in the manner specified in sub-rule (2) within thirty days from the date of receipt of such information or clarification from the applicant.

Physical verification of business premises in certain cases [Rule 25]

Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the common portal within a period of fifteen working days following the date of such verification.

Method of Authentication [Rule 26]

(1) All applications, including reply, if any, to the notices, returns, appeals or any other document required to be submitted under these rules shall be so submitted electronically at the Common Portal with digital

signature certificate or through e-signature as specified under the Information Technology Act, 2000 or through any other mode of signature notified by the Board in this behalf.

Provided that a registered person registered under the provisions of the Companies Act, 2013 shall furnish the documents or application verified through digital signature certificate.

Provided further that a registered person registered under the provisions of the Companies Act, 2013 shall, during the period from the 21st day of April, 2020 to the 30th day of September, 2020, also be allowed to furnish the return under section 39 in **FORM GSTR-3B** verified through Electronic Verification Code (EVC).

Provided also that a registered person registered under the provisions of the Companies Act, 2013 shall, during the period from the 27th day of April, 2021 to the 31st day of October, 2021, also be allowed to furnish the return under section 39 in **FORM GSTR-3B** and the details of outward supplies under section 37 in **FORM GSTR-1** or using invoice furnishing facility, verified through Electronic Verification Code (EVC).

(2) Each document including the return furnished online shall be signed or verified through Electronic Verification Code –

(a) in the case of an individual, by the individual himself or by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;

(c) in the case of a company, by the chief executive officer or authorised signatory thereof;

(d) in the case of a Government or any Governmental agency or local authority, by an officer authorised in this behalf;

(e) in the case of a firm, by any partner thereof, not being a minor or authorised signatory;

(f) in the case of any other association, by any member of the association or persons or authorised signatory;

(g) in the case of a trust, by the trustee or any trustee or authorised signatory; or

(h) in the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48.

(3) All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate or through E-signature as specified under the provisions of the Information Technology Act, 2000 verified by any other mode of signature or verification as notified by the Board in this behalf.

Deemed Registration [Section-26]

(1) The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section 10 of section 25.

(2) Notwithstanding anything contained in sub-section 10 of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.

Special provisions relating to casual taxable person and non-resident taxable person [Section 27]

(1) The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for a **period specified in the application for registration or ninety days from the effective date** of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration:

Provided that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of **ninety days** by a further period not exceeding ninety days.

(2) A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

Provided that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

(3) The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilized in the manner *provided under section 49.*

Amendment of Registration [Section 28]

(1) Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such Form and manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed.

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed:

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(2) Any rejection or approval of amendments under the State Goods and Services Tax Act or the union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this A*ct.*

Cancellation or Suspension of Registration [Section 29]

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, —

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25 :

Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, —

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished [the return for a financial year beyond three months from the due date of furnishing the said return]; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts :

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Revocation of Cancellation of Registration [Section 30]

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the

registration in the prescribed manner within thirty days from the date of service of the cancellation order :

Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended, -

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).

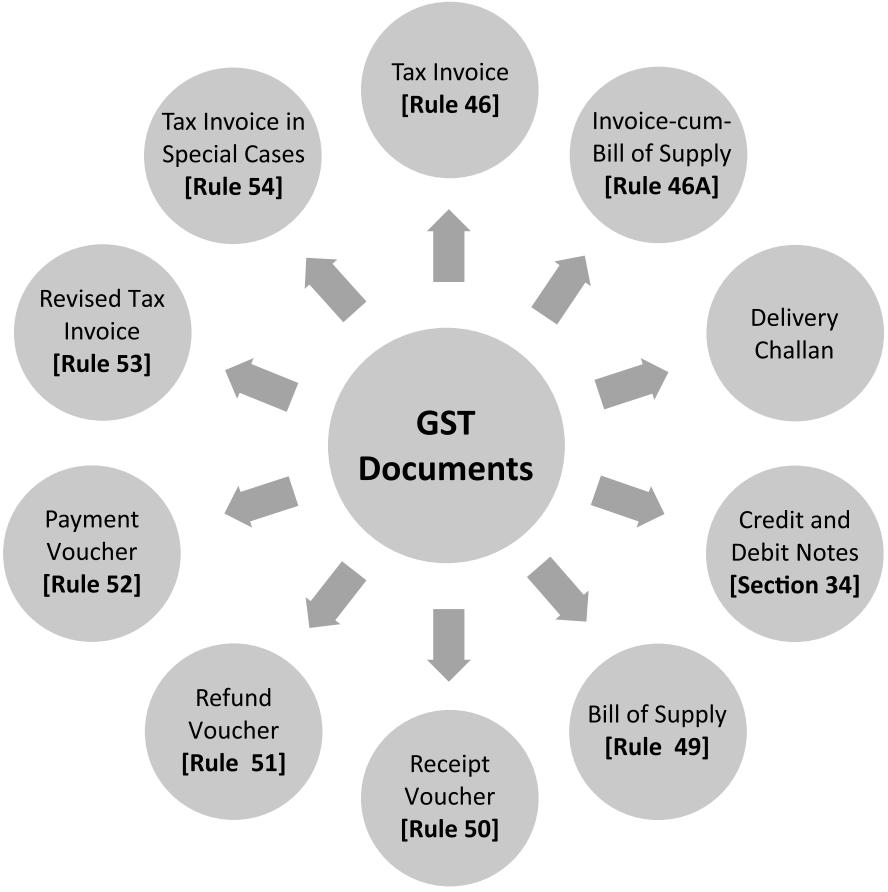
(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application :

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

TAX INVOICES, DEBIT & CREDIT NOTES

Whenever a transaction takes place, different kinds of documents are issued under different circumstances, like invoice, credit note, debit note and bill of supply.



Tax Invoice

Section 2(66) of Central Goods & Services Tax Act, 2017 mandates "invoice" or "tax invoice" as the tax invoice referred to in section 31.

Tax Invoice is mandated to be issued in the event of taxable supplies.

Time Limit for issuing a tax invoice for supply of goods [section 31(1)]:

In case of registered person supplying taxable goods, the invoice must be issued before or at the time of

(a) removal of goods for supply, where the supply involves movement of goods.

(b) or delivery of goods or making available thereof to the recipient in any other case "Removal", in relation to goods, means dispatch of the goods for delivery by the supplier or collection of the goods by the recipient.

Continuous Supply of Goods [section 31(4)]

Meaning of Continuous Supply of Goods: "Continuous Supply of Goods" means a supply of goods which is provided continuously under a contract, whether or not by means of a wire, cable, pipeline or other conduits, and for which **the supplier invoices the recipient on a regular or periodic basis** and includes the supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify.

In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

Goods Sent on Approval basis [Section 31(7)]

Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Thus, the tax invoice must be issued within six months from removal.

Goods can be removed on an approval basis within the State or outside the State. Delivery Challan should be issued at the time of removal of goods. E-way bills will also be issued wherever applicable. The person carrying goods for such a supply can carry the invoice book so that he can issue the invoice once the supply is fructified. – CBEC Circular No. 10/10/2017-GST dated 18-10-2017. Removal of artwork to galleries for subsequent sale Artists removes their artworks to various galleries where these are exhibited. The artworks should be removed under- delivery challan and e-way bill (where applicable). Once the artwork is sold, the tax invoice should be generated.

Time limit for issuing Tax Invoice for services

The invoice in case of a taxable supply of services shall be issued **within a period of thirty days** from the date of the supply of service.

- A banking company or a financial institution, or NBFC, can issue an invoice **within forty-five days** from the date of supply of service.
- An insurer/banking company / financial institution, including a non-banking financial company/ Telecom operator, or any other class of supplier of services as may be notified by the Government **making taxable supplies of services between distinct persons** as specified in Section 25, **may issue the invoice before or at the time recording the same in books of account** or **before the expiry of the quarter** during which the supply was made.

Continuous Supply of Services [Section 31(5)]

Meaning of "**Continuous Supply of Services**" : It means a supply of services which is provided, or agreed to be provided, continuously or on a recurrent basis, under a contract, **for a period exceeding three months with periodic payment obligations** and includes the supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

In case of continuous supply of service

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Supply of Services ceases before completion

In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation. [Section 31(6) of Central Goods and Services Tax Act, 2017]

Revised Invoice [Section 31(3)(a)]

The expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier. Revised Invoice is meant to be issued for supplies made after the effective date of registration till the date of issuance of a certificate of registration.

Timeline for issuing the revised **invoice** is **within one month from the date of issuance of a certificate of registration.**.

The recipient can avail ITC against such a revised invoice issued by the supplier.

A revised tax invoice shall contain the following particulars, namely:-

(a) the word "Revised Invoice", wherever applicable, indicated prominently;

(b) name, address and Goods and Services Tax Identification Number of the supplier;

(c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(d) date of issue of the document;

(e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;

(g) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply; and

(h) signature or digital signature of the supplier or his authorised representative.

TAX INVOICE FOR SMALL VALUE

Section 31(3)(b) Tax invoice may not be issued if value goods or services or both is less than Rs. 200

A registered person may not issue a tax invoice in accordance with the provisions of clause of sub-section (3) of section 31 subject to the following conditions, namely:-

(a) the recipient is not a registered person; and

(b) the recipient does not require such invoice, and

shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

Contents of a Tax Invoice

A tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars:-

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

(g) HSN code of goods or Accounting Code of services;

Position w.e.f. 01.04.2021:

Annual turnover in preceding financial year	***Number of digits of HSN Code***
AT<= Rs. 5 Crores	For B2B supplies- 4 digits For B2C supply- 4 digits (optional)
AT> 5 crores	For B2B and B2C supply- 6 digits

(h) description of goods or services;

(i) quantity in case of goods and unit or unique Quantity Code thereof;

(j) total value of supply of goods or services or both;

(k) taxable value of supply of goods or services or both taking into account discount or abatement, if any;

(l) rate of tax (Central tax, State Tax, Integrated Tax, Union territory tax or cess);

(m) amount of tax charged in respect of taxable goods or services (Central tax, State Tax, Integrated Tax, Union territory tax or cess);

(n) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;

(o) address of delivery where the same is different from the place of supply;

(p) whether the tax is payable on reverse charge basis; and

(q) signature or digital signature of the supplier or his authorized representative:

Signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000.

(r) Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of Rule 48.

(s) a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of Rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of Rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of Rule 48 –

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of Rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

Additions details

In case of supply of goods, the invoice must be issued in triplicate, i.e., original for recipient, duplicate for transporter and triplicate for supplier.

In case of supply of services, the invoice must be issued in duplicate, i.e., original for recipient and duplicate for supplier.

In the case of the export of goods or services, the invoice shall carry an endorsement – "supply meant for export/ supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax" or – "supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax", as the case may be, and shall, in lieu of the details specified in clause (e) of Rule 46, contain the following details, namely, – (i) name and address of the recipient; (ii) address of delivery; and (iii) name of the country of destination:

Manner of issuing invoice [Rule 48]

(1) The invoice shall be prepared in triplicate, in case of supply of goods, in the following manner: –

(a) the original copy being marked as original for Recipient;

(b) the duplicate copy being marked as Duplicate for Transporter; and

(c) the triplicate copy being marked as Triplicate for supplier.

(2) The invoice shall be prepared in duplicate, in case of supply of services, in the following manner: -

(a) the original copy being marked as original for Recipient; and

(b) the duplicate copy being marked as Duplicate for supplier.

(3) The serial number of invoices issued during a tax period shall be furnished electronically through the Common Portal in **FORM GSTR-1.**

(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.

(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

(6) The provisions of sub-rules (1) and (2) shall not apply to an e-invoice prepared in the manner specified in sub-rule (4).

E-Invoicing [Rule 48(4)]

E-Invoicing means submitting or uploading of ERP/ accounting software generated invoice into Invoice Registration Portal (IRP) for electronic authentication. It is a process through which a normally generated invoice is authenticated by GSTN. It is applicable only to B2B transactions.

Initially, w.e.f. October 01, 2020, it was made mandatory for registered person whose Aggregate Turnover in a financial year exceeds Rs. 500 crore. In any of the previous financial year. However, the threshold for e-invoicing has been gradually reduced and at present is stands at Rs. 10 crores (w.e.f. October 01, 2022).

Threshold limit	*Applicability*
>500Crs	1st Oct-2020
>100Crs	1st Jan-2021
>50Crs	1st Apr-2021
>20Crs	1st Apr-2022
>10Crs	1st Oct-2022

Vide Notification No. 69/2019-CT dated 13.12.2019, the Government has further issued Notifications so as to notify the portals where e-invoices in terms of sub-rule (4) of Rule 48 shall be prepared. List of portals are as below;

(i) www.einvoice1.GST.gov.in;

(ii) www.einvoice2.GST.gov.in;

(iii) www.einvoice3.GST.gov.in;

(iv) www.einvoice4.GST.gov.in;

(v) www.einvoice5.GST.gov.in;

(vi) www.einvoice6.GST.gov.in;

(vii) www.einvoice7.GST.gov.in;

(viii) www.einvoice8.GST.gov.in;

(ix) www.einvoice9.GST.gov.in;

(x) www.einvoice10.GST.gov.in.

E-Invoicing is not applicable in following category of persons:

- Insurance Company
- Banking company, financial institution, NBFC
- Goods Transport Agency (GTA)
- Passenger transportation services
- Movie ticket for a multiplex
- An SEZ unit
- A government department and local authority

Self invoice and payment voucher for tax under RCM

Section 31(3)(f) second *proviso* to Rule 46 Section 31(3)(g)	A registered person who is liable to pay tax under RCM (reverse charge mechanism)] shall issue a self-invoice in respect of goods or services received by him on the date of receipt of goods or services **from the unregistered supplier**. A consolidated monthly invoice can be issued if a reverse charge applies under section 9(4) of the CGST Act where the value of such supplies exceeds Rs. 5,000 in a day from any or all suppliers The consolidated invoice **is not permissible** in case tax is payable under reverse charge **for** **Specific services** [section 9(3) of the CGST Act]. **Payment Voucher:** payment voucher is required to be issued at the time of payment to the supplier in respect of supplies where tax is payable under reverse charge.

Contents of Payment Voucher [Rule 52]

A payment voucher referred to in clause (g) of sub-section (3) of section 31 shall contain the following particulars, namely:-

(a) name, address and Goods and Services Tax Identification Number of the supplier if registered;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number of the recipient;

(e) description of goods or services;

(f) amount paid;

(g) rate of tax (Central tax, State tax, Integrated tax, Union territory tax or cess);

(h) amount of tax payable in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);

(i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and

(j) signature or digital signature of the supplier or his authorised representative.

Bill of Supply [Rule 49]

A bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier where the supplies are exempt from payment of tax. The contents of Bill of Supply are as below:-

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/"respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) HSN Code of goods or Accounting Code for services;

(f) description of goods or services or both;

(g) value of supply of goods or services or both taking into account discount or abatement, if any; and

(h) signature or digital signature of the supplier or his authorized representative:

The provisos to Rule 46 as pertaining to tax invoice shall, *mutatis mutandis*, apply to the bill of supply.

Any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non taxable supply shall be treated as a bill of supply for the purposes of the Act.

Signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000.

Invoice Cum Bill of Supply :

Section 31(3)(c) Rule 46A fourth proviso to Rule 46	A registered person **supplying exempted** goods and/or service or **paying tax as under Composite scheme** can issue a single 'invoice cum bill of supply'. This provision also applies to a person who is paying GST on services under a simplified scheme (small taxable persons paying GST @ 6% on services). Thus, **small taxable persons paying GST @ 6% on services shall issue 'Bill of Supply' and not 'tax invoice'.** Where a registered person is **supplying taxable as well as exempted** goods or services or both **to an unregistered person**, a single "invoice-cum-bill of supply" may be issued for all such supplies.- inserted w.e.f. 13-10-2017. **Consolidated Tax Invoice:** A registered person shall issue a consolidated tax invoice at the end of each day in respect of supplies where (a) the **recipient is an unregistered person**; and (b) the recipient **does not require such invoice.**

Receipt Voucher

Section 31(3)(d) Rule 50	A registered taxable person shall, on receipt of advance payment with respect to any supply of goods or services by him, issue a receipt voucher, evidencing receipt of such payment **Contents of Receipt Voucher:-** (a) Name, address, and GSTIN of the supplier (b) A consecutive serial number (c) Date of issue of receipt voucher (d) Name, address and GSTIN of the recipient (e) description of goods or services (f) **Amount of advance taken** (g) Rate of tax (CGST/ SGST/IGST/ UTGST/ cess) Amount of tax charged in respect of taxable services (i) Place of supply along with the name of State and its code, in case of an Inter-State (j) Whether the tax is payable on reverse charge basis (k) signature or digital signature of the supplier or his authorized representative. Provision for payment of tax on advances received has been deleted *vides* **Notification No. 66/2017-CT dated 15-11-2017.** This relaxation is only in respect of the supply of goods and not in respect of services.

Contents of Receipt Voucher [Rule 50]

A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars:

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/"respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) description of goods or services;

(f) amount of advance taken;

(g) rate of tax (Central tax, State tax, Integrated tax, Union territory tax or cess);

(h) amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);

(i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;

(j) whether the tax is payable on reverse charge basis; and

(k) signature or digital signature of the supplier or his authorized representative. Provided that where at the time of receipt of advance,-

(i) the rate of tax is not determinable, the tax shall be paid at the rate of eighteen per cent;

(ii) the nature of supply is not determinable, the same shall be treated as inter-State supply.

Refund Voucher

Section 31(3)(e) Rule 51	If subsequently, supply is not made and tax invoice not issued, **refund voucher** should be issued against such payment. Contents of Refund Voucher are identical to the requirements of Receipt Voucher except for that cross-reference of Receipt Voucher is required and the amount of refund is to be indicated, instead of the amount received as advance. If refund voucher is made, it should be for the full value of advance including the amount of GST

Contents of Refund Voucher [Rule 51]

A refund voucher referred to in clause (e) of sub-section (3) of section 31 shall contain the following particulars, namely:-

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/"respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(e) number and date of receipt voucher issued in accordance with the provisions of Rule 50;

(f) description of goods or services in respect of which refund is made;

(g) amount of refund made;

(h) rate of tax (Central tax, State tax, Integrated tax, Union territory tax or cess);

(i) amount of tax paid in respect of such goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);

(j) whether the tax is payable on reverse charge basis; and

(k) signature or digital signature of the supplier or his authorised representative.

Illustration:

Meenakshi enterprises, Kolkata makes a supply of goods to Dhirani enterprises, Ghaziabad. The goods were removed from the factory at Kolkata on 3rd May. Hence, the tax invoice must be issued on or before 3rd May.

Illustration:

Mohan Ltd. an event management company has provided its services for an event at Photo Film Agencies at Kolkata, on 1st June. The tax invoice must therefore be issued within 30 days, that is, within 30th June.

Illustration:

Seema & Co. has entered into an AMC (Annual Maintenance Contract) with Vir Enterprises for one-year effective 1st September, 2017 for the stabilisers installed in the factory. As per contract, the invoice must be issued by 9th September, 2018. In this case, since there is a continuous supply of services where the due date is ascertainable from the contract, the tax invoice must be issued before or on 9th September, 2018.

Credit / Debit Notes

Under Section 2(37) of Central Goods & Services Tax Act, 2017, "credit note" means a document issued by a registered person under sub-section (1) of Section 34. The credit note is a convenient and legal method by which the value of the goods or services in the original tax invoice can be amended or revised. The issuance of the credit note will easily allow the supplier to decrease his tax liability in his returns without requiring him to undertake any tedious process of refunds.

Under Section 2(38) of Central Goods & Services Tax Act, 2017, "debit note" means a document issued by a registered person under sub-section (3) of Section 34. The debit note or a supplementary invoice is a convenient and legal method by which the value of the goods or services in the original tax invoice can be enhanced. The issuance of the debit note will easily allow the supplier to pay his enhanced tax liability in his returns without requiring him to undertake any other tedious process.

Where a tax invoice has been issued for supply of goods / services / both, and where the taxable value in the invoice is greater than the taxable value of supply; the tax charged per invoice is greater than the tax payable in respect of such supply; OR where the goods so supplied have been returned by the recipient OR where the

goods / services have been found to be deficit in these cases, the registered supplier may issue a credit note to the recipient.

A registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Where a tax invoice has been issued for supply of goods / services / both, and where the taxable value in the invoice is less than the taxable value of supply; the tax charged per invoice is less than the tax payable in respect of such supply; the registered supplier may issue a debit note to the recipient.

Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Contents of credit or debit note:–

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) nature of the document;

(c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as – "-" and – "/" respectively, and any combination thereof, unique for a financial year;

(d) date of issue of the document;

(e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;

(g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;

(h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and

(i) signature or digital signature of the supplier or his authorised representative.

Earlier a credit/debit note, which is issued by the registered person under Section 34, was required to be issued invoice-wise. Now a registered person can issue one (consolidated) note or more debit notes/ credit notes in respect of multiple invoices issued in a financial year without linking the same to individual invoices. This used to cause avoidable compliance burden for tax payers.

Tax Invoice in special cases [Rule 54]

(1) An ISD invoice or, as the case may be, an ISD credit note issued by an Input Service Distributor shall contain the following details:-

(a) name, address and GSTIN of the Input Service Distributor;

(b) a consecutive serial number containing alphabets or numerals or special characters hyphen or

dash and slash symbolised as, "-", "/", respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN (Goods and Services Tax Identification Number) of the recipient to whom the credit is distributed;

(e) amount of the credit distributed; and

(f) signature or digital signature of the Input Service Distributor or his authorized representative:

Provided that where the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as prescribed above.

(1A) (a) A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the Input Service Distributor, which shall contain the following details:-

i. name, address and Goods and Services Tax Identification Number of the registered person having the same PAN and same State code as the Input Service Distributor;

ii. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as – "-" and "/" respectively, and any combination thereof, unique for a financial year;

iii. date of its issue;

iv. Goods and Services Tax Identification Number of supplier of common service and original invoice number whose credit is sought to be transferred to the Input Service Distributor;

v. name, address and Goods and Services Tax Identification Number of the Input Service Distributor;

vi. taxable value, rate and amount of the credit to be transferred; and

vii. signature or digital signature of the registered person or his authorised representative.

(b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.

(2) Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said supplier may issue a consolidated tax invoice or any other document in lieu thereof, by whatever name called, for the supply of services made during a month at the end of the month, whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed under Rule 46:

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000.

(3) Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which

the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also containing other information as prescribed under Rule 46.

(4) Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any FORM, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as prescribed under Rule 46.

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000.

(4A) A registered person supplying services by way of admission to exhibition of cinematography films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46:

Provided that the supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.

(5) The provisions of sub-rule (2) or sub-rule (4) shall apply, *mutatis mutandis,* to the documents issued under Rule 49 or Rule 50 or Rule 51 or Rule 52 or Rule 53.

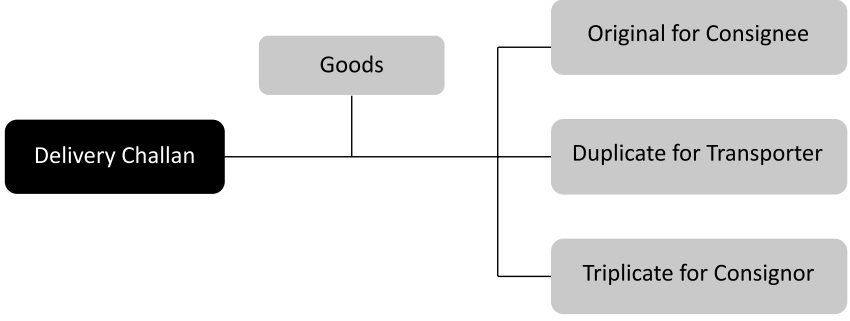
Transportation of Goods without Issue of Invoice [Rule 55]

For the purpose of -

- supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known.
- transportation of goods for job work.
- transportation of goods for reasons other than by way of supply, or
- such other supplies as may be notified by the Board.

The consigner may issue delivery Challan, serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for the transportation, containing date of Challan, details of consigner/consignee, HSN etc.

The delivery Challan shall be prepared in triplicate, in case of supply of goods, as shown in diagram as under :



Where the goods are being transported on a delivery Challan in lieu of invoice the same shall be declared as specified in rule 138.

The supplier is required to issue a tax invoice after delivery of goods where tax invoice could not be issued at the time of removal of goods for the purpose of supply.

Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots –

- the supplier shall issue the complete invoice before dispatch of the first consignment;
- the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
- each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
- the original copy of the invoice shall be sent along with the last consignment.

Rule 55A : Tax Invoice or bill of supply to accompany transport of goods.

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of Rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

ACCOUNTS AND RECORDS

Assessment in GST is substantially focused around self-assessment. Every taxpayer thereby is expected to self- assess the liability, file the returns and pay the tax by the 20th of the following month. The authenticity and completeness of the same is subject to audits, inspection and that casts a responsibility upon the taxpayer to maintain the necessary accounts and records.

Every registered person is expected to maintain the necessary accounts and records at the principal place of business and these records could be electronic or manual.

Place of maintenance

Section 35 of Central Goods & Services Tax Act, 2017 states that every registered person shall maintain books of accounts at his principal place of business and where more than one place of business is specified in the certificate of registration, at every such place of business too.

Nature of records

Section 35 of Central Goods and Services Tax Act, 2017: Maintaining Accounts and other Records

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of–

(a) production or manufacture of goods;

(b) inward and outward supply of goods or services or both;

(c) stock of goods;

(d) input tax credit availed;

(e) output tax payable and paid; and

(f) such other particulars as may be prescribed.

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic FORM in such manner as may be prescribed.

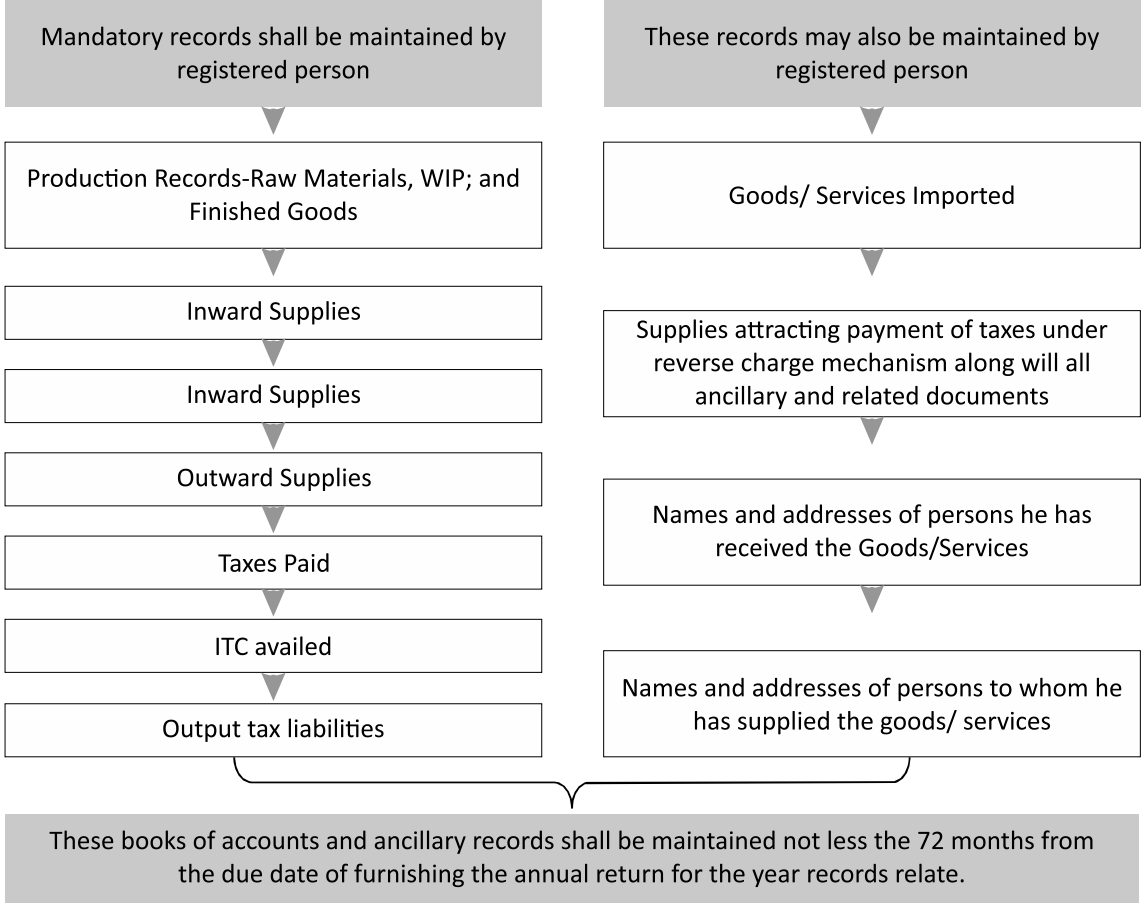
(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed. Also, the CGST Rules, 2017 prescribes the following records:

- Goods / services imported
- supplies attracting payment of taxes under reverse charge mechanism along with all ancillary and
- related documents
- Names and addresses of persons who has received the goods / services
- Names and addresses of persons to whom he has supplied the goods / services

Period of retention of accounts [Section 36]

Every taxpayer shall maintain the books of accounts and ancillary records, until the expiry of 72 months, from the due date of furnishing the annual return for the year to which the records relate.

However, a registered person who is party to an appeal / any other proceedings, before any authority / tribunal, shall have to maintain the accounts and books / records, pertaining to the matters of such appeal for a minimum period of 1 year after disposal of such appeal / revision as the case may be.



ELECTRONIC WAY BILLS

Electronic- Way Bill (E-Way Bill/ e-way bill) mechanism was introduced by the Government w.e.f. 1.4.2018.

1. Basic Conditions

   a. An e-way bill is required to be generated for the transportation of goods of value Rs. 50,000/- or more:

      i. In relation to a supply [for example, supply of goods to the customer]

      ii. For reasons other than supply [for example, movement of goods for job work, repairs, etc.]

      iii. Due to inward supply from Unregistered Persons [i.e. any procurements made from Unregistered Person]

   b. For the purpose of calculating the threshold of Rs.50,000, the value shall be such as shown on the tax invoice/ bill of supply/ delivery challan, as the case may be, including the value of taxes but not including the value of goods which are exempted from the payment of tax, where the invoice is issued in respect of both exempt and taxable goods.

   Example:

   Taxable value as per Invoice is Rs. 45,000

   IGST @ 18% is Rs. 8,100

   Total Invoice value is Rs. 53,100/-

   In the above example, E-Way Bill is required to be issued as the value of invoice including taxes exceeds Rs. 50,000/-.

   c. The limit of Rs. 50,000/- shall not be applicable where the goods are sent for job work from one State to another State. In other words, in such cases, e way bill shall be generated regardless of the value of goods involved.

   d. E-way bill can be generated voluntarily even if the value of goods is less than Rs. 50,000/-.

   e. Thus, an E-way bill shall be generated for each movement of goods whether it constitutes a taxable supply or an exempted supply or for reasons other than supply.

   f. E-way bill is required to be generated regardless of the mode of transportation i.e. railways, air, vessel or road.

   g. E-way bill shall also be required regardless of whether movement of goods is within a particular State or inter-State.

   h. E-way bill shall also be required regardless of whether the goods are transported through a transporter or by own conveyance.

   i. E-way bill is required to be generated against each tax invoice/ bill of supply/ delivery challan regardless of whether consignments pertaining to each such document is being transported in a single conveyance.

   j. Where goods of one invoice is being moved in multiple vehicles simultaneously, e-way bill shall be generated for each such vehicle based on the delivery challans issued for that portion of the consignment.

2. **Scheme of generating the e-way bill:** E-way bill shall be generated in **Form GST EWB-01** on the common Portal. At the outset, User name / password need to be generated on the common portal. The address of common portal is *www.ewaybillgst.gov.in*.

The process of generation is divided into two parts i.e. Part A and Part B of **Form GST EWB-01.**

PART A

Contents - Part A mainly comprise of basic invoice information containing the following fields.

Part A	***Particulars***	***Remarks***
A.1	GSTIN of Supplier	GSTIN of the person generating e-way bill
A.2	Place of Dispatch	Self-explanatory/ It is relevant especially where the Place of dispatch is different from the place of the consignor
A.3	GSTIN of Recipient	Self-explanatory. However, where the recipient is unregistered, it is not required and in such cases the option 'URP' shall be ticked
A.4	Place of Delivery	Self-explanatory
A.5	Document Number	Tax Invoice no/ Bill of Supply No. / Delivery Challan No. as the case may be
A.6	Document Date	Date corresponding to the underlying document
A.7	Value of Goods	As per invoice/ bill of supply/ delivery challan [inclusive of taxes]
A.8	HSN Code	As per the underlying document
A.9	Reason for Transportation	In common portal, the following reasons have been made available for generation of e Way Bill viz. Supply, Export, Import, Job Work, SKD or CKD, Recipient not known, Line Sales, Sales Return, Exhibition or Fairs, For own use and Others

i. Who is required to fill Part A? - Any person who causes movement of goods shall be required to fill Part A. Alternatively, Part A can also be filed by the transporter or e-commerce operator or courier agency provided such agencies are specially authorized by the person who is actually causing movement of goods.

ii. In trade parlance, the person who is a consignor of goods as per the underlying document or arranging transportation as consignor or consignee shall be considered as a person who causes movement.

iii. In case, the goods are procured by a registered person from an unregistered person [URP], the registered recipient person shall be deemed to have caused movement of goods [and the consequences of generating e way bill will follow].

iv. Unique Number – The successful filling up of Part A results in the generation of unique number which shall be used for filling up of Part B.

PART B

The filling up of Part B finally culminates the process with the generation of e way bill.

Contents - Part B mainly comprise of transportation details as below;

Part B	***Particulars***	***Remarks***
B.1	Vehicle No. [for Road]	To be taken from the transporter
B.2	Transport Document No. / Defence Vehicle No. / Temporary Vehicle Registration No. / Nepal or Bhutan Vehicle Registration No.	LR / RR No.

Who is required to fill Part B?

a. Where the goods are transported by road, Part B shall be filled by the registered person as consigner or recipient as consignee.

b. Where Part B is not filed as above and the goods are handed over to the transporter, in such case, Part B shall be filled by the transporter provided the consignor or consignee who had furnished Part A should assign the unique e way bill number to such transporter.

c. Where the goods are transported by vessel, railways or air, Part B can only be filled by the supplier or recipient. [it cannot be filled by the transporter].

d. Part B has to be filled/ furnished within 15 days from the filling up of PART A.

Generation of E-way Bill

Upon filling of Part B, the common portal will finally generate e way bill and unique e-way bill number [EBN] shall be made available to the supplier, recipient and the transporter.

3. Where consignor or consignee fails to generate e-way bill

In the circumstances, where consignor or consignee fails to generate e-way bill in **FORM GST EWB-01,** the responsibility to generate e-way bill has been shifted on to the transporter concerned. In such cases, the transporter is mandatorily required to generate e-way bill based on the information available as per invoice/ bill of supply/delivery challan. However, the above is applicable only in case of transport of goods by road [not in case of transport of gods by railways, vessel or air].

4. Consolidated e-way bill by the transporter

Where e-way bill is generated as per the procedure for each individual consignment and transporter intends to transport multiple consignments in a single conveyance, he may generate consolidated e-way bill by mentioning serial number of each individual e-way bill.

5. When to generate e-way bill

Where the goods are transported by road, e-way bill necessarily required to be generated before the commencement of movement of goods. Any movement of goods [above threshold of Rs. 50,000] without a valid e-way bill is liable to penalties and detention.

Where the goods are transported by air, railways or vessel, e-way bill can be generated either before or after the commencement of movement of goods.

However, in case of railways, it is provided that railways shall not give delivery of goods to the consignee until a valid e-way bill is furnished thereto.

6. **Territorial validity** of e-way bill so generated shall be valid in every State / Union territory.

7. **Modification in e-way bill –** Where, after the generation of e-way bill, the goods are required to be transferred from one conveyance to another for any reason, the requisite details i.e. vehicle no., etc. shall be updated on common portal in Part B either by the person who originally filled information in Part A or by the transporter.

   However, such modification/ updation of e-way bill shall not be necessary where the distance pending to be covered does not exceed 50 kms within the same State or Union territory from the place of the transporter to the place of business of the consignee.

8. **Cancellation of e-way bill** – Where an e-way bill is generated but the goods are not transported or are not transported as per the details furnished in Part A and Part B of e-way bill, it can be cancelled electronically through common portal [provided the e-way bill is not verified in transit by the GST authorities]. Whether a particular e-way bill is already verified by the GST authorities or not can be checked from the common portal**.**

   Thus, in case, the e-way bill is generated with wrong details or the goods for which e-way bill is generated are not required to be transported, the user must cancel such e-way bill on the common portal. Where the un-used e-way bill is not cancelled, the GST authorities will deem that the underlying goods have been transported and the consequences of demand of tax in such cases will follow.

9. **Validity of e-way bill** - The validity of e-way bill is stated as under

Sr. No.	***Vehicle Dimensions***	***Distance***	***Validity Period***
1.	Other than Over Dimensional Cargo	Upto 200 KM	1 day
2.	Other than Over Dimensional Cargo	For Every 200 KM or part thereof	1 additional day
3	Over Dimensional Cargo	Upto 20 km	1 day
4	Over Dimensional Cargo	For every 20 km or part thereof	1 additional day

   i. How to calculate a 'day'?

   Each day shall be counted from the time at which e-way bill is generated till the expiry at midnight of the day immediately following the date of generation of e-way bill.

   For example - if an e-way bill is generated at 10:00 AM on 1.4.2018, then it shall be valid upto 11.59 pm on 2.4.2018.

   ii. What is over dimensional cargo?

   The expression "over dimensional cargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in Rule 93 of the Central Motor Vehicle Rules, 1989.

   iii. Increase in the validity of an existing e-way bill

   The validity of e-way bill can be further increased by the transporter by updating the details in

Part B of Form GST EWB-01. However, such facility to the transporter is allowed only under the circumstance of extreme exceptional nature including transhipment.

10. **Exemption to generate e-way bill** – In the following cases, e-way bill shall not be required to be generated;

a. Where, the value of goods does not exceed Rs. 50,000/- .

b. Where the goods are being transported in a non-motorized conveyance.

c. Where empty cargo containers are being transported.

d. Where the goods are being transported from customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs.

e. Where the goods are being transported under bond from inland container depot or a container freight station to customs port, airport, air cargo complex and land customs station or from one customs station or customs port to another customs station or customs port.

f. Where the goods are being transported under customs supervision or under customs seal.

g. Where the goods are being transported as transit cargo from or to Nepal or Bhutan.

h. Where any movement is caused by defence formation under the Ministry of Defence.

i. Where the goods being transported are petroleum crude, high speed diesel, motor spirit / petrol, natural gas or aviation fuel.

j. Where the consignor of goods is the Central Government, Government of any State or local authority for transport of goods by rail.

k. Where the goods are being transported upto a distance of twenty (20) kilometres from the place of the business of the consignor to a weighbridge for weighment or vice-versa. However, the movement of goods in such cases shall be accompanied by a delivery challan.

RETURNS

As per law, a taxpayer is required to report his inward and outward transactions in the form of various returns. The primary return is **GSTR-1** which is meant to report outward transactions made by the supplier. Them, there is a monthly return in summary form i.e. **GSTR-3B** which primarily encompass inward details including input tax credit along with the summarized outward transactions already reported through GSTR-1. There are various other returns for specific scenarios like TDS, TCS, composition suppliers, ISD, etc. Finally, each supplier has to file annual return IN Form GSTR-9 alongside reconciliation of thereof with the books of accounts in the **FORM GSTR-9C.**

Furnishing details of outward supplies [Section 37]

Section 37 of CGST Act, 2017 mentions that the details of outward supplies **(FORM GSTR-1),** of goods / services both, are required to be furnished by every registered person, including casual taxable person, but excluding:

a) Input Service Distributor (ISD)

b) Non-resident taxable person

c) Person paying tax under composition scheme

d) Person effecting TDS

e) Person effecting TCS

f) supplier of online Information and Data Base Access / Retrieval services (OIDAR)

GSTR-1 is required to be filed on or before 10th of the following month. However, such in terms of the powers granted under section 37, the Government has extended such date till 11th of the following month.

Any registered person, who has furnished the details through **GSTR-1** for any tax period, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period. However, no such rectification of error or omission shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

It is also provided that a registered person shall not be allowed to file outward details/ **GSTR-1** for a tax period, if such details for any of the previous tax periods has not been furnished by him.

The expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

Communication of details of Inward supplies and Input Tax Credit [Section 38]

The details of outward supplies furnished by the registered persons under section 37 along with other er supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies.

The auto-generated statement shall consist of —

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished, —

  (i) by any registered person within such period of taking registration as may be prescribed; or

  (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

  (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

  (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

  (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

  (vi) by such other class of persons as may be prescribed.

Furnishing of Returns [Section 39]

Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in **FORM GSTR-3B** within the prescribed time.

The Government, on the recommendations of the Council, is empowered to notify certain class of registered persons who shall furnish a return for every quarter or part thereof.

A registered person paying tax under the provisions of section 10 i.e. composition scheme shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in **FORM GSTR-4** within the prescribed time.

Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in **FORM GSTR-7**, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in Form 6, a return, electronically, within thirteen days after the end of such month.

Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in **FORM GSTR-5**, a return, electronically, within thirteen days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein. **Provided** that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

The registered person who is required to furnish a return and accrues tax liability thereunder shall such tax to the Government along with the return after taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month or Quarter as the case may be.

The return as above is required to be furnished for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

Where any registered person after furnishing a return discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars subject to payment of interest under this Act. However, no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under section 37 for the said tax period has not been furnished by him.

PAYMENT OF TAX, INTEREST, PENALTY AND OTHER ACCOUNT [SECTION 49]

As India is moving towards digitisation, GST has provided an easy and simple way of payment of taxes. Under GST regime, all the taxpayers get three electronic ledgers namely E-cash Ledger, E-credit Ledger & E-liability Ledger through their GST profile. The liability to pay tax or other amounts is captured in Electronic liability Ledger while the payment of such tax is made through Electronic Cash Ledger and Electronic Credit Ledger.

Payment Mechanism

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with Section 41 to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act, or under the IGST Act in such manner and subject to such conditions and restriction and within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of —

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the Central tax shall first be utilised towards payment of Central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax :

Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of Central tax is not available for payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax :

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of Central tax is not available for payment of integrated tax;

(e) the Central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of Central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely :-

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for, —

(a) Integrated Tax, Central tax, State tax, Union territory tax or cess; or

(b) Integrated tax or Central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25,

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger.

[12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.

Explanation. For the purposes of section 49 —

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression, —

(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

Electronic Liability Register [Rule 85]

(1) The electronic liability register specified under sub-section (7) of section 49 shall be maintained in **FORM GST PMT-01** for each person liable to pay tax, interest, penalty, late fee or any other amount on the Common Portal and all amounts payable by him shall be debited to the said register.

(2) The electronic tax liability register of the person shall be debited by:-

(a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;

(b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;

(c) the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or

(d) any amount of interest that may accrue from time to time.

(3) Subject to the provisions of section 49, section 49A and section 49B payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained

as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic tax liability register shall be credited accordingly.

(4) The amount deducted under section 51, or the amount collected under section 52, or the amount payable under sub-section (3) or sub-section (4) of section 9, or the amount payable under section 10, or sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Act or sub- section (3) or sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act any amount payable towards interest, penalty, fee or any other amount under the Act or the Integrated Goods and Services Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic tax liability register shall be credited accordingly.

(5) Any amount of demand debited in the electronic tax liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.

(6) The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic tax liability register shall be credited accordingly.

(7) A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04**.

ELECTRONIC CREDIT LEDGER [RULE 86]

(1) The electronic credit ledger shall be maintained in **FORM GST PMT-02** for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.

(2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B.

(3) Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

(4) If the refund so filed is rejected, either fully or partly, the amount debited under sub-rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03.**

(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be recredited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03.]**

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him, -

(a) under sub-section (3) of section 54 of the Act, or

(b) under sub-rule (3) of Rule 96, in contravention of sub-rule (10) of Rule 96,

along with interest and penalty, wherever applicable, through **FORM GST DRC-03**, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03A**.

(5) Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.

(6) A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04.**

Explanation. — For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

Conditions of use of amount available in Electronic Credit Ledger [Rule 86A]

Vide Notification No. 75/2019-C.T. dated 26.12.2019, the Government has inserted Rule 86A in the CGST Rules, 2017 which empowers GST officers to block utilization input tax credit in certain scenarios as below.

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible inasmuch as -

(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under Rule 36 -

(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(ii) without receipt of goods or services or both; or

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under Rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under Rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

Restrictions on use of amount available in electronic credit ledger [Rule 86B]

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent, of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lacs rupees:

Provided that the said restriction shall not apply where -

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lacs rupees as income tax under the Income-tax Act, 1961 in each of the last two financial years for which the time limit to file return of income under sub-section (1) of section 139 of the said Act has expired; or

(b) the registered person has received a refund amount of more than one lacs rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or

(c) the registered person has received a refund amount of more than one lacs rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is -

(i) Government Department; or

(ii) a Public Sector Undertaking; or

(iii) a local authority; or

(iv) a statutory body :

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

Electronic Cash Ledger [Rule 87]

(1) The electronic cash ledger under sub-section (1) of section 49 shall be maintained in **FORM GST PMT-05** for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

(2) Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount :

[Provided that the challan in **FORM GST PMT-06** generated at the common portal shall be valid for a period of fifteen days :

(3) The deposit under sub-rule (2) shall be made through any of the following modes, namely :-

(i) Internet Banking through authorised banks;

(ia) Unified Payment Interface (UPI) from any bank;

(ib) Immediate Payment Services (IMPS) from any bank;

(ii) Credit card or Debit card through the authorised bank;

(iii) National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) from any bank; or

(iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft :

Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by -

(a) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;

(b) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

(c) Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any *ad hoc* deposit :

Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.

Explanation. — For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

(4) Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.

(5) Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement [or Immediate Payment Service] mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made :

Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.

(6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

(7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in **FORM GST PMT-07** through the common portal to the bank or electronic gateway through which the deposit was initiated.

(9) Any amount deducted under section 51 or collected under section 52 and claimed by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger .

(10) Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

(11) If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in **FORM GST PMT-03.**

(12) A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04.**

(13) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for Integrated tax, Central tax, State tax or Union territory tax or cess in **FORM GST PMT-09.**

(14) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for Central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in **FORM GST PMT-09** :

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.]

Explanation 1. — The refund shall be deemed to be rejected if the appeal is finally rejected.

Explanation 2. — For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

Principles for Utilization of balance in Electronic Credit Ledger

Section 49A - Notwithstanding anything contained in section 49, the input tax credit on account of Central tax, State tax or Union territory tax shall be utilised towards payment of Integrated tax, Central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilized fully towards such payment.

Section 49B - Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of Integrated tax, Central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

Analysis

The newly inserted section 49A of the CGST Act provides that the input tax credit of Integrated tax has to be utilized completely before input tax credit of Central tax/state tax can be utilized for discharge of any tax liability.

Further, as per the provisions of section 49 of the CGST Act, credit of Integrated tax has to be utilized first for payment of Integrated tax, then Central tax and then state tax in that order mandatorily.

This led to a situation, in certain cases, where a taxpayer has to discharge his tax liability on account of one type of tax (say state tax) through electronic cash ledger, while the input tax credit on account of other type of tax (say Central tax) remains un-utilized in electronic credit ledger.

Accordingly, Rule 88A inserted in the Central Goods and services Tax Rules, 2017 in exercise of the powers under section 49B of the CGST Act vide notification No. 16/2019- Central Tax, dated 29th March, 2019.

The newly inserted rule 88A in the CGST Rules allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in any order subject to the condition that the entire input tax credit on account of Integrated tax is completely exhausted first before the input tax credit on account of Central tax or State / Union territory tax can be utilized.

To further clarify the utilization mechanism, the Government has issued Circular No. 98/17/2019-GST, dated 23-4-2019, which clarifies the revised position as under;

Input tax credit on account of	***Output liability on account of Integrated tax***	***Output liability on account of Central tax***	***Output liability on account of State tax/ Union territory tax***
Integrated tax	(I)	(II) – In any order and in any proportion	
(III) Input tax credit on account of Integrated tax to be completed exhausted mandatorily			
Central tax	(V)	(IV)	Not permitted
State tax/ Union territory tax	(VII)	Not permitted	(VI)

Section	***Order/ Rank preference***	***Credit***	***GST liability***
49A	Ist	IGST	I-IGST II-CGST III-SGST
Proviso of 49(5)	IInd	CGST	I-CGST II-IGST
Proviso of 49(5)	IIIrd	SGST	I-SGST II-IGST

Illustration :

Amount of Input Tax Credit available and output liability under different tax heads

Head	**Output Liability**	**Input Tax Credit**
Integrated tax	1000	1300
Central tax	300	200
State tax / Union territory tax	300	200
Total	1600	1700

Option 1:

Input Tax credit on account of	*Discharge of output liability on account of Integrated tax*	*Discharge of output liability on account of Central tax*	*Discharge of output liability on account of State tax/ Union territory tax*	*Balance of Input Tax Credit*
Integrated tax	1000	200	100	0
Input tax Credit on account of Integrated tax has been completely exhausted				
Central tax	0	100	-	100
State tax / Union territory tax	0	-	200	0
Total	1000	300	300	100

Option 2:

Input tax credit on account of	*Discharge of output liability on account of Integrated tax*	*Discharge of output liability on account of Central tax*	*Discharge of output liability on account of State tax / Union territory tax*	*Balance of Input Tax Credit*
Integrated tax	1000	100	200	0
Input tax Credit on account of Integrated tax has been completely exhausted				
Central tax	0	200	-	0
State tax / Union territory tax	0	-	100	100
Total	1000	300	300	100

Identification number for each transaction [Rule 88]

(1) A unique identification number shall be generated at the Common Portal for each debit or credit to the electronic cash or credit ledger, as the case may be.

(2) The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic tax liability register.

(3) A unique identification number shall be generated at the Common Portal for each credit in the electronic tax liability register for reasons other than those covered under sub-rule (2).

QUARTERLY RETURN MONTHLY PAYMENT (QRMP) SCHEME

Section 39

Proviso to section 39(1) provides that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

Proviso to section 39(7) further provides that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed, —

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

Notified Persons

(1) In terms of the proviso to section 39, the Government vide Notification No. 84/2020-C.T., dated 10-11-2020 has notified the registered persons, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, having an aggregate turnover of up to five crore rupees in the preceding financial year, and who have opted to furnish a return for every quarter, under sub-rule (1) of Rule 61A of the Central Goods and Services Tax Rules, 2017as the class of persons who shall, subject to the following conditions and restrictions, furnish a return for every quarter from January, 2021 onwards, and pay the tax due every month in accordance with the proviso to sub-section (7) of section 39 of the said Act, namely :-

(i) the return for the preceding month, as due on the date of exercising such option, has been furnished :

(ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.

(2) A registered person whose aggregate turnover crosses five crore rupees during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

(3) For the registered person falling in the class specified in column (2) of the Table below, who have furnished the return for the tax period October, 2020 on or before 30th November, 2020, it shall be deemed that they have opted under sub-rule (1) of Rule 61A of the said rules for the monthly or quarterly furnishing of return as mentioned in column (3) of the said Table :-

Sl. No.	***Class of registered person***	***Deemed Option***
(1)	***(2)***	***(3)***
1.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished **FORM GSTR-1** on quarterly basis in the current financial year	Quarterly return
2.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished **FORM GSTR-1** on monthly basis in the current financial year	Monthly return
3.	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

(4) The registered persons referred to in column (2) of the said Table, may change the default option electronically, on the common portal, during the period from the 5th day of December, 2020 to the 31st day of January, 2021.

Form and Manner of furnishing of monthly return [Rule 61]

Rule 61 - (1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under -

(i) sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month :

(ii) proviso to sub-section (1) of section 39, for each quarter, or part thereof, for the class of registered persons mentioned in column (2) of the Table given below, on or before the date mentioned in the corresponding entry in column (3) of the said Table, namely :-

S. No.	*Class of registered persons*	*Due Date*
(1)	*(2)*	*(3)*
1.	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	Twenty-second day of the month succeeding such quarter.
2.	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	Twenty-fourth day of the month succeeding such quarter.

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in **FORM GSTR-3B**.

(3) Every registered person required to furnish return, every quarter, under clause (ii) of sub-rule (1) shall pay the tax due under proviso to sub-section (7) of section 39, for each of the first two months of the quarter, by depositing the said amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month :

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in **FORM GST PMT-06**, for such class of taxable persons as may be specified therein :

Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner :

Provided also that while making a deposit in **FORM GST PMT-06**, such a registered person may -

(a) for the first month of the quarter, take into account the balance in the electronic cash ledger.

(b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.

(4) The amount deposited by the registered persons under sub-rule (3) above, shall be debited while filing the return for the said quarter in **FORM GSTR-3B**, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been filed.

Manner of opting for furnishing quarterly return [Rule 61A]

(1) Every registered person intending to furnish return on a quarterly basis under proviso to sub-section (1) of section 39, shall in accordance with the conditions and restrictions notified in this regard, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised :

Provided that where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless the said registered person, -

(a) becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or

(b) opts for furnishing of return on a monthly basis, electronically, on the common portal :

Provided further that a registered person shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.

(2) A registered person, whose aggregate turnover exceeds 5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds 5 crore rupees.

Clarification issued by the Government on Quarterly Return Monthly Payment (QRMP) Scheme -C.B.I. & C. Circular No. 143/13/2020-GST, dated 10-11-2020

1. Eligibility for the Scheme

In terms of Notification No. 84/2020-Central tax, dated 10-11-2020, a registered person who is required to furnish a return in **FORM GSTR-3B,** and who has an aggregate turnover of up to 5 crore rupees in the preceding financial year, is eligible for the QRMP Scheme. It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 1-1-2021. Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

2. Exercising option for QRMP Scheme

2.1 Facility to avail the Scheme on the common portal would be available throughout the year. In terms of Rule 61A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as CGST Rules), a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

For example : *A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July.*

If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.

2.2 Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

2.3 F*or the first quarter of the Scheme,* i.e., for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, it has been decided that all the registered persons, whose aggregate turnover for the FY 2019- 20 is up to 5 crore rupees *and who have furnished the return in* ***FORM GSTR-3B*** *for the month of October, 2020 by 30th November, 2020*, shall be migrated on the common portal as below. Therefore, taxpayers are advised to furnish the return of October, 2020 in time so as to be eligible for default migration. The taxpayers who have not filed their return for October, 2020 on or before 30th November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the **FORM GSTR-3B** as due on the date of exercising option has been filed.

Sl. No.	***Class of registered person***	***Default Option***
1	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished **FORM GSTR-1** on quarterly basis in the current financial year	Quarterly return
2	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished **FORM GSTR-1** on monthly basis in the current financial year	Monthly Return
3	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

Above default option has been provided for the convenience of registered persons based on their anticipated behaviour. However, such registered persons are free to change the option as above, if they so desire, from 5th of December, 2020 to 31st of January, 2021. It is re-iterated that any taxpayer whose aggregate turnover has exceeded 5 crore rupees in the financial year 2020-21, shall opt out of the Scheme.

2.4 Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

2.5 All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option as in para 4.1.

2.6 It is also clarified that such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case **the aggregate turnover exceeds 5 crore rupees** during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

2.7 It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

3. Furnishing of details of outward supplies under section 37 of the CGST Act

3.1 The registered persons opting for the Scheme would be required to furnish the details of outward supply in **FORM GSTR-1** quarterly as per the rule 59 of the CGST Rule.

3.2 For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility - IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of fifty lacs rupees in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the **FORM GSTR-2A** and **FORM GSTR-2B** of the concerned recipient.

*For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself. Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in **FORM GSTR-1** of the said quarter. The two invoices furnished in IFF shall be reflected in **FORM GSTR-2B** of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in **FORM GSTR-1** shall be reflected in **FORM GSTR-2B** of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1st August till 13th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September.*

It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

3.3 The details of invoices furnished using the said facility in the first two months are not required to be furnished again in **FORM GSTR-1**. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in **FORM GSTR-1** for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in **FORM GSTR-1** only, without using the IFF.

4. Monthly Payment of Tax

4.1 The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in **FORM GST PMT-06**, by the **twenty fifth day of the month succeeding such month**. While generating the challan, taxpayers should select "Monthly payment for quarterly taxpayer" as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months -

(a) Fixed Sum Method : A facility is being made available on the portal for generating a pre-filled challan in **FORM GST PMT-06** for an amount equal to thirty five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

For easy understanding, the same is explained by way of illustration in table below :

(i) In case the last return filed was on quarterly basis for Quarter Ending March, 2021 :

Tax paid in Cash in Quarter (January - March, 2021)		***Tax required to be paid in each of the months - April and May, 2021***	
CGST	100	CGST	35
SGST	100	SGST	35
IGST	500	IGST	175
Cess	50	Cess	17.5

(ii) In case the last return filed was monthly for tax period March, 2021 :

Tax paid in Cash in March, 2021		***Tax required to be paid in each of the months - April and May, 2021***	
CGST	50	CGST	50
SGST	50	SGST	50
IGST	80	IGST	80
Cess	-	Cess	-

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

(b) Self-Assessment Method : The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in **FORM GST PMT-06**. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in **FORM GSTR-2B**, for every month.

4.2 The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.

4.3 It is clarified that in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

4.4 Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

5. Quarterly filing of FORM GSTR-3B

Such registered persons would be required to furnish **FORM GSTR-3B**, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In **FORM GSTR-3B**, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to

be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's **FORM GSTR-3B**. However, any amount left after filing of that quarter's **FORM GSTR-3B** may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in **FORM GSTR-3B** for the relevant tax period.

6. Applicability of Interest

6.1. For registered person making payment of tax by opting Fixed Sum Method

(i) No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as detailed in para 6.1(a) above by the due date. In other words, if while furnishing return in **FORM GSTR-3B**, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made/received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.

(ii) In case such payment of tax by depositing the system calculated amount in **FORM GST PMT-06** is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing FORM GST PMT-06 till the date of making such payment.

(iii) Further, in case **FORM GSTR-3B** for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

Illustration

*A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was Rs. 40/- and for February it was Rs. 42/-. No interest would be payable for the lesser amount of tax (i.e. Rs. 5 and Rs. 7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.*

Illustration

*A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was Rs. 125 but he files the return on 30th April. Interest would be payable at applicable rate on Rs. 55 [Rs. 125 - Rs. 70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly **GSTR-3B** and 30th April.*

6.2 For registered person making payment of tax by opting Self-Assessment Method Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid/paid beyond the due date for the first two months of the quarter.

6.3 Interest payable, if any, shall be paid through **FORM GSTR-3B**.

7. **Applicability of late Fee** - Late fee is applicable for delay in furnishing of return/details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return/ details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

QRMP Scheme — Payment of Tax by Fixed Sum Method

1. W.e.f. 1st January, 2021, following two options are available to the Taxpayers who are under Quarterly Returns and Monthly Payment of Tax (QRMP) Scheme for tax payment for first 02 months of a quarter:
   (a) *Fixed Sum Method :* Portal can generate a pre-filled challan in Form GST PMT-06 based on his past record.
   (b) *Self-Assessment Method :* The Tax due is to be paid on actual supplies after deducting the Input Tax Credit available.
2. In fixed sum method, the 35% Challan can be generated by selecting the *Reason For Challan>Monthly Payment for Quarterly Return> 35% Challan* which is in turn calculated as per following situation :
   (a) 35% of amount paid as tax from Electronic Cash Ledger in their preceding quarter GSTR-3B return, if it was furnished on *quarterly basis*; or
   (b) 100% of the amount paid as tax from Electronic Cash Ledger in their GSTR-3B return for the last month of the immediately preceding quarter, if it was furnished *on monthly basis*.
3. It is to note that, *for the months of Jan and Feb., 2021*, in Q4 of 2020-21, the *auto-populated challan generated under 35% Challan would contain 100% of the tax liability discharged from Electronic Cash Ledger for the month of December, 2020 (and not 35%).* ***[Reason : Till December 2020, all taxpayers were filing GSTR-3B return on a monthly basis.]***
4. From April, 2021 onwards, the pattern as suggested at Para 2(a) and (b) would follow.
5. It is noteworthy, that the taxpayers are not required to deposit any amount for the first 02 months of a quarter, if :
   (a) Balance in Electronic Cash Ledger/Electronic Credit Ledger is sufficient for tax due for the first/ second month of the quarter; or
   (b) There is NIL tax liability

Source : https://www.gst.gov.in

REFUND PROCEDURES

Refund refers to an amount that is due to the tax payer from the tax administration.

Refund of tax [Section 54]

According to section 54 of the CGST Act, 2017, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date.

Refund may be claimed in following situations :

- Goods / services / both are exported / supplied to a SEZ on payment of IGST and a refund of such IGST so paid is claimed;
- Refund claim for accumulated unutilised ITC, in case of supplies to a SEZ / exports of goods/ services/ both;
- Refund claim for accumulated unutilised ITC, in case of supplies on account of an inverted duty structure;
- Refund of any balance in the electronic cash ledger after payment of tax / interest / penalty; and on finalization of provisional assessment if tax becomes refundable to the assessees.

Refund of un-utilised Input Tax Credit

Section 54(3) of CGST Act, 2017 states that, subject to the provisions of section 54(10), a registered person may claim refund of any un-utilised input tax credit at the end of any tax period, in the following cases :

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

However, refund of unutilized Input Tax Credit shall not be allowed in the following cases :

(i) where the goods exported out of India are subjected to export duty:

(ii) if the supplier of goods or services or both avails of drawback in respect of Central tax or claims refund of the integrated tax paid on such supplies.

Thus, refund of balance in electronic credit ledger is allowed only where the accumulation is due to zero rated supplies made by the registered person without payment of tax and in case of inverted rate structure i.e. input tax rate exceed output tax rate.

Procedure to claim refund

Rule 89 – The application for refund shall be made in **FORM RFD-01** and accompanied by —

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods, other than electricity;

(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates

or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in Rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lacs rupees except where the refund relates to the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of **FORM GST RFD-01** issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lacs rupees except where the refund relates to the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

Rule 90. Acknowledgement. – (1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rules (2), (3) and (4) of Rule 89, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-03** through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.]

(4) Where deficiencies have been communicated in **FORM GST RFD-03** under the State Goods and Services Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

(5) The applicant may, at any time before issuance of provisional refund sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08**, in respect of any refund application filed in **FORM GST RFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W**.

(6) On submission of application for withdrawal of refund in **FORM GST RFD-01W**, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORM GST RFD-01**, shall be credited back to the ledger from which such debit was made.

Rule 91. Grant of provisional refund. – (1) The provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lacs rupees.

(2) The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in **FORM GST RFD-04,** sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of Rule 90.

Provided that the order issued in **FORM GST RFD-04** shall not be required to be revalidated by the proper officer.

(3) The proper officer shall issue a payment order] in **FORM GST RFD-05** for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice :

Provided that the [payment order] in **FORM GST RFD-05** shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

(4) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3).

Order sanctioning refund [Rule 92]

(1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in **FORM GST RFD-06** sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted

against any outstanding demand under the Act or under any existing law and the balance amount refundable :

(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in **FORM RFD-06** sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue **FORM GST PMT-03** recrediting the said amount as Input Tax Credit in electronic credit ledger.

(2) Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of sub-section (10) or, as the case may be, sub-section (11) of section 54, he shall pass an order in [Part A] of **FORM GST RFD-07** informing him the reasons for withholding of such refund.

Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of **FORM GST RFD- 07**.

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06** sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, *mutatis mutandis,* apply to the extent refund is allowed :

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1A) or sub-rule (2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06** and issue a [payment order] in **FORM GST RFD-05** for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice :

Provided that the order issued in **FORM GST RFD-06** shall not be required to be revalidated by the proper officer :

Provided further that the [payment order] in **FORM GST RFD-05** shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said [payment order was issued.

(4A) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (4).

(5) Where the proper officer is satisfied that the amount refundable under sub-rule (1) [or sub-rule (1A)] or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06** and issue [a payment order] in **FORM GST RFD-05,** for the amount of refund to be credited to the Consumer Welfare Fund.

Rule 93. Credit of the amount of rejected refund claim. — (1) Where any deficiencies have been communicated under sub-rule (3) of Rule 90, the amount debited under sub-rule (3) of Rule 89 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under Rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in **FORM GST PMT-03.**

Explanation. — For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

Section 54(5) of CGST Act, 2017 states that if, on receipt of any such application, if the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

(a) refund of tax paid on [export] of goods or services or both or on inputs or input services used in making such [exports];

(b) refund of unutilised input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Refund in Certain Cases [Section 55]

A specialised agency of the United Nations organisation or any Multilateral Financial Institution and organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such FORM and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

However, vide Notification No. 20/2018-C.T., dated 28-3-2018, in exercise of the powers conferred by section 148 of the said Act, the Central Government, has allowed the persons notified under section 55 to file refund application before the expiry of eighteen months from the last date of the quarter in which such supply was received.

Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist (Rule 95A of CGST Rules).

Retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods. The refund of tax paid by the said retail outlet shall be available if-

(a) the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;

(b) the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;

(c) name and Goods and Services Tax Identification Number of the retail outlet is mentioned in the tax invoice for the inward supply; and

(d) such other restrictions or conditions, as may be specified, are satisfied.

Interest on Delayed Refunds [Section 56]

Section 56 of the CGST Act, 2017 states that if any tax ordered to be refunded under section 54 is not refunded within sixty days from the date of receipt of application interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

Where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Rule 94 — Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a [payment order] in **FORM GST RFD-05,** specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

Relevant Date

- Where goods are exported by air / sea
  - Date on which the vessel leaves India
- When goods are exported by land
  - Date on which the goods pass the frontiers
- When refund of unutilised ITC in case of zero rated supplies, or accumulated ITC in case of inverted duty structures is claimed
  - End of the Financial Year in which such claim for refund arises

- In case of refund arising out of finalisation of provisional assessment
  - Date of adjustment of tax after the final assessment
- Any other case
  - Date of payment of tax.

Refund Amount

Formula to claim refund of credit in case of zero rated supplies :

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely :-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted Total Turnover" means the sum total of the value of –

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding -

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

(F) "Relevant period" means the period for which the claim has been filed.

Explanation. - For the purposes of this sub-rule, the value of goods exported out of India shall be taken as -

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.

Formula to claim refund of credit in case of inverted rate structure :

Maximum Refund Amount = **{(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - "{tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}.**

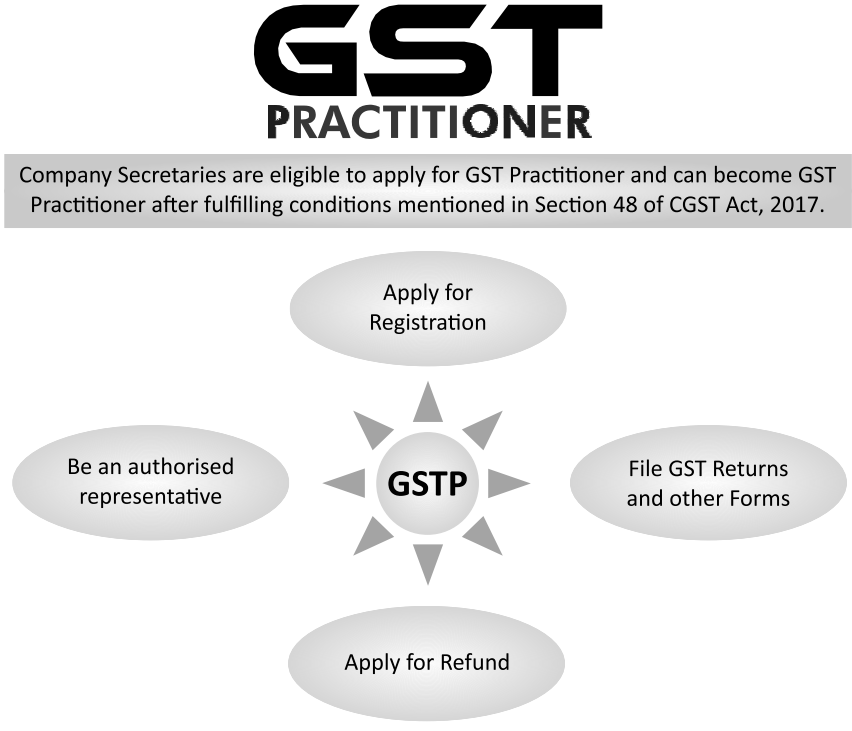
Explanation : - For the purposes of this sub-rule, the expressions -

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).

GST PRACTITIONERS

Goods and Services Tax Practitioner (GSTP) is a person recognized and authorized under section 48 of CGST Act, 2017 to act as GST Professional. GSTP is authorized to provide prescribed services to GST Registered persons. Concept of GSTP ensures smooth implementation of GST in true letter and spirit.



Statutory provisions: The relevant provisions of the CGST Act, 2017 are as under:

The definition of GST Practitioner is provided under Section 2(55) of CGST Act, 2017. It states that "Goods and

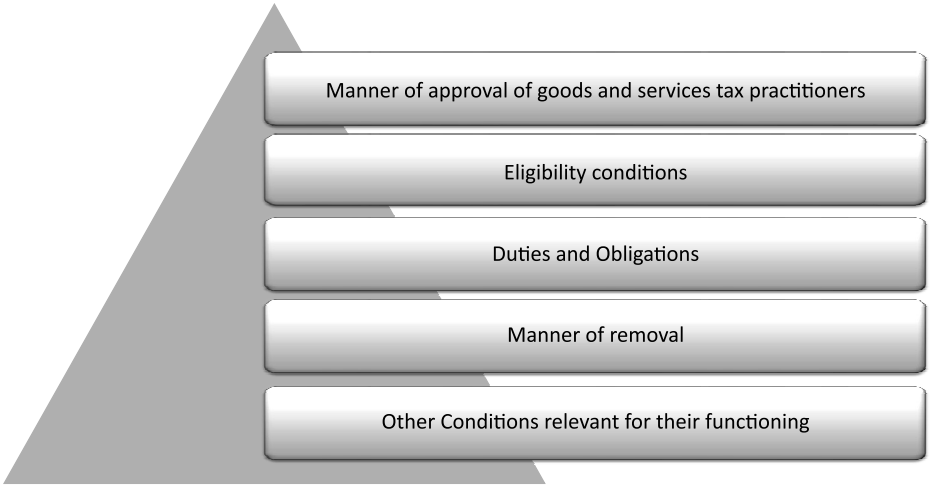
Services Tax Practitioner" means any person who has been approved under section 48 to the act as such practitioner.

Section 48:

(1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.

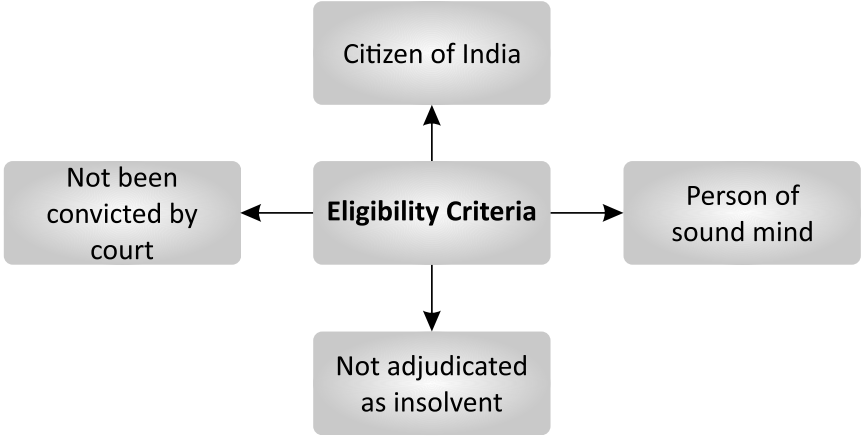
(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 in such manner as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.



Eligibility Criteria for becoming GST Practitioner

Any person can apply for registration as a GST Practitioner under Rule 83(1) of CGST Act, 2017, if he qualifies as per following criteria:



RELEVANT RULES OF CGST RULES, 2017

Rule 83. Provisions relating to a goods and services tax practitioner

(1) An application in **FORM GST PCT-01** may be made electronically through the common portal, i.e., *www.gst.gov.in* either directly or through a Facilitation Centre notified by the Commissioner for enrolment as goods and services tax practitioner by any person who,

(i) is a citizen of India;

(ii) is a person of sound mind;

(iii) is not adjudicated as insolvent;

(iv) has not been convicted by a competent court;

and satisfies any of the following conditions, namely:-

(a) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Indirect taxes and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower than the rank of a Group-B gazetted officer for a period of not less than two years; or

(b) that he has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years;

(c) he has passed,

(i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or

(ii) a degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or

(iii) any other examination notified by the Government, on the recommendation of the Council, for this purpose; or

(iv) has passed any of the following examinations, namely:-

(a) final examination of the Institute of Chartered Accountants of India; or

(b) final examination of the Institute of Cost Accountants of India; or

(c) final examination of the Institute of Company Secretaries of India.

(2) On receipt of the application referred to in sub-rule (1), the officer authorised in this behalf shall, after making such enquiry as he considers necessary, either enroll the applicant as a goods and services tax practitioner and issue a certificate to that effect in **FORM GST PCT-02** or reject his application where it is found that the applicant is not qualified to be enrolled as a goods and services tax practitioner.

[*Note: For details, students can refer Circular No 9/9/2017 dated 18th October 2017 https://www.cbic.gov.in/ resources//htdocs-cbec/gst/circularno-9-gst.pdf*]

(3) The enrolment made under sub-rule (2) shall be valid until it is cancelled:

Provided that no person enrolled as a goods and services tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Commissioner on the recommendations of the Council:

Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of thirty months from the appointed date.

(4) If any goods and services tax practitioner is found guilty of misconduct in connection with any proceedings under the act, the authorised officer may, after giving him a notice to show cause in **FORM GST PCT-03** for such misconduct and after giving him a reasonable opportunity of being heard, by order in **FORM GST PCT- 04** direct that he shall henceforth be disqualified under section 48 to function as a goods and services tax practitioner.

(5) Any person against whom an order under sub-rule (4) is made may, within thirty days from the date of issue of such order, appeal to the Commissioner against such order.

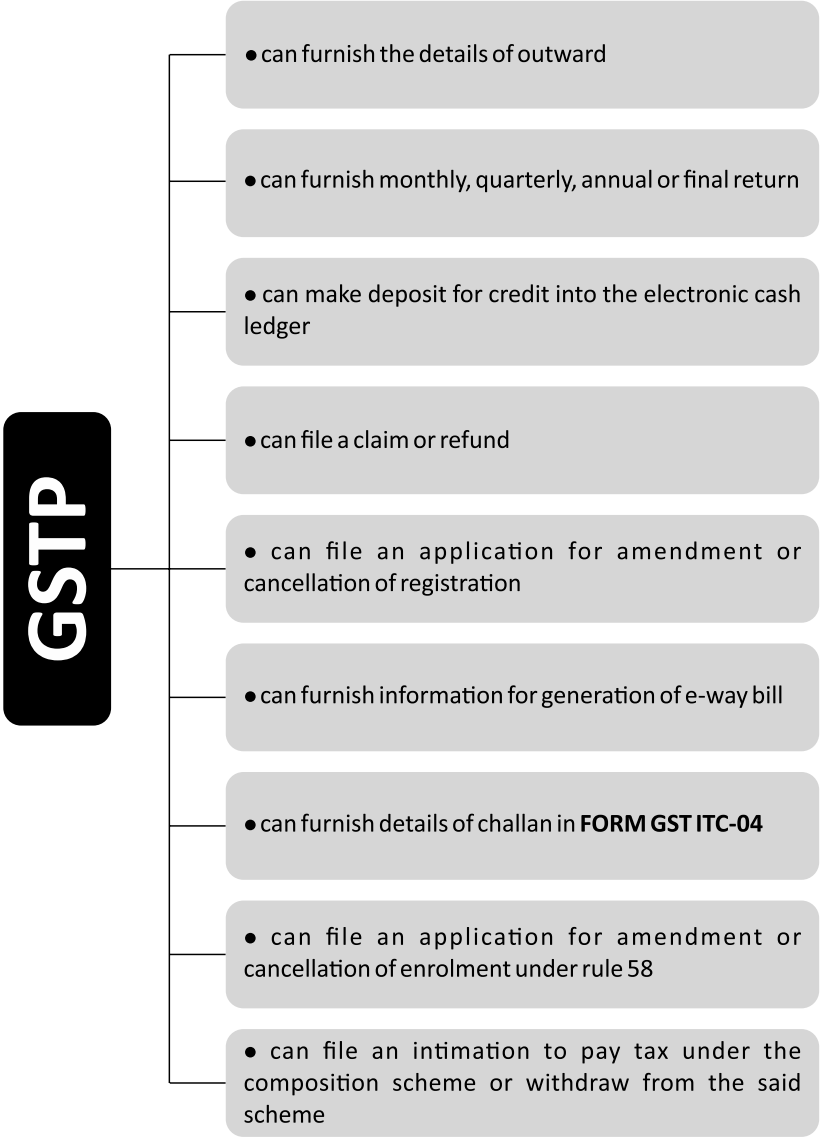
(6) Any registered person may, at his option, authorise a goods and services tax practitioner on the common portal in **FORM GST PCT-05** or, at any time, withdraw such authorisation in **FORM GST PCT-05** and the goods and services tax practitioners authorised shall be allowed to undertake such tasks as indicated in the said authorization during the period of authorisation.

(7) Where a statement required to be furnished by a registered person has been furnished by the goods and services tax practitioner authorised by him, a confirmation shall be sought from the registered person over email or SMS and the statement furnished by the goods and services tax practitioner shall be made available to the registered person on the common portal.

Provided that where the registered person fails to respond to the request for confirmation till the last date of furnishing of such statement, it shall be deemed that he has confirmed the statement furnished by the goods and services tax practitioner.

(8) A goods and services tax practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by him-

Provided that where any application relating to a claim for refund or an application for amendment or cancellation of registration or where an intimation to pay tax under composition scheme or to withdraw from such scheme has been submitted by the goods and services tax practitioner authorised by the registered person, a confirmation shall be sought from the registered person and the application submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be proceeded with further until the registered person gives his consent to the same.



(9) Any registered person opting to furnish his return through a goods and services tax practitioner shall-

(a) give his consent in **FORM GST PCT-05** to any goods and services tax practitioner to prepare and furnish his return; and

(b) before confirming submission of any statement prepared by the goods and services tax practitioner, ensure that the facts mentioned in the return are true and correct.

(10) The goods and services tax practitioner shall-

(a) prepare the statements with due diligence; and

(b) affix his digital signature on the statements prepared by him or electronically verify using his credentials.

(11) A goods and services tax practitioner enrolled in any other State or Union territory shall be treated as enrolled in the State or Union territory for the purposes specified in sub-rule (8).

EXAMINATION OF GST PRACTITIONERS

Rule 83A. examination of Goods and Services Tax Practitioners-

(1) Every person referred to in clause (b) of sub-rule (1) of Rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule, shall pass an examination as per sub-rule (3) of the said rule.

(2) The National Academy of Customs, Indirect Taxes and Narcotics ("NACIN") shall conduct the examination.

[*Note: For details students can visit www.nacin.gov.in and know more about NACIN and latest updates on Examination]*

(3) Registration for the examination and payment of fee.

(i) A person who is required to pass the examination shall register online on a website specified by NACIN.

(ii) A person who registers for the examination shall pay examination fee as specified by NACIN, and the amount for the same and the manner of its payment shall be specified by NACIN on the official websites of the Board, NACIN and common portal.

(4) Examination centers- The examination shall be held across India at the designated centers. The candidate shall be given an option to choose from the list of centers as provided by NACIN at the time of registration.

(5) Period for passing the examination and number of attempts allowed.

(i) Every person referred to in clause (b) of sub-rule (1) of Rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule is required to pass the examination within the period as specified in the other sub-rule (3) of the said rule.

(ii) A person required to pass the examination may avail of any number of attempts but these attempts shall be within the period as specified in clause (i).

(iii) A person shall register and pay the requisite fee every time he intends to appear at the examination.

(iv) In case the goods and services tax practitioner having applied for appearing in the examination is prevented from availing one or more attempts due to unforeseen circumstances such as critical illness, accident or natural calamity, he may make a request in writing to the jurisdictional Commissioner for granting him one additional attempt to pass the examination, within thirty

days of conduct of the said examination. NACIN may consider such requests on merits based on recommendations of the jurisdictional Commissioner.

(6) Nature of examination -The examination shall be a Computer Based Test. It shall have one question paper consisting of Multiple Choice Questions (MCQs).

(7) Guidelines for the candidates. –

(i) The National Academy of Customs, Indirect Taxes and Narcotics (NACIN) shall issue examination guidelines covering issues such as procedure of registration, payment of fee, nature of identity documents, provision of admit card, manner of reporting at the examination center, prohibition on possession of certain items in the examination center, procedure of making representation and the manner of its disposal.

(ii) Any person who is or has been found to be indulging in unfair means or practices shall be dealt in accordance with the provisions of sub-rule (10). An illustrative list of use of unfair means or practices by a person is as under:

(a) obtaining support for his candidature by any means;

(b) impersonating;

(c) submitting fabricated documents;

(d) resorting to any unfair means or practices in connection with the examination or in connection with the result of the examination;

(e) found in possession of any paper, book, note or any other material, the use of which is not permitted in the examination center;

(f) communicating with others or exchanging calculators, chits, papers etc. (on which something is written);

(g) misbehaving in the examination center in any manner;

(h) tampering with the hardware and/or software deployed; and

(i) attempting to commit or, as the case may be, to abet in the commission of all or any of the Acts specified in the foregoing clauses.

(8) Disqualification of person using unfair means or practice- If any person is or has been found to be indulging in use of unfair means or practices, NACIN may, after considering his representation, if any, declare him disqualified for the examination.

(9) Declaration of result- NACIN shall declare the results within one month of the conduct of examination on the official websites of the Board, NACIN, GST Council Secretariat, common portal and State Tax Department of the respective States or Union territories, if any. The results shall also be communicated to the applicants by e-mail and/or by post.

(10) Handling representations- A person not satisfied with his result may represent in writing, clearly specifying the reasons therein to NACIN or the jurisdictional Commissioner as per the procedure established by NACIN on the official websites of the Board, NACIN and common portal.

(11) Power to relax- Where the Board or State Tax Commissioner is of the opinion that it is necessary or expedient to do so, it may, on the recommendations of the Council, relax any of the provisions of this rule with respect to any class or category of persons.

Explanation:- For the purposes of this sub-rule, the expressions –

(a) "jurisdictional Commissioner" means the Commissioner having jurisdiction over the place declared

as address in the application for enrolment as the GST Practitioner in FORM GST PCT-1. It shall refer to the Commissioner of Central tax if the enrolling authority in FORM GST PCT-1 has been selected as Centre, or the Commissioner of State Tax if the enrolling authority in FORM GST PCT1 has been selected as State;

(b) NACIN means as notified by notification No. 24/2018-Central tax, dated 28.05.2018.

Rule 83B. Surrender of enrolment of Goods and Services Tax Practitioner. - (1) A goods and services tax practitioner seeking to surrender his enrolment shall electronically submit an application in **FORM GST PCT-06,** at the common portal, either directly or through a facilitation centre notified by the Commissioner.

(2) The Commissioner, or an officer authorised by him, may after causing such enquiry as deemed fit and by order in **FORM GST PCT-07**, cancel the enrolment of such practitioner.

Rule 84. Conditions for purposes of appearance- (1) No person shall be eligible to attend before any authority as a goods and services tax practitioner in connection with any proceedings under the act on behalf of any registered or un-registered person unless he has been enrolled under Rule 83.

(2) A goods and services tax practitioner attending on behalf of a registered or an unregistered person in any proceedings under the act before any authority shall produce before such authority, if required, a copy of the authorisation given by such person in **FORM GST PCT-05.**

Prescribed forms for GST practitioner

Form GST PCT-01	**Application for enrolment as GST practitioner**
Form GST PCT-02	**enrolment certificate for GST practitioner**
Form GST PCT-03	**Show cause notice for disqualification**
Form GST PCT-04	**Order for disqualification to function as GST practitioner**
Form GST PCT-05	**Authorization / Withdrawal of authorization to GST practitioner**

ASSESSMENT

Chapter XII of the CGST Act, 2017 deals with the assessment (Section 59 to 64).

REGULATORY FRAMEWORK

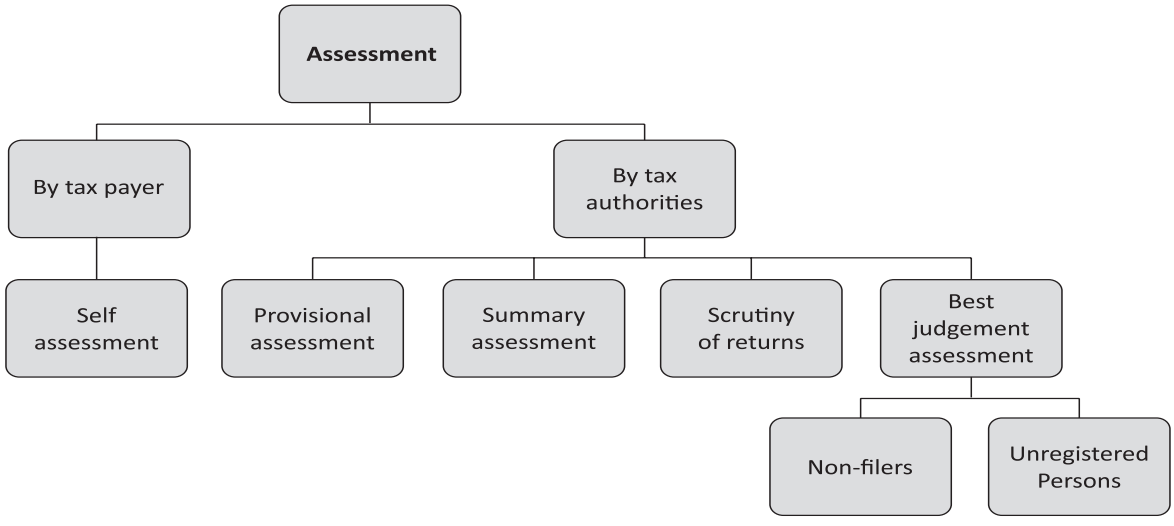
Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 59	Self-Assessment
Section 60	Provisional Assessment
Section 61	Scrutiny of Returns
Section 62	Assessment of non-filers of returns
Section 63	Assessment of unregistered persons
Section 64	Summary assessment in certain special cases

ASSESSMENT

According to **Section 2(11)** of the CGST Act, 2017 "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

In short, the assessment under GST means the determination of tax liability. It has been further categorized as below:



Self-Assessment

Section 59 of the CGST Act, 2017 states that every registered person shall self assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Thus, GST has continued with the legacy of tax philosophy of self-assessment where trust is placed on the assessee to determine its tax liability on its own volition and file its returns.

Provisional Assessment

Section 60 of the CGST Act, 2017 provides that:

1. Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.
2. The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such FORM as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.
3. The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

   Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.
4. The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual Consumer payment, whether such amount is paid before or after the issuance of order for final assessment.
5. Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

Rule 98 of CGST Rules provides that:

1. Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of sub-section (1) of section 60 shall furnish an application along with the documents in support of his request, electronically in **FORM GST ASMT-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
2. The proper officer may, on receipt of the application under sub-rule (1), issue a notice in **FORM GST ASMT-02** requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in **FORM GST ASMT-03**, and may appear in person before the said officer if he so desires.
3. The proper officer shall issue an order in **FORM GST ASMT-04** allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished **not exceeding twenty-five per cent** of the amount covered under the bond.

4. The registered person shall execute a bond in accordance with the provisions of sub-section (2) of section 60 in **FORM GST ASMT-05** along with a security in the FORM of a bank guarantee for an amount as determined under sub-rule (3):

   Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act, 2017 shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.

   Explanation- For the purposes of this rule, the expression –amount shall include the amount of integrated tax, Central tax, State tax or Union territory tax and cess payable in respect of the transaction.

5. The Proper Officer shall issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in **FORM GST ASMT-07.**

6. The applicant may file an application in **FORM GST ASMT-08** for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).

7. The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in **FORM GST ASMT-09** within a period of seven working days from the date of the receipt of the application under sub-rule (6).

Analysis

Thus, the aforesaid provisions relating to provisional assessment gives an opportunity to the registered person to determine its tax liability on provisional basis without attracting penal provisions under the Act. It requires prior permission from the proper officer and he is required furnish bond or such security as the proper offer seeks to secure the interest of revenue. The proper officer is, however, mandated to finalize the assessment within the prescribed timelines.

Scrutiny Assessment

As such, the registered person is entitled to determine its tax liability on its own, GST officer is however empowered to scrutinize the return to verify its correctness. The officer will ask for explanations on any discrepancies noticed in the returns.

Section 61 of the CGST Act, 2017 provides that:

1. The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

2. In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

3. In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Scrutiny of Returns

Rule 99 of the CGST Rules provides that:

1. Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.
2. The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in **FORM GST ASMT-11** to the proper officer.
3. Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in **FORM GST ASMT-12.**

Summary assessment in Certain Special Cases

Section 64 of the CGST Act, 2017 provides that:

1. The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

   Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

   Rule 100 (3). The order of assessment under sub-section (1) of section 64 shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-07.**

2. On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

   Rule 100 (4). The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in **FORM GST ASMT-17.**

   Rule 100 (5). The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in **FORM GST ASMT-18**.

Best Judgement Assessment

(i) Assessment of non-filers of returns

Section 62 of the CGST Act, 2017 provides that:

1. Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

> **Rule 100.** Assessment in certain cases – (1) The order of assessment made under sub-section (1) of section 62 shall be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

2. Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

> **Rule 100.** (2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01**, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

Standard Operating Procedure to be followed in case of non-filers of returns

[Circular No. 129/48/2019-GST, dated 24-12-2019]

Section 46 of the CGST Act read with rule 68 of the Central Goods and Services Tax Rules, 2017 requires issuance of a notice in FORM GSTR-3A to a registered person who fails to furnish return under section 39 or section 44 or section 45 (hereinafter referred to as the "defaulter") requiring him to furnish such return within fifteen days. Further section 62 provides for assessment of non- filers of return of registered persons who fails to furnish return under section 39 or section 45 even after service of notice under section 46. **FORM GSTR-3A** provides as under :

"Notice to return defaulter u/s 46 for not filing return

Tax Period - Type of Return -

Being a registered taxpayer, you are required to furnish return for the supplies made or received and to discharge resultant tax liability for the aforesaid tax period by due date. It has been noticed that you have not filed the said return till date.

1. *You are, therefore, requested to furnish the said return within 15 days failing which the tax liability may be assessed under section 62 of the Act, based on the relevant material available with this office. Please note that in addition to tax so assessed, you will also be liable to pay interest and penalty as per provisions of the Act.*

2. *Please note that no further communication will be issued for assessing the liability.*
3. *The notice shall be deemed to have been withdrawn in case the return referred above, is filed by you before issue of the assessment order."*

   As such, no separate notice is required to be issued for best judgment assessment under section 62 and in case of failure to file return **within 15 days** of issuance of **FORM GSTR-3A**, the best judgment assessment in **FORM ASMT-13** can be issued without any further communication.

4. Following guidelines are hereby prescribed to ensure uniformity in the implementation of the provisions of law across the field formations:

   (i) Preferably, a system generated message would be sent to all the registered persons **3 days before the due date** to nudge them about filing of the return for the tax period by the due date;

   (ii) Once the due date for furnishing the return under section 39 is over, a system generated mail/ message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/ message is to be sent to the authorized signatory as well as the proprietor/partner/director/ karta, etc;

   (iii) Five days after the due date of furnishing the return, a notice in **FORM GSTR-3A** (under section 46 of the CGST Act read with rule 68 of the CGST Rules) shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within fifteen days;

   (iv) In case the said return is still not filed by the defaulter **within 15 days** of the said notice, the proper officer may proceed to assess the tax liability of the said person under section 62 of the CGST Act, 2017, to the best of his judgement taking into account all the relevant material which is available or which he has gathered and would issue order under Rule 100 of the CGST Rules in **FORM GST ASMT-13**. The proper officer would then be required to upload the summary thereof in **FORM GST DRC-07**;

   (v) For the purpose of assessment of tax liability under section 62 of the CGST Act, the proper officer may take into account the details of outward supplies available in the statement furnished under section 37 (**FORM GSTR-1**), details of supplies auto populated in **FORM GSTR-2A**, information available from e-way bills, or any other information available from any other source, including from inspection under section 71;

   (vi) In case the defaulter furnishes a valid return within thirty days of the service of assessment order in **FORM GST ASMT-13**, the said assessment order shall be deemed to have been withdrawn in terms of provision of sub-section (2) of section 62 of the CGST Act, 2017. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of order in **FORM ASMT-13**, then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act, 2017;

5. Above general guidelines may be followed by the proper officer in case of non-furnishing of return. In deserving cases, based on the facts of the case, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act, 2017 before issuance of **FORM GST ASMT-13**.

6. Further, the proper officer would initiate action under sub-section (2) of section 29 of the CGST Act, 2017 for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

(ii) Assessment of Unregistered Persons

Section 63 of the CGST Act, 2017 provides notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Assessment in Certain Cases: **Rule 100(2)** of the CGST Rules provides that the proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of **fifteen days** to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15**.

DEMAND AND RECOVERY CGST ACT, CHAPTER XV

REGULATORY FRAMEWORK

Central Goods and Services Act, 2017

Section	*Deals with*
Section 50	Interest on delayed payment of tax
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts
Section 75	General provisions relating to determination of tax
Section 76	Tax Collected but not paid to Government
Section 77	Tax wrongfully collected and paid to Central Government or State Government
Section 78	Initiation of Recovery Proceedings
Section 79	Recovery of Tax
Section 80	Payment of Tax and other amount in instalments
Section 81	Transfer of Property to be void in Certain Cases
Section 82	Tax to be first Charge on Property
Section 83	Provisional Attachment to Protect Revenue in Certain Cases
Section 84	Continuation and Validation of Certain Recovery Proceedings
Section 122	Penalty for Certain Offences
Section 125	General Penalty
Section 129	Detention, Seizure and Release of Goods and Conveyances in Transit
Section 130	Confiscation of Goods or Conveyances and Levy of Penalty
Section 132	Punishment for Certain Offences

CGST Rules, Chapter XVIII

Rules	*Provisions*
142	Notice and Order for Demand of Amounts Payable under the Act
142A	Recovery of Dues under Existing Laws
143	Recovery by Deduction from any Money Owed
144	Recovery by Sale of Goods under the Control of Proper Officer
145	Recovery from a Third Person
146	Recovery through Execution of a Decree, etc.
147	Recovery by Sale of Movable or Immovable Property
148	Prohibition against Bidding or Purchase by Officer
149	Prohibition against Sale on Holidays
150	Assistance by Police
151	Attachments of Debts and Shares, etc.
152	Attachment of Property in Custody of Courts or Public Officer
153	Attachment of Interest in Partnership
154	Disposal of Proceeds of Sale of Goods and Movable or Immovable Property
155	Recovery through Land Revenue Authority
156	Recovery through Court
157	Recovery through Surety
158	Payment of Tax and Other Amounts in Instalments
159	Provisional Attachment of Property
160	Recovery from Company in Liquidation
161	Continuation of Certain Recovery Proceedings

Relevant definitions for the purpose of this Chapter:

Section	*Defines*
2(4)	Adjudicating Authority
2(8)	Appellate Authority
2(9)	Appellate Tribunal
2(17)	Business

2(24)	Commissioner
2(73)	Market Value
2(84)	Person
2(91)	Proper officer

Demand and Recovery FORMs prescribed:

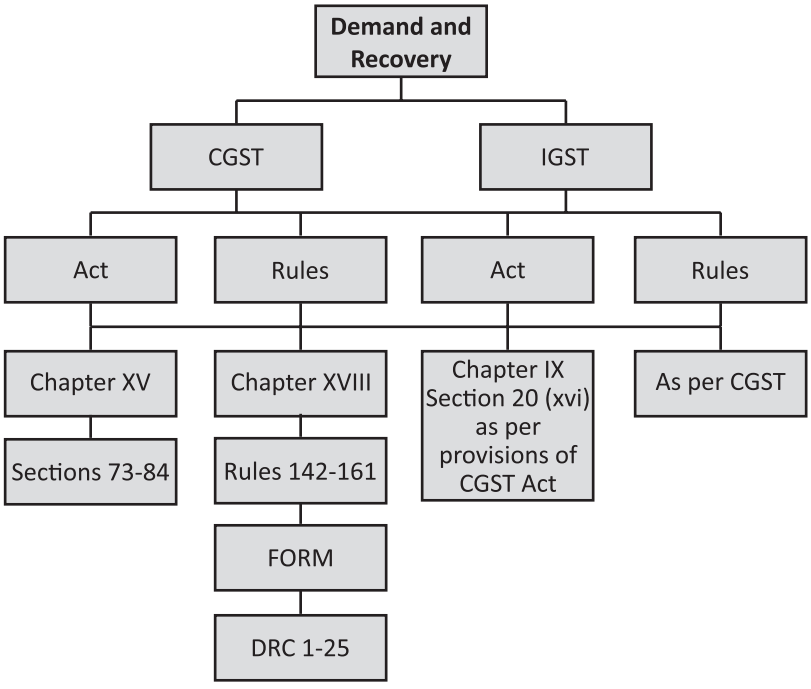
Forms	***Deals with***
GST DRC 01A	Communication of the details of tax, interest or penalty ascertained by the proper officer in Part A and response thereto by the assessee in Part B
GST DRC 01	Summary of Show Cause Notice
GST DRC 02	Summary of Statement
GST DRC 03	Intimation of payment made voluntarily or made against the Show Cause Notice (SCN) or statement
GST DRC 04	Acknowledgement of acceptance of payment made voluntarily
GST DRC 05	Intimation of Conclusion of Proceedings
GST DRC 06	Reply to the Show Cause Notice
GST DRC 07	Summary of the Order
GST DRC 08	Summary of rectification or withdrawal of the Order
GST DRC 07A	Summary of Order issued under existing Laws
GST DRC 08A	Summary of Rectification, Modification or Quashing of Order issued under existing Laws
GST DRC-09	Order for recovery through specified officer under section 79
GST DRC-10	Notice for Auction of Goods under section 79 (1) (b) of the Act
GST DRC-11	Notice to Successful Bidder
GST DRC-12	Sale Certificate
GST DRC-13	Notice to a third person under section 79(1) (c)
GST DRC-14	Certificate of Payment to a Third Person
GST DRC-15	Application before the civil court requesting execution for a decree
GST DRC-16	Notice for attachment and sale of Immovable/Movable Goods/Shares under section 79
GST DRC-17	Notice for Auction of Immovable/Movable Property under section 79(1) (d)
GST DRC-18	Certificate action under clause (e) of sub-section (1) section 79
GST DRC-19	Application to the Magistrate for Recovery as Fine

Forms	*Deals with*
GST DRC-20	Application for Deferred Payment/ Payment in Instalments
GST DRC-21	Order for acceptance/rejection of application for deferred payment / payment in instalments
GST DRC-22	Provisional attachment of Property under section 83
GST DRC-23	Restoration of Provisionally attached Property / Bank Account under section 83
GST DRC-24	Intimation to Liquidator for Recovery of Amount
GST DRC-25	Continuation of Recovery Proceedings

DEMAND AND RECOVERY

The liability for payment of Goods and Services Tax (GST) rests on the taxpayer, as it is payable on self-assessment basis. Under self-assessment system of tax determination and payment of tax in the GST regime, there is every possibility of inadvertently short payment of tax and sometimes deliberately taxes are also not paid by the certain assessees. GST provisions have embedded the elaborate provisions for the recovery of tax under various situations such as tax short paid or erroneously refunded or Input tax credit wrongly availed and non-payment of self-assessed tax or amount collected but not deposited to the Government. If such liability is assessed wrongly, it may be a result of taxes collected but not paid or short paid, input tax credit wrongly availed & utilized, erroneous refund claimed & subsequent to its identification, demand may be raised by GST officials. Sections 73 & 74 of the CGST Act, 2017, states the circumstances under which a proper officer can serve a show cause notice for recovery of tax along with interest or penalty applicable.

Chapter XV and Section 73 to Section 84 of the CGST Act, 2017 contains the provisions of demand and recovery of tax under GST. The recovery process of tax start with communication of demand details, the issuance of show cause notice and end with Adjudication proceedings.



Pre-Show Cause Notice Consultation

To avoid detailed litigation procedures, the Government has obligated the proper officer to communicate the details of tax, interest or penalty to the concerned assessee as ascertained by him enable the assessee to deposit the ascertained amount voluntarily or make submissions against the proposed liability. The relevant provisions have been inserted in the CGST Rules, 2017.

Rule 142(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of **FORM GST DRC-01A.**

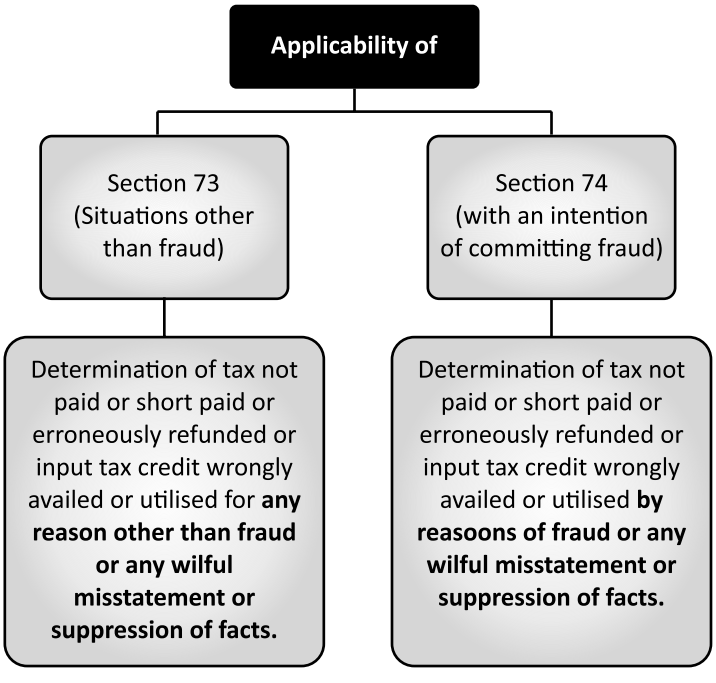
Rule 142(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of **FORM GST DRC-01A.**

The aforesaid provisions provide for communication of the ascertained amount of tax, interest and penalty to the assessee in Part A of **DRC-01A.** The aforesaid provisions are intending to reduce litigation by affording the registered person an opportunity to pay the tax dues, wholly or partially. Where the registered person opts to pay the tax dues as demanded under Rule 142(1A), the proper office shall not proceed to issue Show Cause Notice to the extent the amount is paid.

As per the process, the proper officer shall communicate the ascertained amount of tax, interest and penalty to the assessee in Part A of **DRC-01A**. Upon receipt thereof, the assessee, if it feels that the proposed liability is payable at its end, may choose to deposit the same. In case, it has reasons for not payment of the proposed liability, it should submit its response in Part B of **FORM GST DRC-01A**.

Initiation of Show Cause Notice

Further proceedings under Section 73 / Section 74 of the CGST Act, 2017 shall be initiated only upon consideration of response, if any, received in Part B of **FORM GST DRC-01A**. A brief overview of the applicability of Section 73 / Section74 of the CGST Act, 2017 may be represented hereunder:



Determination of Tax Not Paid

Section 73 of the CGST Act, 2017, Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub- section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 **within thirty days of issue of show cause notice**, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty **equivalent to ten per cent of tax or ten thousand rupees**, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) **within three years from the due date** for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid **within a period of thirty days from the due date of payment of such tax**.

Analysis of Section 73 of the CGST Act, 2017

This section deals with determination of tax and its demand & subsequent recovery in situations resulting into:

- Taxes not paid;
- Taxes short paid;
- Tax erroneously refunded;
- Input tax credit wrongly availed or utilised;
- Recovery of interest payable which is not paid or partly paid or interest erroneously refunded.

but not involving any fraud, willful misstatement or suppression of facts.

Procedure [Rule 142]

Notice and order for demand of amounts payable under the Act –

(1) The proper officer shall serve, along with the-

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**.

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B** of **FORM GST DRC-01A**.

(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has

been uploaded electronically in **FORM GST DRC-01** under sub-rule (1) shall be furnished in **FORM GST DRC-06**.

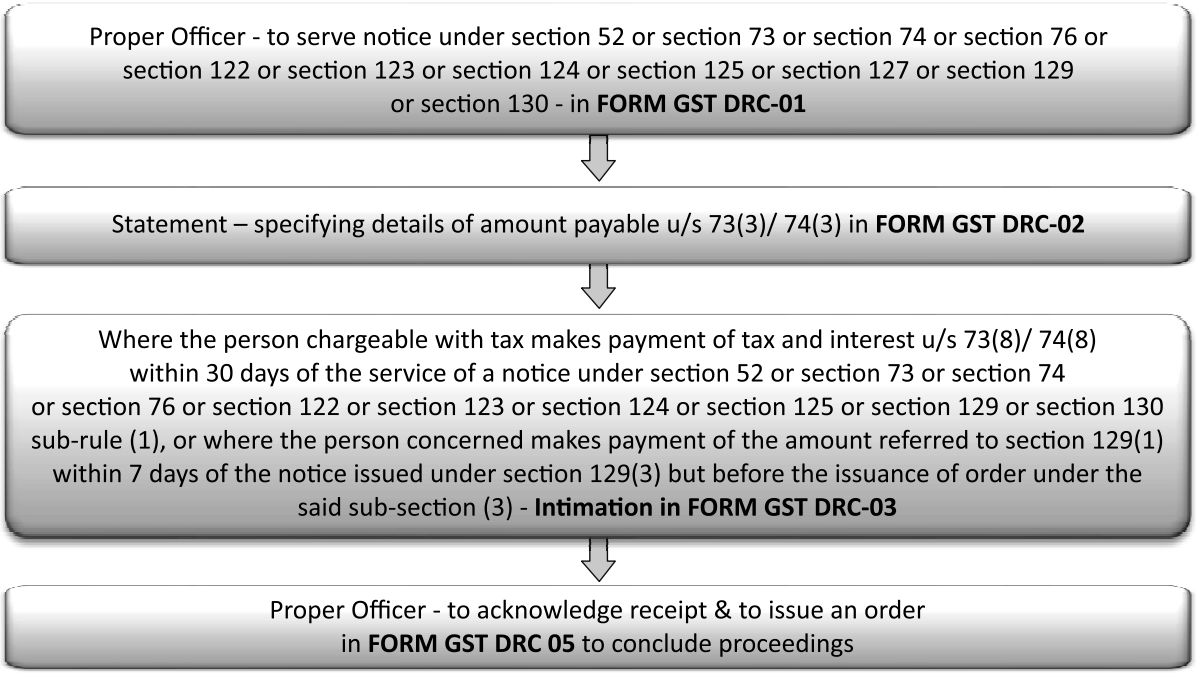
(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of [tax, interest and penalty, as the case may be, payable by the person concerned.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

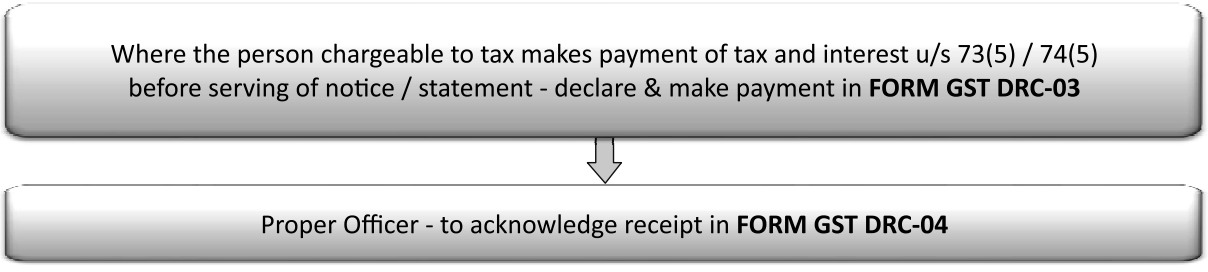
(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**.

Flow Diagram:

(i) Where notice is served



(ii) Where notice is not served but the taxpayer pays voluntarily



Payment of Penalty	*Amount of Penalty*
Dues paid before issuance of show cause notice.	No penalty
Dues paid within 30 days of issuance of show cause notice.	No penalty
Dues paid after 30 days of issuance of Order.	10% of tax dues or INR 10,000 Whichever is higher.
Any other case	10% of tax dues or INR 10,000 Whichever is higher.

Example:

Calculation of Time Limit for issuance of Notice under section 73

Financial Year	*2021-22*
Due Date for filing of Annual Return	31.12.2022
Add: Time period under section 73(10) of 3 years from the due date of furnishing annual return	3 years
Time Period for issuance of order as per Section73(10)	31.12.2025
Less: Notice to be issued under section 73(2) at least 3 months prior to the due date as per Section73(10)	3 months
Time period within which notice under section 73(1) to be issued	30.09.2025

Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful-misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) **at least six months** prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any willful- misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub- section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub- section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty **equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice**, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or **within five years from the date of erroneous refund**.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty **equivalent to fifty per cent. of such tax within thirty days of communication of the order**, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1. – For the purposes of section 73 and this section,–

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.– For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Analysis of Section 74 of the CGST Act, 2017

This section deals with determination of tax and its demand & subsequent recovery in situations resulting **into by way of any fraud, wilful misstatement or suppression of facts:**

- Taxes not paid;
- Taxes short paid;
- Tax erroneously refunded;
- Input tax credit wrongly availed or utilised;
- Recovery of interest payable which is not paid or partly paid or interest erroneously refunded.

Statutory provisions of Rule 142 of the CGST Rules 2017

Procedure contained in Rule 142 is equally applicable for the statutory provision in Section 74. Thus, Students may refer the bare contents of Rule 142 in the forgoing paragraphs.

Time Limit for Issue of Notice, Penalty and Adjudication under Section 74

Payment of Penalty	***Amount of Penalty***
Dues paid before issuance of show cause notice.	15% of tax amount due
Dues paid within 30 days of issuance of show cause notice.	25% of tax amount due
Dues paid after 30 days of issuance of Order.	50% of tax amount due
Any other case.	100% of tax amount due

Financial Year	***2019-20***
Due Date for filing of Annual Return	31.12.2020
Add: Time period under section 74(10) of 5 years from the due date of furnishing annual return	5 years
Time Period for issuance of order as per Section74(10)	31.12.2025
Less: Notice to be issued under section 74(2) at least 6 months prior to the due date as per Section74(10)	6 months
Time period within which notice under section 74(1) to be issued	30.06.2025

Comparative Analysis of Section 73 & 74 of the CGST Act, 2017

Basis of comparison	***Section 73***	***Section 74***
Applicability	Non-payment or short payment of tax without fraud or wilful misstatement or suppression of facts	Non-payment or short payment of tax with fraud or wilful-misstatement or suppression of facts
Time limit for proper officer to issue notice	At least 3 months prior to issuance of order	At least 6 months prior to issuance of order
Time limit for proper officer to issue order	Within 3 years from the due date for furnishing of annual return	Within 5 years from the due date for furnishing of annual return
Penalty – before issuance of show cause notice	No penalty	15% of the tax amount
Penalty – within 30 days after the issuance of show cause notice	No penalty	25% of the tax amount

Penalty – after 30 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs. 10,000, whichever is higher	50% of the tax amount
In any other case	10% of tax or Rs. 10,000, whichever is higher	100% of the tax amount (equivalent to tax)

Section 75: General Provisions relating to determination of tax

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (*10*) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub- section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or Court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued **within three years** as provided for in sub-section (10) of section 73 or **within five years** as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the

Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Analysis of Section 75 of the CGST Act, 2017

Section 75 of the CGST Act, 2017 deals with the general provisions relating to determination of tax and demand under GST. The following are some of the important provisions under Section 75 of GST Act.

- **Stay of Notice**

  If the service of notice or issuance of order is stayed by an order of Court or Appellate Tribunal, the period of stay will be excluded in computing the period 3 years or 5 years – the time limit for issue of notice or adjudication.

- **No Fraud or Wilful Misrepresentation**

  If any Appellate Authority or Appellate Tribunal or Court concludes that the notice issued under Section 74 is not sustainable for the reason that the charges of fraud or wilful misstatement or suppression of facts to evade tax has not been established, the officer shall determine the tax payable deeming as if the notice were issued under Section 73.

- **Time Limit for Passing Order**

  Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order should be issued **within 2 years** from the date of communication of the said direction.

- **Opportunity for Being Heard**

  An opportunity of hearing should be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is proposed against such person.

- **Maximum Adjournments Allowed**

  The officer can, if sufficient cause is shown by the person chargeable with tax, adjourn the hearing for reasons to be recorded in writing. Adjournment will be allowed for maximum of 3 times.

- **Passing Order**

  The officer, in his order, should set out the relevant facts and the basis of his decision.

- **Limitations**

  The amount of tax, interest and penalty demanded in the order should not be in excess of the amount specified in the notice and no demand can be confirmed on the grounds other than the grounds specified in the notice.

  Further, where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission can be imposed on the same person under any other provision of this Act.

Finally, if the order is not issued within 3 years or 5 years as provided under section 73 and 74, respectively, then it shall be deemed that the adjudication proceedings are completed and no order can be issued afterwards.

- **Applicability of Interest**

  The interest on the tax short paid or not paid should be payable whether or not specified in the order determining the tax liability.

Monetary Limits fixed by the Board for issuance of show cause notices and orders under Section 73 and 74 of the Act

Sl. No.	*Officer of Central tax*	*Monetary limit of the amount of Central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of Central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act, 2017*	*Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously re- funded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act, 2017 made applicable to matters in relation to integrated tax vide Section 20 of the IGST Act*	*Monetary limit of the amount of Central tax and integrated tax (including cess) not paid or short paid or erroneously re- funded or input tax credit of Central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act, 2017 made applicable to integrated tax vide Section 20 of the IGST Act*
(1)	**(2)**	**(3)**	**(4)**	**(5)**
1.	Superintendent of Central tax	Not exceeding Rupees 10 lacs	Not exceeding Rupees 20 lacs	Not exceeding Rupees 20 lacs
2.	Deputy or Assistant Commissioner of Central tax	Above Rupees 10 lacs and not exceeding Rupees 1 crore	Above Rupees 20 lacs and not exceeding Rupees 2 crores	Above Rupees 20 lacs and not exceeding Rupees 2 crores
3.	Additional or Joint Commissioner of Central tax	Above Rupees 1 crore without any limit	Above Rupees 2 crores without any limit	Above Rupees 2 crores without any limit

Illustration:

Notice issued by the proper officer demanding suppression of turnover INR 35,00,000, GST @5% thereon. Assuming the amount was challenged by the respondent taxpayer before the Appellate Tribunal. The Tribunal awarded the judgement of addition to the tune of INR 12,50,000, GST @5%.

The liability for payment of GST shall be as follows:

GST liability 5% of INR 12,50,000	INR 62,500
Add: Interest @ 24% p.a. on INR 62,500 from the date of liability till the date of actual payment	
Add: Penalty (depending upon the date of issuance of notice)	

Procedure for Recovery of Dues under existing Laws [Rule 142A]

(1) A summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in **FORM GST DRC-07A** electronically on the common portal for recovery under the Act and the demand of the order shall be posted in Part II of Electronic Liability Register in **FORM GST PMT-01**.

(2) Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in **FORM GST DRC-08A** and Part II of Electronic Liability Register in **FORM GST PMT-01** shall be updated accordingly.]

Analysis

Vide Notification No. 60/2018-C.T., dated 30-10-2018, the Government has inserted Rule 142A to provide that the dues arisen under pre-GST laws, unless recovered under the said laws, be recovered under the CGST Act, 2017.

Where a Penalty is imposed u/s 73 or 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Section 76: Tax Collected but not Paid to Government

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made there under or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Section 77: Tax wrongfully Collected and Paid to Central Government or State Government

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter- State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of Central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

Illustrations:

Situation	***Suggested procedure***
A Registered person has wrongly paid Central tax and State Tax / Union Tax on a transaction, which is considered to be intra-State, subsequently held to be inter-State, shall be refunded the amount of taxes so paid	There is no actual refund back of the tax paid. Rather, there shall have to be an amendment of invoice/invoices to be made while filing return of any subsequent tax period.
A registered person who has paid integrated tax on a transaction considered to be an inter-State supply, shall not be required to pay any interest on the amount of Central tax and State tax/Union territory tax.	Similar procedure as above & no interest is payable.

Section 78: Initiation of Recovery Proceedings

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

Section 79: Recovery of Tax

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:–

(a) The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Explanation. – For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.

Analysis of Section 79:

Proper officer can adopt one or more of the methods for recovery of the amounts payable	➢ Deduction out of any money owing to defaulter. ➢ By detaining and selling the goods belonging to the defaulter. ➢ Recovery from any other person who owes money to defaulter. ➢ Collection by detention of any moveable or immoveable property. ➢ Recovery through District Collector. ➢ Recovery through Magistrate.

Bonds or any other instruments may be executed towards amount due	Bonds or any other similar instruments may be executed towards the amount due.
By way of an explanation, the scope of Section 79 has been expanded to include distinct person, which means that recovery proceedings can be initiated against any of the persons falling under the same PAN. *For example* – LLT Limited has business places in all 29 states of India and accordingly registered with the GST authorities in each state. One of its branch located in Gujarat defaulted for payment of tax for the month of April 2019. Upon conclusion of adjudication proceedings, the authorities can proceed against any of the registration of LLT Limited located in 29 states [although the default is made by of its branch located in Gujarat].	

Rules pertaining to recovery of tax

Rule	*Provision*	*Forms*
143	Recovery by deduction from any money owed	GST DRC-09
144	Recovery by sale of goods under the control of proper officer	GST DRC-10
		GST DRC-11
		GST DRC-12
145	Recovery from a third person	GST DRC-13
		GST DRC-14
146	Recovery through execution of a decree, etc.	GST DRC-15

Section 80: Payment of Tax and Other Amount in instalments

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self- assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

Rule	*Provision*	*Forms*	*Relates to*
158	Payment of tax and other amounts in instalments1	GST DRC-20	Application to be filed electronically by the taxable person
		GST DRC-21	Grant of permission & issue of order

Section 81: Cases where the Transfer of Property is Void

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government

revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Analysis of Section 81:

Situations / cases – Valid	*Situations / Cases – Void*
Made for adequate consideration	Creates a charge on ; or
Without notice of the pendency of proceeding	Parts with the property; or
Without notice of such tax or other sum payable by the said person	Belonging to the tax payer; or
With previous permission of the proper officer	In the possession of the tax payer, by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any of his properties.

Section 82: Tax to be first charge on property

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

Analysis of Section 82:

- The provisions would apply to a taxable person or any other person who is liable to pay tax, interest or penalty to Central or State Government;
- Any liability payable to the Central or State Government would be given priority in the matter of effecting recovery by placing a first charge on the property of the taxable person or any other person;
- This provision also covers recovery from any person, other than the taxable person like a legal representative, member of partitioned HUF, etc.

Rule	*Provision*	*Forms*	*Deals with*
147	Recovery by sale of moveable or immoveable property	GST DRC-16	Proper officer shall prepare a list of moveable and immoveable property, issue an order of attachment and a notice for sale prohibiting any transaction in relation thereto
		GST DRC-17	Notice for auction including e- auction indicating the property to be sold and the purpose of sale

		GST DRC– 11	Proper officer to inform successful bidder requesting him to pay the amount within 15 days
		GST DRC -12	Issue a Certificate after payment indicating date of transfer, details of property, details of bidder, amount paid, rights, title, interest on the property
151	Attachment of Debts and Shares, etc.	GST DRC -16	Proper officer to issue written order
152	Attachment of property in custody of courts or Public officer	–	Copy of attachment to be sent to courts or public officer requesting property, interest receivable or any other income be held
153	Attachment of interest in Partnership	–	Charge may be created by the Proper Officer to recover dues by issuing attachment order of interest in partnership property and profits
154	Disposal of proceeds of sale of goods and moveable or immoveable property	–	Amount recovered be appropriated towards recovery expenses and then towards principal recovery amount
155	Recovery through land revenue authority	GST DRC-18	The proper officer shall send a certificate to the Collector or Deputy Commissioner of the district or any other officer authorised in this behalf in FORM GST DRC-18 to recover from the person concerned, the amount specified in the certificate as if it were an arrear of land revenue.
156	Recovery through Court	GST DRC-19	Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f) of sub- section (1) of section 79 in FORM GST DRC- 19 to recover from the person concerned, the amount specified thereunder as if it were a fine imposed by him.
157	Recovery from surety	–	Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter

160	Recovery from company in liquidation	GST DRC-24	Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.

Rule 147: Recovery by Sale of Moveable or Immoveable Property

- List of properties to be seized is to be prepared by the proper officer
- Property shall be seized by the proper officer
- Notice for sale in **FORM GST DRC-16**
- All such properties shall remain affixed till the confirmation of sale
- Notice for auction / e-auction in **FORM GST DRC-17**
- Proper officer may mention the pre-bid deposit amount
- The last day for the submission of the bid or the date of the auction shall not be **earlier than fifteen days** from the date of issue of the **GST DRC-17**, subject to deviation in number of days in cases of perishable/ hazardous goods or where the proper officer finds the cost of holding is more than the expected realisable value
- Any amount relating to stamp duty, etc. for transfer of property to the bidder would be borne by the Government
- If the defaulter pays the amount due under recovery including recovery expenses before the issuance of GST DRC 17, then the proper officer shall cancel the process of auction
- If there is no bidder found then re-auction can also be initiated by the proper officer.

Section 83: Provisional Attachment to Protect Revenue in Certain Cases

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the **expiry of a period of one year** from the date of the order made under sub-section (1).

Analysis of Section 83:

- This section applies only during the pendency of any proceedings under
- Provisional attachment of the property of taxable person can be initiated by the Commissioner
- Such provisional attachment would be valid for one year from the date of the order made by the Commissioner

Rule	*Provision*	*Forms*	*Relates to*
159	Provisional attachment of property	GST DRC-22	Commissioner to pass an order detailing property including bank account to be attached
		GST DRC-23	Release of property to the taxable person if he pays the lower of amount due or equal to the market value of the property

Section 84: Continuation and Validation of Certain Recovery Proceedings

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then –

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) Where such Government dues are reduced in such appeal, revision or in other proceedings –

(i) It shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) The Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) Any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Analysis of Section 84:

- Deals with continuation of proceedings, where a notice is already served;
- Refers to any notice of demand in respect of Government dues (tax, interest and penalty) served on taxable person;
- Any appeal, revision application is filed or other proceedings are initiated with reference to recovery of such Government dues;
- Continue recovery proceedings for the reduction or enhancement of any demand in **FORM GST DRC-25** Other rules in support of the Demand and Recovery proceedings.

Rule 148: Prohibition against bidding or purchase by officer

Prohibition against bidding or purchase by officer – No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Rule 149: Prohibition against sale on holidays

Prohibition against sale on holidays – No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

Rule 150: Assistance by police

Assistance by police – The proper officer may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

LESSON ROUND-UP

- Registration: In terms of Section 22 of the CGST/SGST Act 2017, every supplier (including his agent) who makes a taxable supply of goods and / or services which are leviable to tax under GST law, and his aggregate turn over in a financial year exceeds the threshold limit of twenty lacs rupees shall be liable to register himself in the State or the Union territory, as the case may be, from where he makes the taxable supply.
- E-Way Bill system has been introduced under GST.
- Requirements and exemptions from Registration under GST have been provided in the law A registered person is required to maintain prescribed Books of Accounts.
- Any transaction under GST is vouched by various kinds of documents including Debit / Credit Notes, Tax Invoice, Bill of supply and Delivery Challans.
- Various monthly, quarterly and annual returns are filed under GST.
- Payment options available under GST include NEFT, RTGs, net banking, debit/credit card.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions (MCQs)

1. Which section of CGST Act 2017 deals with Persons liable for registration?
   a) section 29
   b) section 22
   c) section 44
   d) section 54
2. GSTIN is a digit number
   a) 10
   b) 12
   c) 15
   d) None of the above

3. Aggregate Turnover under CGST Act includes
    a) All taxable supplies
    b) Exempt supplies
    c) Zero-rated supplies
    d) All of the above
4. When an e-way bill is not required to be generated?
    a) where the goods are being transported by a non-motorised conveyance
    b) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs
    c) Where the goods being transported are specified in Annexure to Rule 138 of the CGST Rules
    d) All of the above cases
5. Every registered person required to keep and maintain books of account or other records in accordance with section 35(1) of CGST Act 2017, shall retain them until the expiry of _____ from the due date of furnishing of annual return for the year pertaining to such accounts and records.
    a) 60 months
    b) 72 months
    c) 36 months
    d) 24 months

Answers: 1 (b), 2 (c), 3 (d), 4 (d), 5 (b)

Descriptive Questions

1. Mr. Mohan is located in Sikkim. He provides the following informations:

Particulars	***Amount (Rs.)***
Value of taxable supply in Uttar Pradesh	12 Lacs
Value of exempt supply	6 Lacs

   Does Mohan require any registration? What if he located in Uttar Pradesh?
2. What do you understand by Suo Moto & Deemed Registration under GST Laws?
3. Explain the Content of Tax Invoice as per applicable provisions of GST Act and GST Rule 2017.
4. What is the e-way bill? Explain the validity period for e-way in the context of distance.
5. What is the QRMP?
6. Who are GST practitioners? What is the eligibility criteria for becoming GST Practitioner?

LIST OF FURTHER READINGS

- Goods & Services Tax, Laws, Concepts and Impact Analysis-Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra
- GST Ready Reckoner- Taxmann – V.S. Datey
- A complete guide to Goods & services Tax Ready Reckoner in Q & A FORM at- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra.
- Students may also visit HTTP://cbic.gov.in/ for regular updates on GST and other Indirect tax laws.

Overview of Customs Act

Lesson 20

KEY CONCEPTS

■ Basic Custom Duty (BCD) ■ Countervailing Duty (CVD) ■ Goods ■ Person-in-charge ■ Classification ■ Duty Drawback ■ Transit and Transhipment ■ Warehousing

Learning Objectives

To understand :

- An Overview of the Customs Act, 1962
- Types of Customs Duty
- Import and Export Procedures
- Duty Drawback

Lesson Outline

- Introduction- Overview of Customs Law
- Levy and Collection of Customs Duties
- Types of Custom Duties
- Classification and Valuation of Import and Export Goods
- Exemptions
- Baggage
- Officers of Customs
- Administration of Customs Law
- Import and Export Procedures under Customs Law
- Transportation
- Warehousing
- Duty Drawback
- Demand and Recovery
- Confiscation of Goods and Conveyances
- Lesson Round-Up
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK

1. Customs Act, 1962

Chapter No. and Title	*Sections*	*Content*
I. Preliminary	Section 1 to 2	Short title extent and commencement and Definitions
II. Officers of Customs	Section 3 to 6	Appointment and powers of officers of customs
III. Appointment of Customs Ports, Airports, Warehousing stations etc.	Section 7 to 10	Appointments of Customs Ports, Airports, Warehousing Stations etc.
IV. Prohibitions on importation and exportation of goods	Section 11	Powers to prohibit import and export of goods
IVA. Detection of illegally imported goods and prevention of the disposal thereof	Sections 11A to 11G	Provisions for illegal importation of notified goods and prevention of the disposal thereof
IVB. Prevention or Detection of Illegal Export of Goods	Sections 11H to 11M	Provisions for illegal export of specified goods
IVC. Power to exempt from the provisions of Chapters IVA and IVB	Section 11N	Power to exempt
V. Levy of, and Exemption from, Customs Duties	Sections 12 to 28BB	Chargeable section, valuation of goods, Recovery and refund of duty
VA. Indicating amount of duty in the price of goods, etc., for purpose of refund	Section 28C to 28D	Price of goods and incidence of duty passed on to the buyer
VB. Advance Rulings	Section 28E to 28M	Provisions for advance ruling such as authority, application, procedure and powers of authority
VI. Provisions relating to conveyances carrying imported or exported goods	Sections 29 to 43	Arrival or departure of goods, delivery of departure manifest or export report
VII. Clearance of imported goods and export goods	Sections 44 to 51	Clearance of import and export goods other than by way of baggage and postal articles.
VIIA. Payments through electronic cash ledger and electronic duty credit ledger	Section 51A to 51B	Payment of duty, interest, penalty, etc.
VIII. Goods in Transit	Sections 52 to 56	Transit and transshipment of goods
IX. Warehousing	Section 57 to 73A	Provision relating to public and private warehouse

Chapter No. and Title	Sections	Content
X. Drawback	Sections 74 to 76	Duty drawback on re-export of duty paid goods or material used in the manufacture of goods
XI. Special provisions regarding baggage, goods imported or exported by post, and stores	Section 77 to 90	Special provisions regarding baggage, goods imported or exported by post, and stores
XII. Provisions relating to coastal goods and vessels carrying coastal goods	Section 91 to 99	Provisions relating to coastal goods and vessels carrying coastal goods other than baggage and stores
XIII. Searches, seizure and arrest	Section 100 to 110A	Power to search, inspect, examine persons and seizure of goods, documents and things
XIV. Confiscation of goods and conveyances and imposition of penalties	Section 111 to 127	Adjudication proceedings and confiscation of goods
XIVA. Settlement of cases	Sections127A to127N	Provisions relating to Settlement Commission
XV. Appeals and Revision	Sections 1f Administration to 131C	Procedure and time limits for appeals and revisions
XVI. Offences and Prosecutions	Section 132 to 140A	Offences and cognizance of offences
XVII. Miscellaneous	Section 141 to 161	Conveyances, duty deferment, licensing of Customs house agent, appearance by authorised representative, delegation of power etc.

2. Customs Tariff Act, 1975

INTRODUCTION - OVERVIEW OF CUSTOMS LAWS

Customs Duty is an Indirect Tax, imposed under the Customs Act formulated in 1962. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods, passengers etc., into or outside the country. The Act extends to whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

The Customs Act, 1962, not only regulates the levy and collection of duties, but also, serves equally important purposes, like:

i) Regulation of Imports & Exports

ii) Protection of Domestic Industry

iii) Prevention of Smuggling

iv) Conservation and Augmentation of Foreign Exchange.

Rules & Regulations

The rule making power is delegated to the Central Government while the regulation making power delegated to the Central Board of Indirect Taxes and Customs (CBIC).

Difference between Rules and Regulations

Parameter	*Rules*	*Regulations*
Power to make	Section 156	Section 157
Authority	Central Government is authorized to make the rules	CBIC is authorized to make the regulations
Purpose	To support the Act	To support the Act and the Rules
Content	Transaction Value; Chargeability of Accessories & Repairs & Maintenance Spare Parts; Detention & Confiscation of Goods; Goods mentioned in the shipping bill / Bill of Export but either not exported or exported and subsequently re-landed	The form of Bill of Entry; Shipping Bill; Bill of Export; Import & Export Manifest; Form & Manner of Making Application for Refund of Duty; Conditions for Transhipment & Removal of Good Without payment of Duty; Manner of Conducting Audit of Duty Assessment of Imported / Exported Goods

Definitions [Section 2]

Section 2 of the Customs Act, 1962 contains the definitions of various terms used at various places in the Act.

Adjudicating Authority: Section 2(1):- Adjudicating Authority means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.

Assessment: Section 2(2):- Determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force and includes provisional assessment, self- assessment, re-assessment and any assessment in which the duty assessed is nil.

Baggage: Section 2(3):- Includes unaccompanied baggage but does not include motor vehicles.

Bill of Entry: Section 2 (4):- Bill of Entry means a bill of entry referred to in section 46, i.e., entry of goods for importation.

Bill of Export: Section 2 (5):- Bill of Export means a bill of export referred to in section 50, i.e., entry of goods for exportation.

Coastal Goods : Section 2(7):- Means goods, other than imported goods, transported in a vessel from one port in India to another.

Conveyance: Section 2(9):- Includes a vessel (by sea), an aircraft (by air), and a vehicle (by land).

Customs Area: Section 2(11):- Area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

Customs Port: Section 2(12):- Any port appointed under clause (a) of section 7 to be a customs port, and includes a place appointed under clause (aa) of that section to be an inland container depot.

Customs Station: Section 2(13):- Any customs port, customs airport, international courier terminal, foreign post office or land customs station.

Dutiable Goods: Section 2(14):- Any goods which are chargeable to duty and on which duty has not been paid.

Duty: Section 2(15):- Duty means a duty of customs leviable under this Act.

Export: Section 2(18):- Taking out of India to a place outside India.

Export Goods: Section 2(19):- Any goods which are to be taken out of India to a place outside India.

Exporter: Section 2(20):- Exporter, in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.

Foreign going Vessel / Aircraft: Section 2(21):-Vessel or aircraft for the time being engaged in the carriage of goods / passengers between any port / airport in India and any port / airport outside India whether touching any intermediary location or not, and includes :

(i) Any naval vessel of any foreign government taking part in any naval exercises;

(ii) Any vessel engaged in fishing or any other operations outside the territorial waters of India;

(iii) Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

Goods: Section 2(22):- Includes –

a. vessels, aircrafts and vehicles;

b. stores;

c. baggage;

d. currency and negotiable instruments; and

e. any other kind of movable property.

Import: Section 2(23):- Bringing in to India from a place outside India.

Arrival Manifest or Import Manifest or Import Report: Section 2(24): - The manifest or report required to be delivered under section 30.

Imported Goods: Section 2(25):- Any goods brought into India from a place outside India but doesn't include goods which have been cleared for home consumption.

Importer : Section 2(26) :- Importer, in relation to any goods, at any time between their importation, and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

India: Section 2(27) :- Includes the territorial waters of India.

Note: Territorial waters extend upto 12 nautical miles from the baseline on the coast of India.

Indian Customs Waters: Section 2(28) :- The waters extending into the sea upto the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbor, creek or tidal river.

1 Nautical Miles = 1.1515 miles = 1.853 Kms

Note: Indian Customs Waters extend upto 24 nautical miles from the baseline on the coast of India. It means an area extended upto 12 nautical miles beyond territorial waters.

Person-in-charge: Section 2(31) :- Means

(a) in relation to a vessel, the master of the vessel;

(b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance.

Prohibited Goods : Section 2(33) :- Any goods, the import or export of which is prohibited by the Customs Act or any law for the time being in force, but doesn't include any goods, in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Smuggling: Section 2(39) :- "Smuggling" in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or 113.

Warehouse: Section 2(43) :- A public warehouse licensed under Section 57 or a private warehouse licensed under Section 58 or a special warehouse licensed under Section 58A.

Warehoused Goods : Section 2(44) :- Goods deposited in a warehouse.

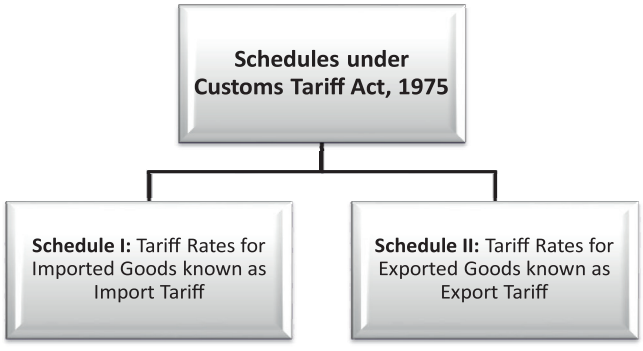
LEVY & COLLECTION OF CUSTOMS DUTIES

Levy of and Exemption from Customs Duty

Goods become liable for import OR export duty when Goods are Imported into India OR Exported out of India. Levy is the stage where the declaration of such liability is made and the persons / properties in respect of which the duty is to be levied is identified. If the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (pre- clearance) as may be specified in such notification, goods of the specified description, from the whole or any part of the customs duty leviable thereon. An exemption notification cannot be withdrawn and duty cannot be demanded with retrospective method.

Section 12 of the Customs Act, 1962 is the charging section, which is the basis for levy of tax. As per section 12, customs duty is imposed on goods imported into or exported out of India as per the rates provided in Customs Tariff Act, 1975 or any other law for the time being in force. This can be analyzed as below:

- Customs duty is levied on goods where such goods are imported into or exported out of India.
- Levy is subject to other provisions of this Act or any other law.
- The rates of Basic Custom Duty are specified under the Tariff Act, 1975 or any other Law.
- Even goods belonging to Government are subject to levy, though they may be exempted by notification(s).



TYPES OF CUSTOMS DUTIES

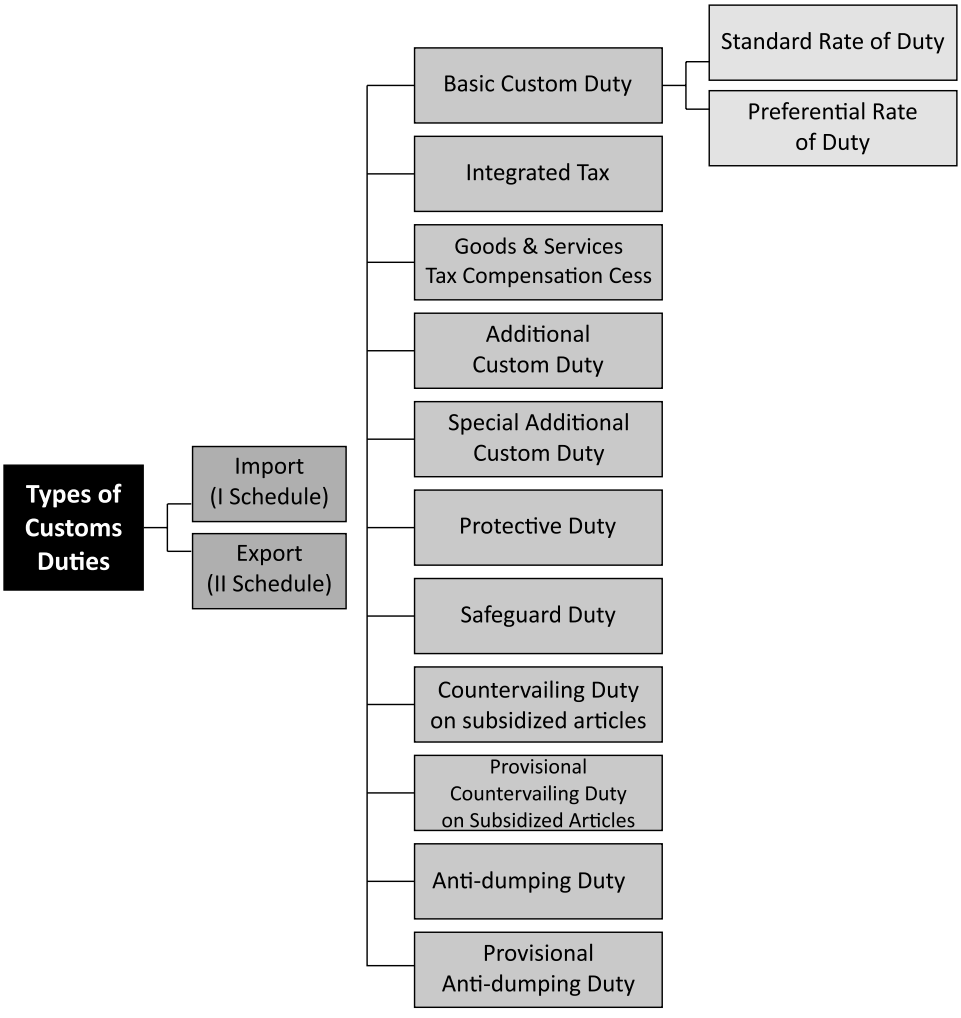
Import Duty

a) Basic Customs Duty (BCD)

i) Levied as a percentage of value as determined under Section 14(1).

ii) Could be levied at "Standard" OR "Preferential Rates" (where imported from a preferential area as may be specified by the Government).

iii) Onus is on the person (owner) to substantiate with the supporting evidence that the goods are chargeable with a preferential rate of duty.



b) Integrated Tax [Section 3 (7) of the Customs Tariff Act, 1975]

Any article which is imported into India shall be liable to integrated tax in addition to custom duties as chargeable. IGST shall be applicable at the same rate as is applicable on goods supplied in India.

c) GST Compensation Cess

Any article which is imported into India shall, in addition, be liable to the Goods and Services Tax

Compensation cess at such rate, as is leviable under Section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Section 3(10) of The Customs Tariff Act, 1975 [Section 3(9) of the Customs Tariff Act, 1975].

d) Additional Customs Duty / Countervailing Duty (CVD)

i) Till 01.07.2017, CVD equal to the amount of excise duty on like goods manufactured / produced in India was imposed on imported goods. In addition Special Additional Duty (SAD) of 4% was imposed in lieu of Sales Tax or VAT.

ii) Under the GST regime, CVD & SAD duties are subsumed. Integrated Goods and Services Tax (IGST) is payable on value (assessable value plus basic customs duty)determined under Section 14 (1) o Customs Act or Customs Tariff Act.

iii) In case of alcoholic liquor for human consumption is imported into India, the same is still under state excise which has not been subsumed under GST. Therefore, IGST is not leviable under Import.

iv) In case inward taxable supplies are in the nature of Imported Goods, which have been taxed and have been consumed in the manufacture of outward taxable supplies, Input Tax Credit is available to the extent of IGST paid.

e) Special Additional Duty (SAD)

i) It used to be levied to offset the Sales Tax / VAT.

ii) However, this has now been subsumed under GST and as such is leviable only on imported goods for which GST is not applicable (example : Petroleum Products).

Note: Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and /or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the GST Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

f) Protective Duty

In order to protect any industry established in India, a duty may be imposed on imported goods on the recommendation of Tariff Commission [Section 6 of the Customs Tariff Act, 1975].

g) Safeguard Duty

The Central Government may impose Safeguard Duty on specified imported goods, if it is of the opinion that the goods are being imported in large scale and they are causing injury to the industry in India [Section 8B(1) of the Customs Tariff Act, 1975].

This is levied on goods imported into India, when such goods are already manufactured in India, but the costs are higher as compared to import prices. It is levied to ensure that the Indian manufacturers don't suffer owing to import of cheaper goods from outside and therefore aims to create a level playing field for the Indian manufacturers and importers, thereby with the intent of safeguarding the National interest.

Provisional Safeguard Duty may also be imposed by the Central Government subject to Section 8B(1) of the Customs Tariff Act, 1975 on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry [Section 8B(2) of the Customs Tariff Act, 1975].

Safeguard measures imposed under section 8B, which were earlier limited to imposition of safeguard duty, are expanded by Finance Act, 2020 to include tariff-rate quota fixations or any other measures, as deemed fit. Under tariff- rate quota, a lower tariff rate is imposed on imports of a given product within a specified quantity and a higher tariff rate on imports exceeding that quantity to provide the desired degree of import protection.

h) Countervailing Duty on Subsidized Articles

Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, the Central Government may, by notification in the Official Gazette, impose a countervailing duty [Section 9(1) of the Customs Tariff Act, 1975].

i) Provisional Countervailing Duty on Subsidized Articles

When the amount of subsidy is not determined central government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it. if on determination government finds that it is less than the subsidy provisionally determined it may reduce such duty and also may refund the excess duty collected.

j) Anti-Dumping Duty on Dumped Articles

Where any article is exported by an exporter or producer from any country or territory to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an Anti - Dumping Duty [Section 9A(1) of the Customs Tariff Act, 1975].

In *Designated Authority vs Haldor Topsoe 2000 (120) ELT 11,* the Supreme Court held that anti-dumping duty could be fixed with reference to prices in a territory and that European Union could also be a territory.

k) Provisional Anti Dumping Duty

The Central Government may impose anti dumping duty on provisional basis if determination of normal value and margin of dumping of an article is pending in accordance with the provisions of this section and rules made there under and if such anti-dumping duty exceeds the margin as so determined,-

Central Government shall reduce the anti dumping duty and shall also refund the excess duty so collected.

l) Social Welfare Surcharge (SWS) on Imported Goods

It is a duty of customs levied for the purpose of the Union on the goods specified in the First Schedule to the Customs Tariff Act, 1975, being goods imported into India. It is levied @10% on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government under Section 12 of the Customs Act, 1962. It is not applicable on Safeguard Duty, Countervailing Duty, Antidumping Duty, IGST and GST Compensation cess.

m) Road and Infrastructure Cess on Imported Goods

It is levied as duty of custom @ rupee 8 per litre on Motor Spirit (petrol) and High Speed Diesel (HSD) imported in to India for the purpose of Financing Infrastructure Projects.

n) Introduction of Health Cess

Finance Act, 2020 has imposed a Health Cess on import of medical equipment of classified in 4th schedule for augmenting and financing health infrastructure and related services.

CLASSIFICATION & VALUATION OF IMPORT AND EXPORT GOODS

Classification

Classification enables categorising the goods into groups / sub-groups, in order to apply a single rate of duty on each group / sub-group. This classification is based on the concept of Harmonised System of Nomenclature (HSN).

HSN is an internationally accepted coding system and the same was formulated and thereby enunciated under the General Agreement on Tariffs & Trade (GATT). At international level, the HSN classification of goods is a six digit coding system but India follows 8 digit coding system, wherein first two digit represent chapter number, next two digits represents heading number, next two digits represents sub heading number and last two digits product code.

For example: HSN is 07031010 then details of each digit is as under:

07	03	10	10
Chapter	Heading	Sub Heading	Product Code

07- Edible Vegetables

03- Onions, Shallots, garlic, Leeks

10- Fresh or Chilled Onions or Shallots

10- Fresh or Chilled Onions

Interpretation Rules under the Customs Tariff Act, 1975

General Rule for Classification [Rule 1]

The essence of this rule is that the reference to the rules may be made in case of ambiguity, that is, the reference to the six rules of interpretation is not required when classification of the goods is possible on the basis of description in the heading, sub-heading etc.

Interpretation :-

(a) The titles of sections, chapters and sub-chapters do not have any legal force.

(b) Terms of headings read with relative section and chapter notes are legally relevant for the purpose of classification.

(c) The rules of interpretation need not be resorted to when classification is possible on the basis of description in heading, sub-heading, chapter notes and section notes.

(d) Notes of one chapter or section cannot be applied for interpreting entries in other chapters or sections.

Unfinished Articles & Mixtures [Rule 2]

a) Any reference in a heading to an article, shall be deemed to include a reference to that article in an unfinished stage too, as long as in the present stage, the incomplete article exhibits the essential character of that article in complete / finished form :

Example : Car without tyres or without seats would be still construed as Cars, but not Cars without engines.

b) Any reference in a heading to a material or substance, shall be deemed to include a reference to the mixtures and combinations of that material / substance with other materials / substances.

Example : natural rubber would include its mixture with synthetic or other forms of rubber .

Interpretation :-

If any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article shall also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.

If any particular heading refers to a finished/complete article, the unassembled/dis-assembled form of that article shall also be classified under the same heading provided the unassembled/dis-assembled goods have the essential characteristics of the finished goods.

Classification of Goods classifiable under more than one head [Rule 3]

a) "Specific Identification", i.e., the goods shall be classified under the heading which is closest to the specific description.

Example : Mint Tea is not separately classified, but the classification should be tea as the product is closest to the one under the heading "tea", mint is only a flavour.

b) "Essential Character Principle", i.e., if composite goods cannot be classified as per Rule 3(a), then, shall be classified on the basis of material / substance that defines the essential character.

Example : If one imports "Liquor Gift Sets" that have both, liquor and glasses, it should be classified under the heading, "Liquor", as the essential character of the composite item is the liquor itself and the glasses are pure ancillaries.

c) "Latter the Better Principle", i.e., when goods can't be classified under rules 3(a) or 3(b), the goods would be classified under the heading that appears last in the numerical order amongst those which equally merit consideration.

Example : A gift set, which has socks and ties, can be classified under any of the above rules, and therefore should be classified as ties (heading 6117) over socks (heading 6115).

Akin Principle [Rule 4]

This rule states that the goods which cannot be classified in accordance with Rules 1, 2 or 3, shall be classified under the heading which includes goods that are the most "akin or similar".

An example would be anti-glare films used for car windows, venetian blinds, all of these are not separately classified, they would be classified under the heading for "builders' ware of plastic", as that's the closest these fit into.

Cases / Containers for Packaging of Goods [Rule 5]

Goods which are in the nature of containers / packages such as necklace boxes, camera cases, musical instrument cases, will be classified with the specific article which are generally sold within these packages. However, this is applicable to containers, which are fitted for the article they will contain, are suitable for long term use, protect the article when not in use, and are of a kind normally sold with such articles. Cases for camera, musical instruments, drawing instruments, necklaces are few examples.

Sub-headings [Rule 6]

Only sub-headings at the same level are comparable.

CASE LAWS

CC vs. Maestro Motors Ltd. 2004 (174) E.L.T 289 (S.C.)

In this case, the Court observed that if a tariff heading is specially mentioned in exemption notification, the general interpretative rules would be applicable to such exemption notification. But, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for the purpose of classification, it may be otherwise.

CC vs. Hewlett Packard India Sales (P). Ltd. 2007 (215) E.L.T. 484 (S.C.)

In this case the assessee was engaged in the manufacture of, and trading in, computers including Laptops (otherwise called 'Notebooks') falling under Heading 84.71 of the CTA Schedule. They imported Notebooks (Laptops) with Hard Disc Drivers (Hard Discs, for short) preloaded with Operating Software like Windows XP, XP Home etc. These computers were also accompanied by separate Compact Discs (CDs) containing the same software, which were intended to be used in the event of Hard Disc failure.

The assessee classified the software separately and claimed exemption. The court held that without operating system like windows, the laptop cannot work. Therefore, the laptop along with software has to be classified as laptop and valuation to be made as one unit.

Keihin Penalfa Ltd. vs. Commissioner of Customs 2012 (278) ELT 578 (SC)

Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub- heading 9032.89. An exemption notification dated 01-03- 2002 exempted the disputed goods by classifying them under chapter sub- heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

The Apex Court observed that the Central Government had issued an exemption notification dated 01-03-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 01-03-2002, the said classification needs to be accepted for the period prior to it.

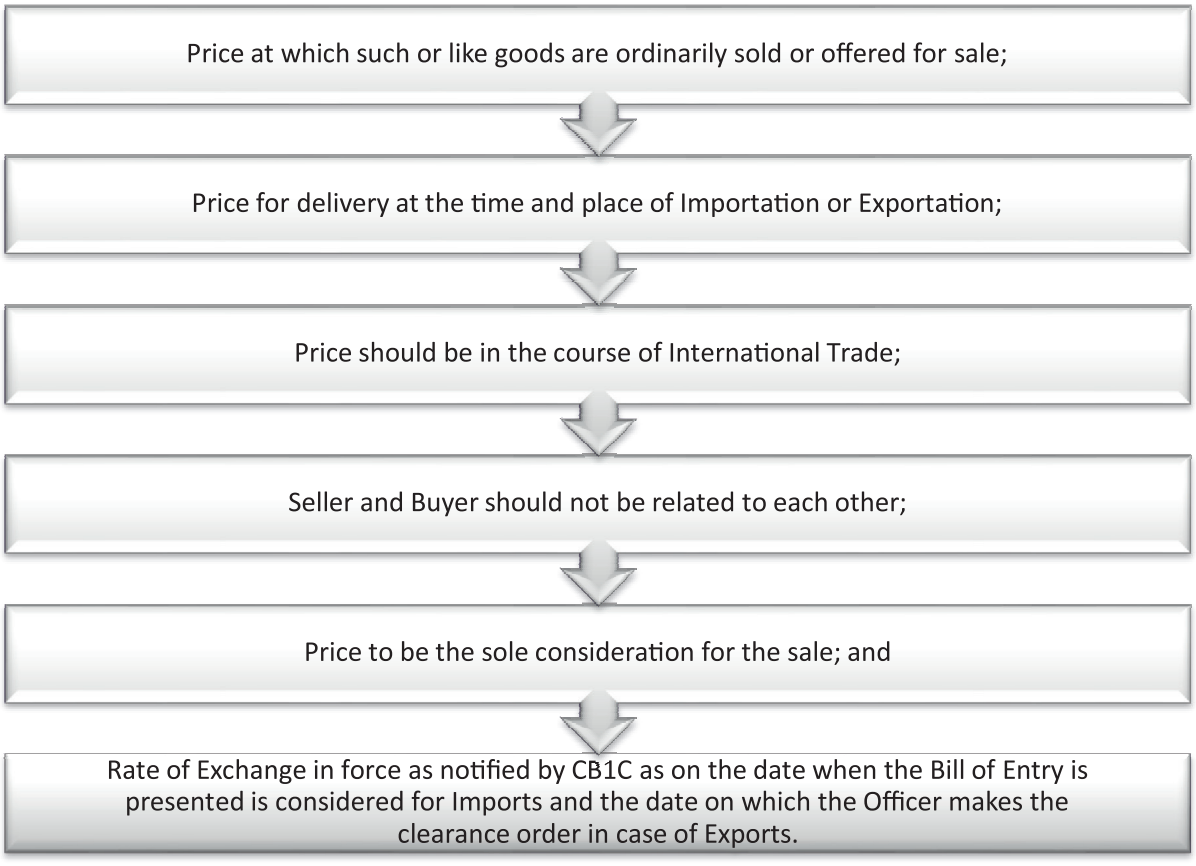
VALUATION FOR CUSTOMS DUTY

Valuation for Customs Duty begins with determination of "Transaction Value". Transaction Value includes the price paid / payable as consideration. In case of transaction between related parties, sale transaction would be examined to ascertain the influence of relationship on the declared value, and whether the same could then be accepted as transaction value (it needs to be at arm's length).

VALUATION RULES

The Customs Value fixed as per Section 14 is the value that would be used for calculating the Customs Duty Payable. This is also called Assessable Value.

Criteria for deciding Value –



CASE LAW

In case of *CC* vs. *East African Traders 2000 (115) E.L.T. 613 (S.C.)*, it was held that Customs authorities and Tribunal can pierce the veil of the respondent company to determine whether or not the buyer and the seller were 'related persons within the scope of rule 2(2) of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [now rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Rule 3(1)

Value of Imported Goods shall be the Transaction Value adjusted in accordance with provisions of Rule 10;

For Imports

Price paid / payable for delivery at the time and place of Importation, which essentially implies that the price up to a port in India when goods are imported has to be considered (i.e., C.I.F. Value).

For Exports

Price paid / payable for delivery at the time and place of Exportation, which essentially implies that the price up to a port in India when goods are exported has to be considered (i.e., F.O.B. Value)

Important Points to remember

- C.I.F. = F.O.B. + Cost of Transport (Freight) and Insurance.
- Freight to be taken at actuals, if ascertainable. If not ascertainable, it shall be calculated at 20% of FOB Value. However, it shall be capped at maximum of 20% of FOB [even ascertainable], if goods are imported by air.
- Insurance to be taken at actuals, if ascertainable. If insurance cost is not ascertainable, it shall be calculated at 1.125% of FOB Value.
- The cost of transport of the imported goods includes the ship demurrage charges on charted vessels, lighterage or barge charges.
- In the case of goods imported by sea or air and transhipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transhipment shall be excluded.
- Transaction Value (T.V.) = C.I.F.
- Exchange rate as applicable on date of presentation of a shipping bill or bill of export, as determined by CBIC or ascertained in manner determined by CBIC should be considered of the valuation as above cannot be determined, then sequentially, the following rules will be applied.

Identical Goods / Comparison Method [Rule 4]

Transaction Value (TV) of identical goods will be used in determining the value of imported goods, only when such identical goods are sold at the same commercial level, and these goods are substantially the same quantity as the goods being valued. TV of goods exported would be based on the transaction value of the goods of like kind and quality exported at or about the same time to the same destination country, or in absence, another destination country.

In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Similar Goods for Imports and Computed Value Method for Exports [Rule 5]

The TV for Imported Goods would be based on that of the similar goods (i.e., like characteristics & country of production). The TV of goods exported, would be taken at computed value, i.e., Cost of Production + Charges for design/brand + Reasonable profit.

Residual Method [Rule 6]

For exports, the TV would then be arrived at by reasonable and consistent means by Customs Officer. For Imports, Rule 7 and 8, as below would be invoked.

Deductive Value [Rule 7]

Unit price at which the imported goods (or) identical (or) similar imported goods are sold in the greatest aggregate quantity

Less: Commission, Selling Expenses, and Profit made, Transport & Insurance & Taxes within India.

The goods at or about same time can be considered, if not at the earliest date of importation but before the expiry of 90 days after such importation.

Computed Value [Rule 8]

This would be the cost of materials used in producing the imported goods, including fabrication costs, and usual profits commensurate with sale of goods of same class in India, including specific additions as per Rule 10 (i.e., Insurance, Freight and Landing Charges).

Illustration:

Answer with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:

(i) What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer pays the contract price?

(ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?

Solution:

(i) The value of the imported goods or export goods is its transaction value, which means the price actually paid or payable for the goods. Where a contract has been entered into, the transaction value shall be the price stated in the contract, unless it is not legally acceptable.

Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.

(ii) As per explanation to Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the payment for post-importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

Valuation Terminologies

FOB **:** This is also known as "Free on Board" or "Freight on Board". It signifies the cost of delivering the goods to the nearest port and thereafter the Buyer is responsible to ship from there to the buyer's address.

CIF **:** This is known as "Cost, Insurance & Freight" Value. This would add on the Insurance and Freight to the FOB Values, as explained below.

Addition of cost of freight in case of imports:

Mode of Transportation	***By Air***	***Any other mode***
If Actual Freight Ascertainable	Actual Freight; or 20% of FOB value of the goods, Whichever is less	Actual Freight
If Actual Freight Not Ascertainable	20% of FOB value of the goods	20% of FOB value of the goods

Addition of cost of insurance in case of imports:

If Actual cost of Insurance available	Actual cost of insurance
If Actual cost of Insurance not available	1.125% of the FOB value of the goods

Relevant date for rate of duty on - Imported Goods (Section 15):

Section	*Types of Goods*	*Relevant Date*
15(1)(a)	Goods cleared for home consumption under Section 46	Rate prevailing on the : a. date of presentation of bill of entry; or b. date of entry inwards of the vessel/aircraft/vehicle whichever is later.
15(1)(b)	Goods cleared from a warehouse under Section 68	Rate prevailing on the date of presentation of Ex-Bond bill of Entry for home consumption.
15(1)(c)	In case of any other goods	Rate prevailing on the date of payment of duty.

Relevant date for rate of duty on Exported Goods (Section 16):

Section	*Types of Goods*	*Relevant Date*
16(1)(a)	Goods entered for export under Section 50	Rate prevailing on the date on which proper officer makes an order permitting clearance and loading of the goods for exportation under Section 51.

Note: Provisions of both section 15 and 16 are not applicable to baggage and goods imported / exported by post.

Specific Additions

These would include expenses incurred by the buyer and not included in the price. Any payments made to the seller as a condition of sale.

Template for Calculation of Import Duties

Particulars	*INR*	
Assessable Value (AV)	1000	
Basic Custom Duty (BCD)	100	Taken at 10% of AV
Safeguard Duty	300	Taken at 300% of AV
Social Welfare Surcharge (SWS)	10	Taken at 10% of BCD
Anti Dumping Duty	200	
Total	**1610**	
IGST	289.8	Taken 18% of Total
GST Compensation Cess (GCC)	241.50	Taken 15% of Total
Total Taxes and Duties	**1141.30**	

Illustration :

Use the information appended below to find out the Assessable Value:

Item No.	***Description***	***USD***
1	Cost of Machine at the factory of the US Exporter	17500
2	Transport Charges from the said factory until the sea port for onward shipment	2500
3	Handling Charges at the Port of Shipment	200
4	Buying Commission paid by Importer	50
5	Freight Charges until the Indian Port	2500
	Please use an exchange rate of $1=63.84 INR	

Solution:

Description	***USD***	***INR***
Cost of Machine at the factory of the US Exporter	17,500	
Transport Charges from the said factory until the sea port for onward shipment	2,500	
Handling Charges at the Port of Shipment	200	
F.O.B. Value	20,200	
Insurance Charges @ 1.125%	227	
Freight Charges	2,500	
Buying Commission paid by Importer	-	
C.I.F. Value	22,927	
Assessable Value	22,927	14,63,660

Notes :

1) *All costs up to the Port of Shipment will be included in the F.O.B. Value.*
2) *Insurance Charges shall be added on @ 1.125% of F.O.B. Value as the value of Insurance Charges as it is not ascertainable.*
3) *The actual freight charges of USD 2500 are included as it is within the maximum that can be added on is USD 4040 (which is 20% of F.O.B. Value).*
4) *Buying Commission is not to be included in the computation.*

Illustration :

Ms. Nisha imported 2500 Tonnes of goods and materials valued at USD 50 per tonne (C.I.F.). Exchange Rate per notification (CBIC) was $1= INR 63.84. The Basic Customs Duty was chargeable @ 10% and over and above, there was an Anti-Dumping Duty levied on the goods, which was the differential between the amount so calculated as the Landed Value . Basic Customs Duty and Cess is INR 100,00,000/-. Calculate the Anti-Dumping Duty.

Solution:

Description	*Tonnes*	*Rate*	*USD*	*INR*
C.I.F. Value	2,500	50	1,25,000	79,80,000
Assessable Value				79,80,000
Basic Custom Duty (BCD) @ 10%				7,98,000
Social Welfare Cess @ 10% of BCD				79,800
Landed Value				88,57,800
Landed value as per Notification				1,00,00,000
Anti Dumping Duty				11,42,200

Note : Anti-Dumping Duty is levied to promote the local industry and to curb imports, and to ensure that India is not used as a dumping ground, which could otherwise have serious repercussions on the economic growth of the Nation. This Anti-dumping duty is continued even under the GST regime.

Illustration :

XYZ imports Pan Masala into India and the C.I.F value is INR 500/-. The rates of tax for Pan Masala (HSN Code 21069020) are Basic Customs Duty 37.5%; IGST 28% and Compensation Cess 60%.

Compute Total Import Duty.

Solution:

Description	*INR*	
CIF Value	500	
Assessable Value(AV)	500	
Basic Custom duty @ 37.5%	188	A
Social Welfare Cess @ 10% of A	18.80	B
AV + BCD + Cess = 500 + 188 + 18.8 =706.8		
IGST @ 28%	197.90	C
Compensation Cess @ 60% (706.8 x 60%)	424.08	D
Total Import Duty payable(A+B+C+D)	828.78	
Total Value including Import Duty	1328.78	

Note : The CBIC notified rate of exchange in force as on the date on which the bill of entry is filed, is what will be applied for computation of assessable value. Note also, that the above cess, Compensation Cess is leviable under GST and hence applicable on the same base; i.e., AV + BCD, like IGST.

Illustration :

M/s XYZ Chemicals Ltd. imported a machine from ABC Inc. at USA (Boston). The price of the machine was contracted at USD 12500 and the machine was shipped on 1st February, 2022. Meanwhile XYZ Chemicals, renegotiated a price reduction owing to the past relationship, and this price reduction was agreed vide an e-mail and a fax on 15th February, 2022. The machine arrived in India (Mumbai Port) on 1st March, 2022.

The assessing authorities claimed that the duty would be payable basis the Original Contracted price, pre - shipment. Please advise your stand as a Tax Consultant to XYZ Chemicals Ltd.

Solution:

The stand taken by the Customs Authorities is factually incorrect and can be challenged under the Law. The basic reason is that the Transaction Value is considered at the time and place of importation. Hence, it was contended that the Import is complete only when the Goods become a part of the Country. Here, in the present case, the price was mutually revised while the Goods were still in transit. Hence, the revised price could be considered for arriving at the Assessable Value and the same was also enunciated under the case law : *Gujarat Heavy Chemicals vs. Commissioner of Customs, Ahmedabad 2004.*

Illustration :

Calculate the total Import Duty Payable if :

a) F.O.B. Value is GBP 18000.

b) Freight Charges incurred (actual) are GBP 7500.

c) Design & Development Charges incurred at UK are GBP 2500.

d) Selling Commission at India paid to a local agent @ 2% of F.O.B. Value.

e) Date of Bill of Entry : 24th Oct 2022 (Rate of Basic Customs Duty is 20% and Exchange Rate as notified by CBIC is INR 68 to 1 GBP).

f) Date of Entry Inward : 20th Oct 2022 (Rate of Basic Customs Duty is 18% and Exchange Rate as notified by CBIC is INR 70 to 1 GBP).

g) IGST @ 18%.

h) Insurance Charges could not be ascertained.

Solution:

ITEM	***GBP***	***INR***	
F.O.B.	18,000		
Design & Development	2,500		
Local commission @ 2%	360		

FOB as per Customs	20,860		
Freight @ 20% of F.O.B. (assumed by air)	**4,172**		
Insurance @ 1.125% of F.O.B.	234.675		
C.I.F. Value	**25,266.675**		
Assessable Value (AV)		**17,18,134**	
Basic Custom Duty		3,43,627	A
Social Welfare cess @ 10%		34,363	B
Total for IGST (AV + All Custom Duties)		**20,96,124**	
IGST @ 18%		**3,77,302**	C
Total Import Duty		**7,55,292**	**A+B+C**

Notes:

a) Insurance is taken @ 1.125% of F.O.B. value, as the charges aren't ascertainable.

b) Freight can be taken at actuals but capped to 20% of F.O.B.

c) Selling Commission is paid in Indian Rupees to local agents appointed by exporters to usher their sales in India and hence included in C.I.F. Value.

d) The Exchange Rate in force per CBIC notification, on the date when the Bill of Entry is presented is to be considered.

e) IGST is levied on Assessable Value + All Customs Duties.

f) Social welfare Cess is levied on BCD @ 10%.

Illustration :

Determine the Customs Duty payable including the safeguard duty of 20%, for Goods with Assessable Value of INR 50,00,000 considering BCD @ 10%, IGST @ 18%.

Solution:

Item	***INR***	
Assessable Value	50,00,000	
Basic Custom Duty @ 10%	5,00,000	A
Social Welfare Surcharge @ 10%	50,000	B
Safeguard Duty @ 20%	10,00,000	C
Total for IGST(AV + All Custom Duties)	65,50,000	
IGST @ 18%	11,79,000	D
Total Duty & Taxes payable(A+B+C+D)	**27,29,000**	

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Custom duties are calculated on specific or *ad valorem* basis, i.e., on the value of goods. The value of goods is determined by Rule 3(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. This rule pegs the value of imported goods at the transaction value that has been adjusted according to the provisions under Rule 10.

In case there are no quantifiable or objective data regarding the valuation factors, valuation conditions aren't satisfied, or there are doubts regarding the accuracy or truth of declared value as per Rule 12 of Valuation Rules 2007, valuation of items has to be done through other means as per the following hierarchy,

- Comparative Value Method which compares the transaction value of similar items (Rule 4).
- Comparative Value Method which compares the transaction value of similar items (Rule 5).
- Deductive Value Method which uses the sale price of item in importing country (Rule 7).
- Computed Value Method which uses the costs related to fabrication, materials and profit in production country (Rule 8).
- Fallback Method which is based on the earlier methods with higher flexibility (Rule 9).

EXEMPTIONS UNDER CUSTOMS ACT

If the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, which would need to be fulfilled before / after clearance, goods of the specified description from the whole or any part of the duty of customs.

If an Assesse want to take the benefit of any exemption than it is his responsibility to provide proof for availing the exemption available under which notification with proof.

It may, by special order, exempt from duty, any goods, on which duty is leviable only under exceptional circumstances. Further, no duty is to be collected, if the amount of duty leviable is less than or equal to INR 100.

Both the general and specific exemptions mentioned above, may be granted by providing for the levy of duty at a rate expressed in a form which is different from the statutory rate.

An exemption notification cannot be withdrawn and the duty cannot be demanded with retrospective effect.

ADMINISTRATION OF CUSTOMS LAWS

Administration of Customs Law is under Ministry of Finance, Government of India. Central Board of Indirect Taxes & Customs (CBIC) has been constituted with headquarter at New Delhi to administer provisions of indirect taxes, which consist of Central Excises, Customs and GST.

As per Section 5(1) of Customs Act, an officer of Customs may exercise the powers and discharge the duties conferred on him or imposed on him, subject to conditions and limitations as may be imposed by CBIC.

OFFICERS OF CUSTOMS LAW

Proper Officer in relation to any function to be performed under Customs Ace, means the officer of Customs who is assigned those functions by CBIC or Principal Commissioner of Customs under Sections 5 of Customs Act.

The Customs Officers are authorised to:

a) Declare warehousing stations;

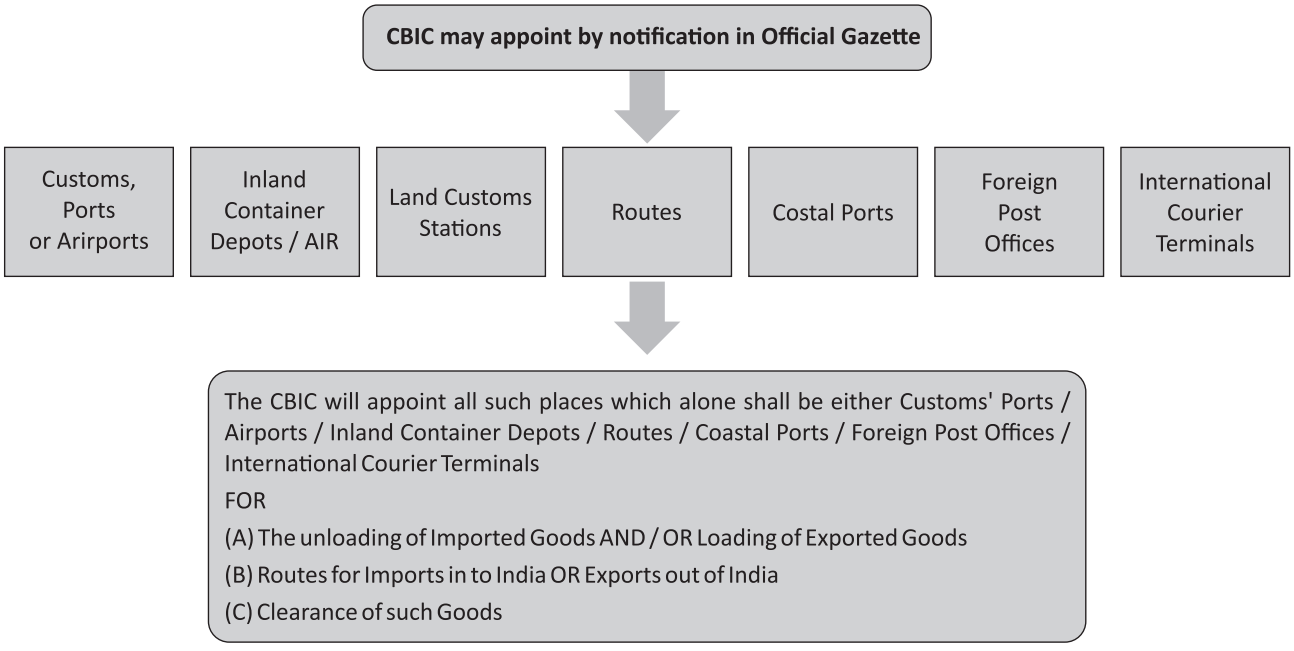
b) Allow setting up of warehouses (Public / Private);

c) Power to search any vessel / conveyance / person;

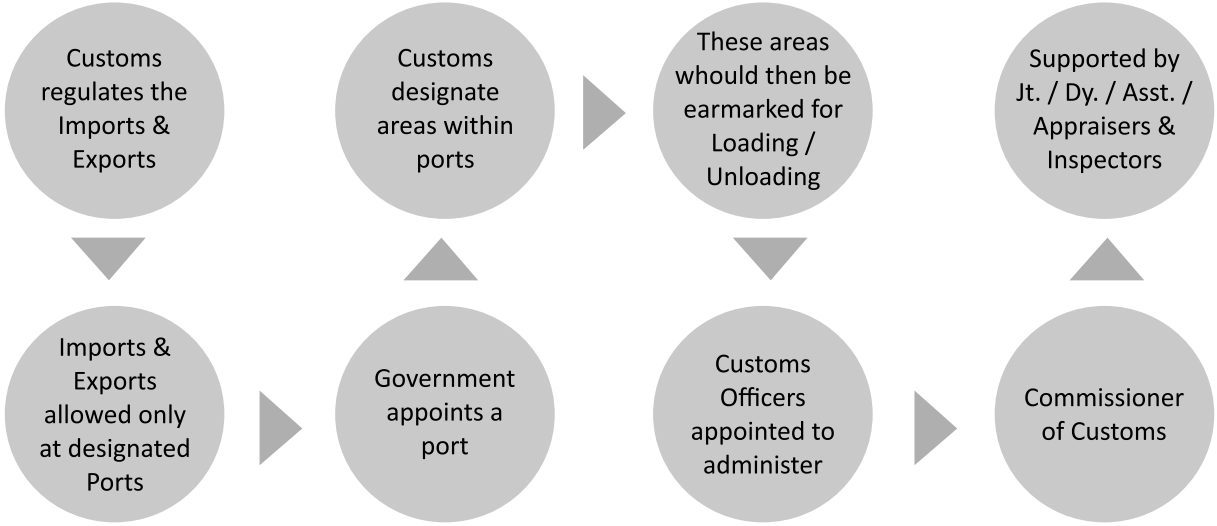
d) Power of Seizure of Goods;

e) Power to Arrest.

Establishment under Customs



Administration



Types of Ports

a) Sea Ports;

b) Airports;

c) Land Customs Stations (LCS);

d) Inland Container Depots (ICD);

e) Container Freight Stations (CFS) attached to ports.

Mode of Clearance

a) Regular Cargo;

b) Courier;

c) Foreign Post Office;

d) Baggage.

IMPORT & EXPORT PROCEDURES UNDER CUSTOMS LAW

Procedures have to be followed by 'Person in Charge of conveyance' as well as the importer.

Person in Charge : Master (in case of a Vessel), Commander or Pilot (in case of an aircraft), Conductor, guard or any other person having the chief direction of the train (in case of a train), Driver or other person in charge of the conveyance (any other conveyance).

Responsibilities of a Person in Charge (PIC)

The Import Manifest means the report which is required to be delivered under Section 30, which states that the PIC, in the case of a vessel / an aircraft, shall deliver to the proper officer an import manifest PRIOR to the arrival of vessel / aircraft and in case of a vehicle, within 12 hours post the arrival at the customs station, in the prescribed format.

Also, it's imperative to note that the import is completed only when the goods so imported are cleared for home consumption.

Entry of Goods on Importation (Section 46)

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof:

(a) to examine the goods in the presence of an officer of customs, or

(b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

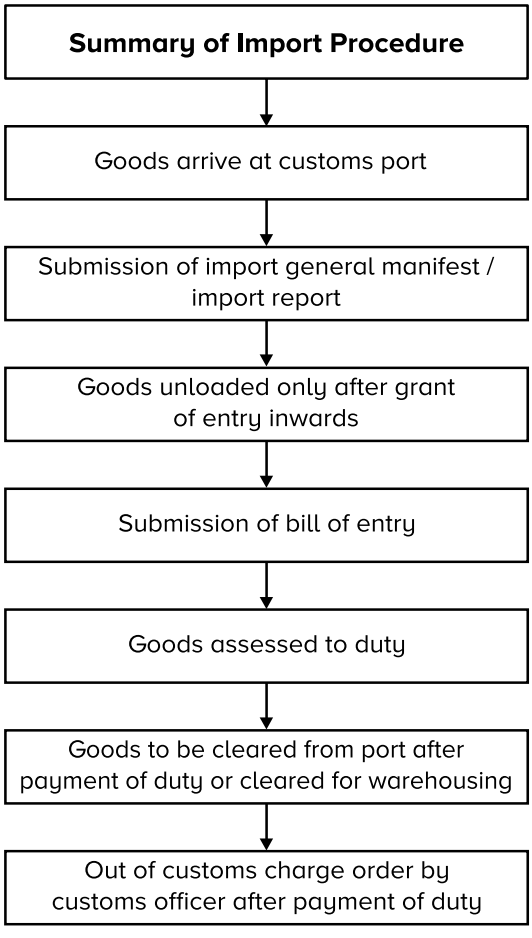
Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. (4A) The importer who presents a bill of entry shall ensure the following, namely: -

a) the accuracy and completeness of the information given therein;

b) the authenticity and validity of any document supporting it; and

c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.



(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

Entry of Goods for Exportation (Section 50)

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days (30 days) at a time.

The exporter of any goods shall make entry thereof by presenting electronically to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

However, the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner.

The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

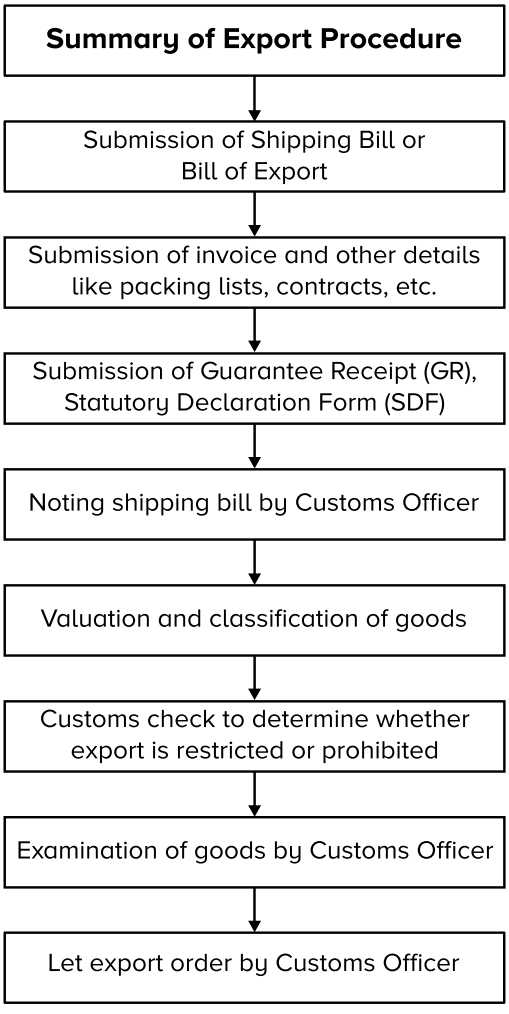
The exporter who presents a shipping bill or bill of export shall also ensure the following, namely:-

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Summary of Export Procedure



TRANSPORTATION

Goods can come through post parcel or as baggage with passengers. Different procedures are there for import and export of goods by different mode of transportation.

Imported goods are allowed to be warehoused but under due compliance of customs. There are public and private warehouses for this purpose. Improper imports / exports are subject to seizure and confiscation and they are also subject to penalties and arrest in certain cases.

Import duties are refunded in the form of duty drawback to eligible exporters. Baggage is permitted from passengers arriving in India subject to baggage provisions

Transit and Transhipment

A conveyance/vessel may reach a port but may not unload the goods at that port. It may halt at the port for any other purpose such as repairs, replenishment of supplies, refueling etc. Once the purpose is over, it may start sailing to the destination port. In this case two ports are involved:-

1. the halting port (known as transit port) and
2. the destination port (called as port of clearance).

Such a phenomenon of temporary stay at a port other than a destination port is called transit. In transit; the goods remain in the same vessel and consequently reach the port of clearance.

In transhipment, however, the vessel after reaching an intermediate port, transfers the goods to another vessel and the second vessel into which the goods are transferred (loaded) from the first vessel, carries the goods to the destination port.

Transit of Goods without payment of duty [Section 53]

Any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, for transit in the conveyance to any place outside India or any Customs station may be allowed to be so transited without payment of duty, subject to such conditions, as may be prescribed.

Transhipment of Goods without payment of duty [Section 54]

In case any goods imported into a Customs station are intended for transhipment, a bill of transhipment shall be presented to the proper officer in the prescribed form.

However, where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.

Where any goods imported into a Customs station are mentioned in the Import Manifest or import report as the case may be, as for transhipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

Differences between Transit & Transhipment

Transit	*Transhipment*
Goods remain in the same vessel at the intermediate port	Goods are transferred to a different vessel at the intermediate port
Only import manifest has to be submitted for entry	Bill of Transhipment / declaration is also required to be submitted
No supervision is required at the Intermediate Port	Transhipment process is conducted under the supervision of the Customs Officer
The same vessel reaches the destination port	A different vessel reaches the destination port

WAREHOUSING

Imported goods need not be cleared for home consumption immediately on arrival. If importer wish or he may not require the goods immediately or sometime to avoid demurrage charges or intends to re-export of such imported goods or for any other reasons, he may store such goods in Warehouse without payment of goods. Warehouses allow goods to be stored and thus deferment of duty. The Goods are to be released from the Warehouse, subject to “clearance”; i.e., post assessment and payment of Duty. Warehouse may public warehouse licensed under section 57 or private warehouse licensed under section 58 or special warehouse licensed under section 58A.

Public Bonded Warehouse

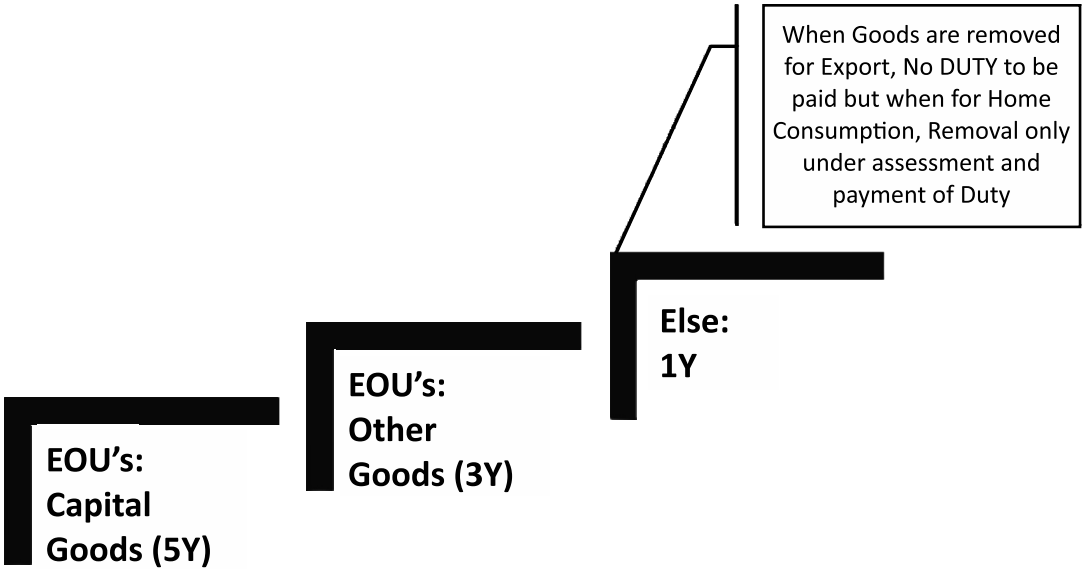
1) These are owned and managed by Government / Governmental Bodies / Agencies;
2) Only dutiable goods can be warehoused therein;
3) Availability of space certificate from the warehouse keeper would be required;
4) A double duty bond would also be required to be furnished for deposit of goods;
5) Also, the person seeking warehousing would need to pay rental / warehousing charges to the warehouse keeper.

Private Bonded Warehouse

1) These are owned and managed by private entities;
2) These aren't generally allowed where the public bonded warehouses are available;
3) Only dutiable goods can be warehoused therein;
4) Availability of space certificate from the warehouse keeper would not be required in this case;
5) Double bond duty would still be required but, customs officers would need to be posted at the expense of the warehouse keeper.

The Goods so warehoused, can vary, depending on whether these are for 100% Export Oriented Units (EOU's) or otherwise, as explained by the diagram below (up to a period of 5 years / 3 years / 1 year) :

PERIOD OF WAREHOUSE



BAGGAGE RULES

Goods imported by a passenger or a member of crew in his baggage are classified under one tariff heading and levied to a single rate of duty. Section 77 provides that the owner of any baggage shall for the purpose of clearing it makes a declaration of its contents to the proper officer.

The term Baggage has not been defined as such. However following may be noted : (a) Baggage means all dutiable articles, imported by passenger or a member of a crew in his baggage (b) Un-accompanied baggage,

if dispatched previously or subsequently within prescribed period is also covered (c) baggage does not include motor car, alcoholic drink (beyond certain limit) and goods imported through courier (d) baggage does not include articles imported under an import licence for his own or on behalf of others.

Baggage Rules, 2016 provide for duty free clearance, up to a certain limit, of articles such as used personal effects, travel souvenirs and other articles when carried on the person or in the accompanying baggage of the passenger arriving in India.

Personal effect means things required for satisfying daily necessities but does not include jewellery. Generally, duty free allowance is allowed to the Indian resident or foreigner residing in India.

Duty Free Baggage Allowances of Dutiable and Non-Prohibited Articles (Baggage Rules, 2016)

Rule	***Passenger***	***Passenger arriving from countries***	***Amount of Duty Free Baggage Allowance***
Rule 3	An Indian resident or a foreigner residing in India or tourist of Indian origin	Other than Nepal, Bhutan or Myanmar	Rs. 50,000
Proviso to Rule 3	Tourist of foreign origin	Other than Nepal, Bhutan or Myanmar	Rs. 15,000
Rule 5	Any passenger residing abroad for more than one year	Any country	Gold Jewellery: a. Gentlemen – 20 grams with a value cap of Rs. 50,000 b. Lady – 40 grams with a value cap of Rs. 1 lac

Illustration: Mr. Ram, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2020. His wife also joined him in London on 01.12.2020. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2021:

(a) used personal effects worth Rs. 95,000

(b) a music system worth Rs. 34,000

(c) the jewellery brought by Mr. Ram for Rs. 44,000 and the jewellery brought by his wife worth Rs.25,000

Determine their eligibility with regard to duty free allowance.

Solution: As per the Baggage Rules, in case of passengers other than tourists there is no customs duty on used personal effects and general free allowance is Rs.50,000 per passenger. Thus, their duty liability is nil for the personal effects and a music system.

However, the additional duty-free allowance, that is jewellery allowance is applicable to non-tourist passenger of Indian origin who had stayed abroad for period exceeding one year. The additional jewellery allowance is as follows:-

Gentleman Passenger - Rs.50,000/-

Lady Passenger - Rs.1,00,000/- Thus, there is no duty liability on the jewellery brought by Mr. Ram as he had stayed abroad for period exceeding one year.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period less than a year. Thus, she has to pay customs duty on the amount of jewellery brought by her. However, she is eligible to avail GFA of Rs.50,000. To the extent of satisfaction of the Assistant commissioner of customs, Jewellery brought back which was taken out earlier by the passenger or by a member of his family from India shall be allowed clearance free of duty.

DUTY DRAWBACK

Duty drawback provisions enable the exporter to obtain a refund of the Import Duties (Customs Duty) paid on :

- imported goods which are meant for re-exportation; or
- inputs, which are processed for / used in manufacture of final products to be exported.

The Central Government is empowered to grant duty drawback (Section 74 & Section 75).

This benefit is available not only on the re-export of the duty paid goods (Section 74), but also, on imported materials used in the manufacture of Goods which are exported (Section 75). These goods should be entered for export within 18 months.

The procedure is as under

- ✓ At the time of export, the Exporter shall endorse the shipping bill to the Proper Customs Officer;
- ✓ Necessary forms like ARE1 are submitted;
- ✓ Customs Officer makes an order permitting clearance for exportation (Section 51);
- ✓ If an amount of drawback, and interest paid to the exporter turns out to be higher than what he is eligible to, this amount would have to be repaid back to the Customs authorities;
- ✓ If there is a drawback which is made to an exporter, who eventually cannot realise the Invoice (export proceeds) within the period(s) specified by FEMA, such drawback could be recovered from the exporter.

An exporter could opt for drawback as per the All Industry Rate (AIR) or the Brand Rate. The AIR's are fixed annually by the Directorate of Drawback, but the brand rates are for special products.

Where the goods are not put into use after import, 98% of Duty Drawback is admissible under Section 74 of the Customs Act, 1962. In cases where the goods have been put into use after import, Duty Drawback is granted on a sliding scale basis depending upon the extent of use of the goods. No Duty Drawback is available if the goods are exported 18 months after import. Application for Duty Drawback is required to be made within 3 months from the date of export of goods, which can be extended up to 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

There is distinction between section 74 and 75 of the Customs Act- section 74 of the Customs Act comes into operation when articles are imported and thereupon exported, such articles being easily identifiable; and section 75 comes into operation when imported materials are used in the manufacture of goods which are exported.

If the goods were in possession of the importer, they might be treated as used by the importer. As per the rules framed by Central Government, percentage of drawback is enumerated in given below table:

Sl. No	***Period of Use***	***Percentage of Drawback***
1	Upto 3 months	95%
2	More than 3 months to 6 months	85%
3	More than 6 months to 9 months	75%
4	More than 9 months to 12 months	70%
5	More than 12 months to 15 months	65%
6	More than 15 months to 18 months	60%
7	More than 18 months	Nil
	For Motor Vehicles	
	Use per quarter during	***Percentage of Reduction***
1.	1st Year	4%
2.	2nd Year	3%
3.	3rd Year	2.5%
4.	4th Year	2%

Drawback is allowed if the use is over 24 months only with permission of Commissioner of Customs if sufficient cause is shown.

The Customs Act, 1962 lays down certain limitations and conditions for grant of Duty Drawback. No Duty Drawback shall be admissible where:

i. The Duty Drawback amount is less than Rs.50/-.

ii. The Duty Drawback amount exceeds one third of the market price of the export product.

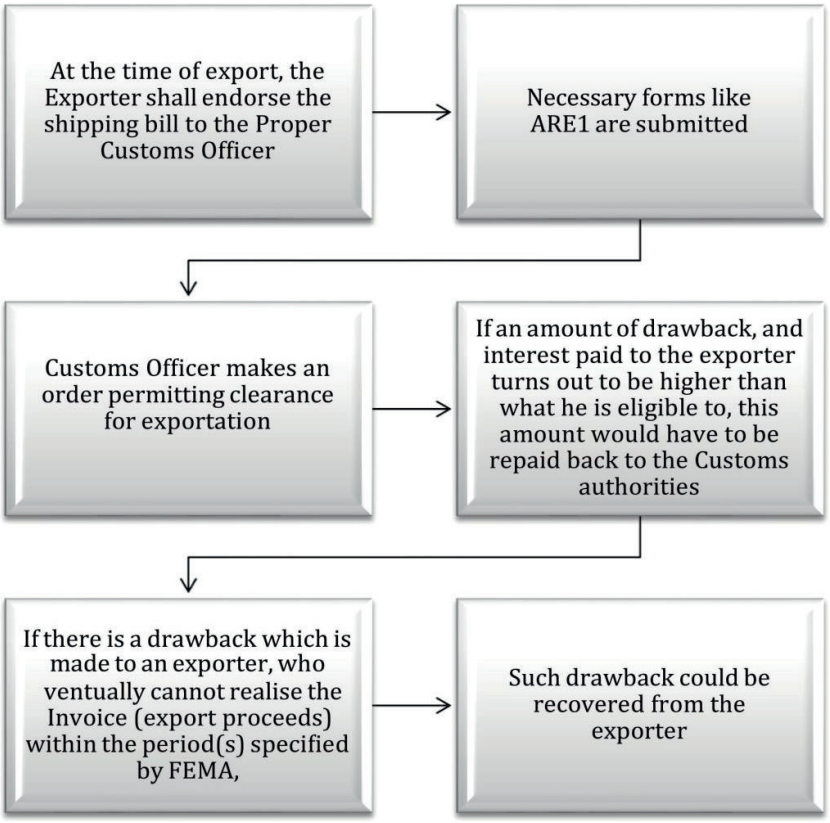
iii. The Duty Drawback amount is less than 1% of FOB value of export (except where the amount of Duty Drawback per shipment exceeds Rs.500/-).

iv. Where value of export goods is less than the value of imported material used in their manufacture. If necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government.

The duty drawback needs to be paid, within 1 month, and if not paid, interest is payable to the claimant, at a specified rate.

Also, where drawback has been paid to the claimant in excess of what he is eligible to, the claimant has a time period of 2 months, to repay the excess, else, interest would be charged on the exporter from the date of payment of drawback until the date of recovery.

Duty Drawback is a scheme that encourages exports and thereby accelerates aggregate demand. It is intended to propel the economic growth of the nation and thereby accelerates the GDP.



DEMAND & RECOVERY

Demand of Duty

The notice of demand, must be served in writing, clearly mentioning the reasons, and providing the party an opportunity of being heard.

Generally, the Show Cause Notice, should be served within 1 year from the relevant date; that is; 1 year from the date of assessment / payment of duty.

However, in specific cases, where the duty or interest is not paid, or short paid, by reason of collusion, wilful suppression of facts, or misstatement, then the notice could be served within a period of 5 years.

The demand of duty provisions also calls for attachment of property for upto 6 months, for protection of interest of revenue and that could be extended for another period of 6 months, but the attachment period cannot exceed 2 years.

Post which the duty must be collected, in the name of customs duty and paid to the credit of the Government.

CONFISCATION OF GOODS & CONVEYANCES

Confiscation of Goods

Confiscation would generally tend to connote the forceful seizure / repossession of goods by the Government, without any compensation to the owner, as the possession of the goods was contrary to the law.

- ✓ Section 111 states that the following improperly imported goods, shall be liable to confiscation
  - those which are imported by sea / air and offloaded / attempted to be offloaded in a port other than the appointed customs' port.
  - those which are imported by land / inland water, through a route other than a specified route.
  - any dutiable / prohibited goods brought in to any bay / creek / gulf etc. for the purpose of being landed at a place other than customs' port.
  - any dutiable / prohibited goods, found concealed in a conveyance.
  - any dutiable / prohibited goods which should have been disclosed in the Import General Manifest but were not.
  - any dutiable / prohibited goods removed / attempted to be removed from a warehouse / customs station, without permission.
  - goods which do not match the description in the documents, vis-à-vis value / any other particulars.
  - any goods, which were exempted from duty subject to a condition, which was eventually not met.
- ✓ Section 113 states that the following improperly exported goods, shall be liable to confiscation
  - those which are exported by sea / air and loaded / attempted to be loaded in a port other than the appointed customs' port.
  - those which are exported by land / inland water, through a route other than a specified route.
  - any dutiable / prohibited goods brought near any bay / creek / gulf etc. for the purpose of being exported from a place other than customs' port.
  - any dutiable / prohibited goods, found concealed in a conveyance.
  - any goods loaded in a wrongful manner without necessary permissions.
  - goods which do not match the description in the documents, *vis-à-vis* value / any other particulars.
  - any goods, on which import duty wasn't paid and entered for export under a claim for drawback.
- ✓ Section 115 deals with Conveyances which are liable to confiscation
  - Any vessel which has been within the Indian customs waters, any aircraft in India, or any vehicle, which has been adapted or fitted or structured in a manner that it purports or enables the concealment of goods.
  - Any conveyance from which the goods are destroyed to prevent seizure.
  - Any conveyance which had to stop / land but didn't do so except for sufficient cause.
  - Any vessel from which goods which have been cleared for exportation, under a claim for drawback, were unloaded without necessary permissions.
  - Any conveyance which carried goods into India, but which were later missing without any account for the loss.
  - Any conveyance / animal used for smuggling.
- ✓ Section 118 deals with confiscation of packages
  - Where the goods imported / exported are liable to confiscation, the packages within which they are cased and carried, are also liable for confiscation.

- ✓ Section 119 states that any goods used to conceal the smuggled goods are also liable to confiscation
- ✓ Section 120 & 121 state that where the smuggled goods undergo a change in their physical form, post smuggling, even then they would be liable for confiscation (example : gold bars, later converted to ornaments). Also, where the smuggled goods are mixed in a manner with other goods such that they are inseparable, entire goods would be liable to confiscation, and if the smuggled goods are sold off, the sale proceeds thereof are liable to confiscation.
- ✓ Section 122 states that the adjudicating authorities shall be given an opportunity of being heard to the party concerned.
- ✓ Section 123 clearly states that if goods are seized, the onus is on the owner to prove that they were not smuggled.
- ✓ Section 124 clearly states that before confiscation, it is necessary that a Show Cause Notice (SCN) is issued to the owner, citing grounds and he should be given an opportunity to make a representation / of being heard. The SCN can be issued by a person not below the rank of Assistant Commissioner of Customs.
- ✓ Section 125 states that the authorised officer may allow the owner an option to pay fine in lieu of confiscation.
- ✓ Section 126 mentions that confiscated goods vest with the Central Government.
- ✓ Section 127 clarifies that any award of confiscation / penalty shall not interfere with or prevent the owner from being punished under any other provisions of this or any other law for the time being in force.

REFUND

Refund of Export Duty

Where on the export of goods; any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

(a) the goods are returned to such person otherwise than by way of re-sale;

(b) the goods are re-imported within one year from the date of exportation; and

An application for refund of such duty is made within 6 months from the date on which the proper officer makes an order for the clearance of the goods when they are imported back.

Refund of Import Duty

Where on the import of any goods, duty has been paid upon clearance for home consumption, such duty can be refunded to the person by whom or on whose behalf it was paid, if -

(a) The goods are found to be defective or not in conformity with the specifications.

(b) The importer does not claim any duty draw back with respect to these goods.

(c) If the goods are exported back / importer relinquishes his title to the goods / they are destroyed in the presence of the proper officer.

An application for refund of duty is to be made within 6 months from the relevant date, i.e.,

(a) The date when the proper officer makes an order for clearance of goods when they are exported back.

(b) Date of relinquishment if the importer relinquishes his title to the goods.

(c) Date of destruction, where the goods are destroyed.

Moreover, for all general refunds of duty, apart from the ones covered above, have a limitation period of 1 year, that is, the refund application must be filed within 1 year from the date of payment of such duty.

MISCELLANEOUS

Assessment of Duty [Section 17]

Section 17 of the Customs Act, 1962 prescribes the method for self-assessment of duty. The importer and exporter must self-assess the duty if any leviable on such goods. These self-assessed goods may be verified, examined or tested by the proper officer.

For verification, the proper officer may require the importer, exporter or any other person to produce any document or information, on the basis of which the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall be bound to produce such document or furnish such information.

Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, re-assess the duty leviable on such goods.

Where any re-assessment so done is contrary to the self-assessment done by the importer or exporter with respect to valuation of goods, classification, or concessions of duty availed and where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment.

Where the importer or exporter is unable to make self-assessment and makes a request in writing to the proper officer for assessment; or where the proper officer deems it necessary for any reason whatsoever, the officer may direct that the duty leviable on such goods be subject to provisional assessment if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed.

When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then (a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be; and (b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order, at the rate fixed by the Central Government from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

If any refundable amount is not refunded within 3 months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government until the date of refund of such amount.

Prohibitions

Central Government may prohibit, either absolutely or subject to such conditions specified in the notification, the import / export of goods of the specified description, for:

(a) Maintenance of national security

(b) Maintenance of public order / decency

(c) Prevention of smuggling

(d) Conservation of exchange

(e) Safeguarding the balance of payments

(f) Protection of human lives / animals

(g) Protection of national treasures

(h) Protection of Patents & Trade Marks

(i) Prevention of contravention of any laws or in the interest of the public.

Offences

The following would constitute offences under the Act:

(a) Any mis-declaration in respect of the goods vis-à-vis its value or description or weight or origin.

(b) Violation of allied acts, example, Violation of wild life, Drug & Cosmetics Act, Food laws etc.

(c) Landing of Goods at unauthorised ports.

Such offences could result in civil or criminal liabilities or both and both could run simultaneously. Criminal prosecution could result in imprisonment + fines, and civil prosecution could result in alienation of wealth and penalties.

Criminal Liabilities

- ✓ Punishment up to 7 years.
- ✓ Offences involving duty evasion of more than INR 50 Lakhs, or prohibited goods, are non-bailable.
- ✓ Fraudulent duty drawback claims, exceeding INR 50 Lakhs is also non bailable.

Civil Liabilities

- ✓ Recovery of duties short paid.
- ✓ Interest charge.
- ✓ Penalties.
- ✓ Confiscation of import / export goods.
- ✓ Confiscation of conveyances used for smuggling.
- ✓ Up to 200% duty for unaccounted goods.
- ✓ Up to 5 times the value of goods for forged documents.

The normal limit for the above prosecution is one year, whereas for intended fraud, the time limit is 5 years.

Advance Ruling

This refers to the determination, by the authority, of a question of law / fact specified in the application, regarding the liability to pay duty in relation to an activity proposed to be undertaken by an applicant.

In the context of Customs Act, the activity above in the definition would imply import / export.

The application is made in quadruplicate with the fees specified, and can be withdrawn within 30 days of the application. It is imperative to note that, for matters already pending before the Tribunal / Court, would not be admissible under Advance Ruling separately.

The ruling must be made within 90 days of the application.

Settlement Commission

Settlement Commission has been constituted under the Customs Act to provide speedy resolution of disputes pending before an adjudicating authority. The cases can be referred by applicants with the Commission.

Once the case is submitted before it, it enjoys exclusive jurisdiction over it and then can consequently perform the functions of a customs officer, and thereafter the customs officer cannot investigate, adjudicate or issue notice / corrigendum.

The application will be disposed effectively and suitable orders would be issued by the Commission.

The orders of the Commission are non – appealable, however, amenable to writ jurisdiction of High Court. The appellants can also take the route of Tribunal / High Court and Supreme Court under the litigation mode.

LESSON ROUND-UP

- The CBIC is the authority to appoint and designate establishments under the Act.
- The types of Customs Duties are Basic Customs Duty (BCD).), Countervailing duty (CVD) and Special Additional Duty (CVD) are now subsumed under GST, GST Compensation Cess, Protective Duty, Safeguard Duty, CVD on subsidized articles, Anti-Dumping Duty.
- Goods become liable for duty when they are imported into / exported out of India.
- The rates of customs duty are specified under the Customs Tariff Act.
- BCD is calculated on Assessable Value (AV). IGST is calculated on the entire amount (AV plus all Customs Duties). GST Compensation Cess, like IGST is calculated on (AV plus all Duties).
- Warehouses allow goods to be stored and deferment of duty. The goods are to be released from the warehouse, subject to “clearance”; i.e., post assessment and payment of Duty.
- The Duty Drawback is a facility that enables the Exporter to obtain a refund of the Import Duties (Customs Duty) paid on inputs, which are processed for manufacture of goods to be exported.
- In transit, the goods remain in the same vessel and consequently reach the port of clearance. In transhipment, however, the vessel after reaching an intermediate port, transfers the goods to another vessel and the second vessel into which the goods are transferred (loaded) from the first vessel, carries the goods to the destination port.
- The Act and the Rules provide well defined procedures for import / export and the roles and responsibilities of the parties involved, including the Importer, the Exporter, the Custodian, the Customs and the Carrier.
- Varied types of assessments could take place pre-post clearances and there could be circumstances that could allow the refund of the import / the export duty, subject to timelines and conditions being fulfilled.
- The Act provides and enunciates circumstances wherein the goods can be confiscated or fines and penalties can be levied in lieu of the confiscation.

- Offences under the Act could attract civil or criminal liabilities or both.
- Advance Ruling refers to the determination, by the authority, of a question of law / fact specified in the application, regarding the liability to pay duty in relation to an activity proposed to be undertaken by an applicant.
- The Central Government may if it deems necessary to do so in the general interest of the public, exempt goods generally or specifically.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

Multiple Choice Questions (MCQs)

1. ..... charges are levied by the port authorities if goods are not cleared within 3 days of unloading.
    a) Demurrage
    b) Warehousing
    c) Storage
    d) None of the Above
2. Section 111 to Section 127 of Customs Act, 1962 deals with
    a) Warehousing of goods
    b) Confiscation of goods
    c) Drawback
    d) Goods in Transit
3. Warehouses allow goods to be stored and deferment of duty. The Goods are to be released from the Ware- house, subject to
    a) Assessment
    b) Payment
    c) Clearance
    d) All of the Above
4. In ....., the vessel after reaching an intermediate port, transfers the goods to another vessel and the second vessel into which the goods are transferred (loaded) from the first vessel, carries the goods to the destination port.
    a) Transit
    b) Transhipment
    c) Both of the Above
    d) None of the above

5. IGM stands for
    a) Internal General Memo
    b) International General Memo
    c) Import General Manifest
    d) None of the above

Answers: 1 (a), 2 (b), 3 (d), 4 (b), 5 (c)

Descriptive Questions

1. Explain the following in the context of Custom Act, 1962.
    a. Person-In-Charge
    b. Advance Ruling
    c. Countervailing Duty (CVD)
2. What do you understand by;
    a. Demurrage
    b. Territorial waters
    c. Anti-Dumping Duty (ADD)
3. What is the difference between Transit and Transshipment?
4. Smart Limited imports goods into India by Air having FOB Rs. 10 lakh, cost of freight is Rs. 50,000 and cost of insurance is not ascertainable. Basic custom Duty is 37.5% and IGST is 28%. Compute Assessable Value and total Import Duty.
5. Explain the concept of duty Drawback and what will be the rate of Drawback in case where goods were in possession of the importer for;
    1. Upto 3 months
    2. more than 18 months
    3. more than 9 moths to 12 months

LIST OF FURTHER READINGS

- Customs Law Manual – R.K. Jain
- Indirect Taxes – Law & Practice – V.S. Datey

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.

It may be noted that according to regulation 2(ia) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.

EXECUTIVE PROGRAMME
TAX LAWS & PRACTICE – TEST PAPER
GROUP 2 • PAPER 7

(This test paper is for practice and self study only and not to be sent to the Institute)

Time allowed: 3 hours *Maximum Mark: 100*

Note : **All the references to sections mentioned in Part I of the Question Paper relate to the Income Tax Act, 1961 and relevant Assessment Year 2023-24, unless stated otherwise.**

PART I : DIRECT TAX (60 MARKS)

Case Based Objective Type Question

Question No. 1

(i) Mr. Sunil (resident individual aged 43 years), a engineer by profession based at Delhi, earned an income from profession Rs. 32,00,000 and interest on bank deposit Rs. 2,00,000 (includes interest on saving bank interest Rs. 30,000). He deposits Rs. 1,20,000 in public provident fund. Compute his taxable income for the assessment year 2023-24 (assuming assessee has not opted for section 115 BAC of the Income Tax Act, 1961) ?

a) Rs. 32,10,000

b) Rs. 32,50,000

c) Rs. 32,60,000

d) Rs. 32,70,000

(ii) What would be the taxable income of Mr. Sunil in question no. 1 if he has opted for section 115BAC of the Income tax Act, 1961.

a) Rs. 34,00,000

b) Rs. 33,50,000

c) Rs. 32,60,000

d) Rs. 32,70,000

(iii) What would be the taxable income of Mr. Sunil in question no. 1 if his age is 63 years and has not opted for section 115BAC of the Income tax Act, 1961.

a) Rs. 32,10,000

b) Rs. 32,50,000

c) Rs. 32,60,000

d) Rs. 32,30,000

(1 x 3 =3 Marks)

Question No. 2

(i) Mr. Ajay (Aged 81) a resident of India during the previous year 2022-23 rendered services in India and earned a salary Income of Rs. 4,80,000. Compute the tax liability of Mr. Narendra for the FY 2022-23 in India (assuming assessee has not opted for section 115 BAC of the Income Tax Act, 1961) ?

a) Rs. 22,660

b) Rs. 24,720

c) Rs. 11,845

d) NIL

(ii) What would be the tax liability of Mr. Ajay in question no. 4 if he has opted for section 115BAC of the Income tax Act, 1961.

a) Rs. 22,660

b) Rs. 24,720

c) Rs. 11,845

d) NIL

(iii) What would be the tax liability of Mr. Ajay in question no. 4 if his age is 45 years and has not opted for section 115BAC of the Income tax Act, 1961.

a) Rs. 22,660

b) Rs. 24,720

c) Rs. 11,845

d) NIL

(1 x 3 =3 Marks)

Question No. 3

Mr. X purchased a house on 01.04.2001 for Rs. 2,00,000 and incurred Rs. 3,00,000 on improvement on 01.07.2002 and it was received by his son Mr. Y on 01.07.2011 and Mr. Y incurred Rs. 4,00,000 on improvement on 01.07.2013 and the house was sold by him on 01.07.2021 for Rs. 1,00,00,000. He is entitled to Deduction u/s 80C of Rs. 1,00,000.

(i) Compute the long term capital gains of Mr. Y.

a) Rs. 78,83,922

b) Rs. 77,83,922

c) Rs. 1,00,00,000

d) NIL

(ii) Compute the Net Total Income of Mr. Y.

a) Rs. 78,83,922

b) Rs. 77,83,922

c) Rs. 1,00,00,000

d) NIL

(iii) Compute the Tax liability of Mr. Y assuming not opted for section 115BAC of the Income tax Act, 1961

a) Rs. 15,06,784

b) Rs. 16,57,462

c) Rs. 1,00,00,000

d) NIL

(1 x 3 =3 Marks)

Question No. 4

P Co-operative Society engaged in procession of agriculture produce and running its activities without aid of power furnishes following details of income.

- Income from processing of agricultural produce of its member 38500
- Income from marketing of the agricultural produce 12000
- Dividend from another co-operative society 41400
- Income from letting of gowdown 24000
- Commission income 91000

(i) Compute taxable income for the A.Y. 2022-23 if it does not opt to be taxed under section 115BAD.

a) Rs. 41,000

b) Rs. 2,06,900

c) Rs. 82,000

d) NIL

(ii) Compute taxable income for the A.Y. 2022-23 if it opt to be taxed under section 115BAD.

a) Rs. 41,000

b) Rs. 2,06,900

c) Rs. 82,000

d) NIL

(iii) Compute tax liability for the A.Y. 2022-23 if it does not opt to be taxed under section 115BAD.

a) Rs. 9,670

b) Rs. 47,340

c) Rs. 9,300

d) NIL

(1 x 3 =3 Marks)

Descriptive Questions

Question No. 5

Mona Ltd., a resident Co., earned a profit of INR 15,00,000/- after debit / credit of the following amounts:

Items debited

a) Provisions for the losses of Subsidiaries; INR 70,000

b) Provision for doubtful debts; INR 75,000

c) Provision for Income Tax; INR 105,000

d) Provision for Gratuity basis actuarial valuation; INR 200,000

e) Depreciation; INR 360,000

f) Interest to Financial Institution (unpaid before filing of return); INR 100,000

g) Penalty for infraction of law; INR 50,000

Items credited

a) Profits from unit(s) established in SEZ; INR 500,000

b) Share in income of an AOP as a member; INR 175,000

c) Long Term Capital Gains; INR 300,000

Other Information

a) Depreciation includes INR 150,000 on account of revaluation of fixed assets

b) Depreciation per Income Tax Rules is INR 280,000

c) Balance of P&L Account on the assets side of B/S as at 31st March, 2020 was INR 10,00,000; of which the unabsorbed depreciation was INR 400,000

d) Capital Gains has been invested in specified assets u/s 54EC

e) The AOP, of which the Co. is a member has paid the tax at maximum marginal rate

f) Provision for Income Tax includes INR 45,000 as interest

You are required to compute the MAT u/s 115JB of the Income Tax Act, 1961 for AY 2023-24, assuming that the Co. is not required to comply with IND AS.

(12 Marks)

Question No. 6

(a) DEF Ltd. is in the business of manufacture and sale of formal apparels and in order to expand its footprints globally, has launched a massive online campaign. For the purpose of the online advertisements, it utilized the services of GHI Ltd, based out of Singapore. During the PY, DEF Ltd. paid a consideration of INR 20,00,000 to GHI Ltd. for such services.

Entail the implications if:

a) GHI Ltd. has no permanent establishment in India.

b) GHI Ltd. has a permanent establishment in India.

(6 Marks)

(b) XP Private Ltd. went into liquidation on 1.6.2021. The company was apprehended and controlled of the following funds prior to the distribution of assets to the shareholders: Share capital of Rs. 500000 which was issued on 1st April 2013, Accumulated profit till date would be Rs. 300000. Moreover, Rs. 500000 has been an excess realisation on liquidation. There are five shareholders, each of whom received Rs. 2,60,000 from the liquidator in full settlement. Being Company Secretary of Company, throw light on the various issues and advice the shareholders and company about their liability to Income tax.

(6 Marks)

Question No. 7

(a) Shiva is earning a salary of Rs. 40,000 per month from Pranshul Ltd. He is given an option by his employer either to take house rent allowance or a rent free accommodation which is owned by the company. The HRA payable was Rs. 7,000 per month. The rent for the hired accommodation was Rs. 6,000 p.m. at New Delhi. Advice Shiva whether it would be beneficial for him to avail HRA or Rent Free Accommodation. Give your advice on the basis of "Net Take Home Cash benefits". Assume Shiva does not opt for the provision of section 115 BAC of the Income tax Act, 1961.

(6 Marks)

(b) Rama aged 65 years is Karta of his HUF, which consists of himself, his wife and two sons viz., C of 28 years and Minor D aged 16 years. The HUF is assessed to income tax and has business income from the year 2010-11 onwards. The business income of HUF for the year ended 31st March, 2022 is Rs. 5,00,000. Rama is employed in a private company and his salary income for the same period is Rs. 6,10,000 (computed).

You are required to answer the following treating each of them as independent situations:

(i) C gave cash gift of Rs. 1,00,000 to the HUF of Rama. What would be the total income of HUF?

(ii) The HUF has one house property fetching rent of Rs. 10,000 per month and some movable assets. There is a proposal to make a partial partition of HUF by allotting the house property to C on 1st July, 2021. Is it advisable to do a partial partition? In whose hand the rental income is taxable after the partial partition of HUF.

(iii) A car owned personally by Rama was blended with HUF during the year. It was leased out for a monthly rent of Rs. 10,000 from 1st October, 2021. How would this income be taxed ?

(2 Marks each = 6 Marks)

Question No. 8

(a) An enterprise engaged in the business of manufacturing of steel balls discontinued its activities and decided to lease out its factory building, plant and machinery and furniture from 1st April, 2021 on a consolidated lease rent of Rs. 50,000 p.m.

Following information is supplied for the previous year 2021-22:

(i) Brokerage paid on hundi loan taken Rs. 2,000

(ii) Interest received on deposits Rs. 1,00,000

(iii) Interest paid on hundi and other loans which were given as deposits on interest to others Rs. 75,000

(iv) Expenses incurred on repairs of building, plant and machinery Rs. 15,000

(v) Fire insurance premium of plant and machinery and furniture Rs. 12,000

(vi) Depreciation for the year Rs. 1,47,500

(vii) Legal fees paid to an advocate for drafting and registering the lease agreement Rs. 1,500

(viii) Factory licence fees paid for the year Rs. 1,000

(ix) The unabsorbed depreciation for assessment year 2021-22 is Rs. 2,75,000. The income tax return for assessment year 2021-22 is not filed before due date u/s 139(1).

(x) Interest paid in (iii) above includes an amount of Rs. 25,000 remitted to a non-resident outside India on which tax was not deducted at source.

Compute the total income of enterprises for the assessment year 2022-23.

(8 Marks)

(b) Mr. A is an employee earning salary of Rs. 30,000 per month. He filed return of income and his tax liability was nil after claiming rebate under section 87A. Later he found that he didn't disclose interest income of Rs. 60,000 on which tax was deducted by bank. The time limit to file belated return has expired. Can assessee file updated return and claim refund of tax deducted on interest?

(4 Marks)

PART II: INDIRECT TAX (GST & CUSTOMS) (40 MARKS)

Case Based Objective Type Question

Question No. 9

(i) M/s. S Consultants, located and registered under GST in Faridabad, Haryana, provided architectural services to J Ltd., located and registered under GST in Nagpur, Maharashtra, for its hotel to be constructed on land situated in Germany.

Determine the place of supply of architectural services provided by M/s. S Consultants to J Ltd.:

a) Faridabad, Haryana

b) Nagpur, Maharashtra

c) Germany

d) Either Maharashtra or Germany, at the option of the recipient

(ii) Determine the place of supply of architectural services provided by M/s. S Consultants to J Ltd., if the hotel is constructed in Mumbai, Maharashtra:

a) Faridabad, Haryana

b) Nagpur, Maharashtra

c) Germany

d) Mumbai, Maharashtra

(iii) Determine the place of supply of architectural services provided by M/s. S Consultants to J Ltd., if J Ltd. is not registered under GST the hotel is constructed in Nagpur (Maharashtra):

a) Faridabad, Haryana

b) Nagpur, Maharashtra

c) Germany

d) Either Maharashtra or Germany, at the option of the recipient

(1 x 3 =3 Marks)

Question No. 10

(i) S Ltd., is a manufacturer of bakery and confectionery products like chocolates (GST Rate 12%), cakes (GST Rate 18%) and sweets (GST Rate 28%) etc. In the month of October, 2022, S Ltd. launched a Diwali Gift pack consisting chocolates, cakes and sweets. The price of Gift pack is Rs.2,250. In October and November, 2022 the company supplied 50,000 gift packs in the market. What is the nature of supply of the Gift Pack under GST?

a) Bundled Supply

b) Composite Supply

c) Mixed Supply

d) Open Supply

(ii) The applicable GST rate on Gift Pack under GST will be _____.

a) 12%

b) 18%

c) 28%

d) 58%

(iii) If S Ltd. supplying their food products separately to different vendors then the rate of GST will be :

a) at the rate of 12% for chocolates, cakes and sweets.

b) at the rate of 18% for chocolates, cakes and sweets.

c) at the rate of 28% for chocolates, cakes and sweets.

d) at the rate of 12% for chocolates, 18% for cakes and 28% for sweets.

(1 x 3 =3 Marks)

Question No. 11

S, a practicing Company Secretary is located in Gurugram (Haryana). She has returned to India from USA. She provides the following information:

Particulars	***Amount in (Rs.)***
Value of supply of services goods in Delhi	15,00,000
Value of exempt supply of goods in Gurugram, Haryana	15,00,000
Value of exempt supply of goods in Ghaziabad, Uttar Pradesh	8,00,000

(i) S, requires registration under GST in_____

a) Delhi only

b) Gurugram, Haryana only

c) Ghaziabad, Uttar Pradesh only

d) all three States

(ii) If S, has returned to India from USA, then what is the duty free allowance allowed under the Baggage Rules, 2016?

a) Rs. 30,000

b) Rs. 50,000

c) Rs. 75,000

d) Rs. 1,00,000

(1 x 2 =2 Marks)

Descriptive Questions

Question No. 12

M/s Saaz Properties, is a registered person under GST. Its main business is renting of various immovable

properties owned by them. M/s Saaz Properties is also involved in import and export of goods. The following collections are made in the course of its business during the month of December, 2022 :

Particulars	*Amount (Rs.)*
(i) Building let to a multiplex	5,00,000
(ii) Premises let to a Save the smile a Charitable trust	45,000
(iii) Land let for use by Indian Asian Circus	90,000
(iv) Houses let to individuals for Residential purposes	2,00,000
(v) Vacant land let used for Agriculture purposes	40,000
(vi) Land given on lease to T Ltd. for construction of a commercial complex	10,00,000
(vii) Building let to a Professional course coaching centre	45,000
(viii) Building let to a Resort and Spa	15,00,000

You are required to calculate the GST payable by M/s Saaz Properties (GST rate applicable is 18%).

M/s Saaz, properties also wants to know which charges are levied by the port authorities if goods are not cleared within 3 days of unloading.

(8 Marks)

Question No. 13

(a) M/s ABC, is a Garments manufacturer registered under GST. It received a Government order for making Garments for Different arm forces (exempted from GST under a special notification by the Government of India) for which it procured fabric separately. To execute the work M/s ABC also procured buttons, threads, collars and lining materials which are also used for the production of other goods in the factory, Input Tax Credit available in respect of thread, buttons and collars for the month of December, 2022 was Rs. 50,000, Rs. 90,000 and Rs. 1,00,000 respectively and the taxable and exempted supplies during the month were Rs. 20 lacs and Rs. 2 lacs respectively. Calculate the eligible ITC that can be availed by M/s ABC, for the month of December, 2022 in respect of thread, buttons and collars.

(6 Marks)

(b) Mention the due date/maximum time allowed for the following :

(i) Issue of orders under section 74(10) of the Central Goods & Services Tax Act, 2017.

(ii) Withdrawal period for application for advance ruling under Customs Act, 1962.

(iii) Time of supply of goods when :

- A supplied goods to S on 15th December, 2022 for 11,800 taxable @ 18% GST.
- GST rate reduced to 12% on 20th December, 2022.
- S made payment to A on 25th December, 2022.

(2 Marks each = 6 Marks)

Question No. 14

(a) S Pvt. Ltd., a company engaged in the manufacturing of auto parts and spares having registered office and factory located at Udaipur has got itself registered under the composition scheme for the purpose of tax under GST. Company furnishes the following information/details and of the total

value of supplies including inward supplies taxed under reverse charge basis for the financial year 2022-23:

Particulars	*Amount (Rs.)*
Intra-state supplies of auto spares 'V' units chargeable to GST @12%	38,00,000
Intra-state supplies of auto spares 'X' chargeable to GST @ 5%	32,00,000
Inward supplies on which tax payable under Reverse Charge having GST rate of 18%	10,60,000
Intra-state supplies wholly exempt under section 11 of CGST Act, 2017	17,40,000

Determine the tax liability of S Pvt. Ltd. payable under composition and the gross total tax liability for the Financial year 2022-23.

(6 Marks)

(b) Daisy Ltd., of Delhi, engaged in various activities has provided the following services in the month of December 2022, of which values are being listed against each.

(i) Service of interior decoration in respect of immovable property located in Jammu Rs.15 lacs.

(ii) Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney which is a fixed establishment of the Indian Hotel Chain for Rs.5 Lacs.

(iii) Freight-forwarding services : Rs.12 lacs profit earned on buying and selling cargo space on airlines for export of goods. In some other cases, commission of Rs. 3 lacs earned from airlines on acting as intermediary in arranging cargo space on airlines for export of goods.

(iv) Online information and database access and retrieval services provided to clients in US : Rs. 10 lacs.

All the values given here in above are exclusive of taxes, cess & GST. You are required to compute the value of taxable supplies for the purpose of GST liabilities by giving the reason in brief in the context of provision of CGST Act, 20l7.

(6 Marks)