Income Tax Amendments for Nov'22

◈ Ch:- Capital Gains

1) **Unit Linked Insurance Policies:-**
All the provisions related to ULIP have been removed from CA Inter Syllabus and restricted to only CA Final level.

Hence, the provisions related to ULIP discussed u/s 2(14), 45(1B), 112A, 10(10D) shall be IGNORED.

◈ Ch:- Return of Income

1) **Requirement of filing ROI u/s 139(1) by certain persons, when the quantum of prescribed transactions exceed the prescribed monetary threshold:-** [Notification No.37/2022 dated 21.04.2022]
Clause (iv) to seventh proviso of section 139(1) provides that a "person (OTHER THAN a company or a firm)" who is NOT required to furnish a return u/s 139(1) has to furnish return on or before the due date **IF** the person fulfills such other conditions as may be **PRESCRIBED**.

Rule 12AB has been inserted vide this notification to prescribe the following OTHER conditions for furnishing return u/s 139(1).

Accordingly, the persons referred to in column (1) of the table below have to furnish their return u/s 139(1), in cases where the AMOUNT of prescribed transaction referred to in column (2) EXCEEDs (> or ≥, as the case may be) the PRESCRIBED monetary threshold in the corresponding row of column (3) of the table below:-

Case (1)	Prescribed Transaction (2)	Prescribed Monetary Limit (3)
A person carrying on BUSINESS	His Total sales, turnover or gross receipts, as the case may be, in the business	**MORE THAN** 60 Lacs during the relevant PY
A person carrying on PROFESSION	His Total gross receipts in profession	**MORE THAN** 10 Lacs during the relevant PY
Any person	The aggregate of TDS & TCS in his case	Rs. 25k **OR MORE** during the relevant PY (50k in case of Resident Citizen of age 60 or more during the PY)
A person having SAVINGS bank account(s)	The deposit in one or more SAVINGS bank account of the person, in AGGREGATE	Rs. 50 Lacs **OR MORE** during the relevant PY

2) **Fee for subsequent intimation of Aadhaar:-** [Notification No. 17/ 2022 dated 23.03.2022]

A) Under Section 234H, where a person, who is REQUIRED to intimate his Aadhar Number u/s 139AA(2), FAILS to do so on or before the NOTIFIED DATE i.e., 31st March, 2022, he would be liable to pay such FEE, as may be **PRESCRIBED**, AT the time of making intimation under section 139AA(2) AFTER 31st March, 2022. However, such fee shall NOT EXCEED Rs. 1,000.

B) As per section 139AA(2), every person who has been allotted PAN as on 1st July, 2017 and eligible to obtain Aadhar Number, is REQUIRED to intimate his Aadhaar number to the prescribed authority in the prescribed form and manner.

C) Accordingly, the CBDT has, vide notification no. 17/2022 dated 29.3.2022, **inserted Rule 114(5A)** to provide that if such person fails to do so BY the date notified in section 139AA(2) i.e., 31st March,

2022, then, AT the time of **SUBSEQUENT** intimation of his Aadhaar number to the prescribed authority, such person would be liable to pay, by way of FEE, an amount equal to:-

i) Rs. 500, in a case where such intimation is made WITHIN three months from the date referred in section 139AA(2) i.e., by 30.06.2022; AND

ii) Rs. 1,000, in all OTHER cases.

3) **Clarification with respect to relaxation of provisions of Rule 114AAA prescribing the manner of making PAN inoperative:-** [Circular No. 7/2022 dated 30.03.2022 read with Notification No. 17/ 2022 dated 23.03.2022]

A) Section 139AA(2) makes it MANDATORY for every person who has been allotted a PAN as on 1st July, 2017 to intimate his Aadhaar Number so that the Aadhaar and PAN can be LINKED. This is required to be done on or before a notified date, failing which the PAN would become INOPERATIVE.

B) Accordingly, in case of FAILURE to intimate the Aadhaar Number by 31.03.2022, the PAN allotted to the person would be made INOPERATIVE.

C) Further, section 234H provides that where a person who is required to intimate his Aadhaar under section 139AA(2) fails to do so on or before a notified date, he would be liable to pay a FEE not exceeding Rs. 1,000, as may be prescribed, at the time of making intimation under section 139AA(2) after the said date.

D) Further, **Rule 114AAA** provides that if PAN of a person has become inoperative, he will NOT be able to furnish, intimate or quote his PAN and would be liable to all the consequences under the Act for such failure. This will have a number of implications SUCH AS:-

i) The person would not be able to FILE return using the inoperative PAN;

ii) Pending returns will not be PROCESSED;

iii) Pending REFUNDS cannot be issued to inoperative PANs;

iv) Pending PROCEEDINGS as in the case of defective returns cannot be completed once the PAN is inoperative;

v) Tax will be required to be deducted at a HIGHER RATE as PAN becomes inoperative.

E) IN ADDITION to the above, the tax payer might face difficulty at various other places like banks and other financial portals, as PAN is one of the important KYC criterion for all kinds of financial transactions.

F) As per Rule 114AAA**(2)**, where a person, whose PAN has become inoperative under Rule 114AAA(1), is required to furnish, intimate or quote his PAN, it would be DEEMED that he has NOT furnished, intimated or quoted the PAN, as the case may be, in accordance with the provisions of the Act. Consequently, he would be liable for all the consequences under the Act for NOT furnishing, intimating or quoting the PAN.

G) In order to have smooth application of section 234H and existing rule 114AAA, it is **CLARIFIED** that the impact of Rule 114AAA(2) would come into effect from **1st April, 2023**(not 2022); and the period from 1st April, 2022 to 31st March, 2023, would be the period during which Rule 114AAA**(2)** WOULD not have its negative consequences.

However, the tax payer would be liable to pay a FEE in accordance with section 234H read with Rule 114(5A).

◈ Ch:- TDS, TCS & Advance Tax

1) **Guidelines u/s 194-O, 194Q and 206C(1-I):-** [Circular No. 20/2021 dated 25.11.2021]
Treatment of tax deduction on **GST** component included in the invoice has been clarified vide CBDT Circular No. 13/2021. THIS circular gives clarification in case of purchase of goods which are NOT covered within the purview of GST, but which are subject to **VAT/Sales tax/Excise duty/CST**.

IF	THEN
1) Tax is deducted at the time of **CREDIT** of amount in the account of seller; AND 2) In terms of the agreement or contract between the buyer and the seller, the component of "**VAT/Sales Tax/Excise Duty/CST**" comprised in the "amount payable to the seller" is INDICATED SEPARATELY.	TDS is deductible u/s 194Q on "amount credited" **WITHOUT** including such "VAT/Sales Tax/Excise Duty/CST" component.
Tax is deducted on **PAYMENT** basis because the payment is EARLIER THAN the credit.	TDS is deductible u/s 194Q on "amount paid or payable" **INCLUDING** such "VAT/Sales Tax/Excise Duty/CST" component (Since it is not possible to identify that payment with GST component of the amount to be invoiced in future)

Treatment in case of Purchase Returns is going to be as follows:-

IF	THEN
1) Goods are sold and TDS u/s 194Q is deducted on EARLIER of Payment/Credit; 2) The said goods are returned; AND 3) Money is **REFUNDED** to the buyer.	TDS so deducted on sales can be ADJUSTED against the next purchase against the SAME Seller (i.e. TDS not required to be deducted on next sales PROVIDED the TDS Deductible Amount comes out to be the same)
1) Goods are sold and TDS u/s 194Q is deducted on EARLIER of Payment/Credit; 2) The said goods are returned; AND 3) The buyer is given **NEW Goods** in replacement of returned goods.	No adjustment is required

2) **Applicability of section 194Q in cases where exemption has been provided under section 206C(1A):-**

A) Section 194Q does NOT apply in respect of transactions where tax is collectible u/s 206C [EXCEPT sale of goods under section 206C**(1H)**].

B) Section 206C(1H) requires to collect tax at source in respect of sale of "goods OTHER THAN goods which have been covered u/s 206C(1)/ (1F)/(1G)".

C) In accordance with section 206C(1A), tax is NOT required to be collected in the case of a RESIDENT Buyer who furnishes DECLARATION to the effect that the goods u/s 206C**(1)** are to be UTILISED

FOR the purposes of "manufacturing, processing or producing articles or things **OR** for the purposes of generation of power" and NOT for "trading purposes".

D) In case of goods which are covered u/s 206C(1) but EXEMPTED u/s 206C(1A), tax would NOT be collectible u/s 206C(1)/(1H).

E) It is clarified that the provisions of section 194Q **will apply** in SUCH cases covered under section 206C**(1A)** and the buyer is to be liable to deduct tax u/s 194Q, **IF** the conditions specified therein are fulfilled.

3) **Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation:-**

A) To be considered as a "Buyer" for the purposes of 194Q, such person should be:-

i) carrying out a business/commercial activity; AND

ii) having total sales, gross receipts or turnover from SUCH business/commercial activity of MORE THAN Rs. 10 crore during the FY immediately PRECEDING the "FY in which goods are being purchased by such person".

B) Accordingly, the following clarifications were given:-

i) Can Department of Government be a "Buyer" for the purposes of section 194Q?:-
Yes, but ONLY IF "it is carrying on business or commercial activity" and also "satisfies OTHER conditions mentioned u/s 194Q for being a Buyer(Like having 10 Cr+ Turnover in Preceding FY)".

ii) Can Department of Central/State Government be considered as "Seller" for the purpose of section 194Q?
No. Hence, for PURCHASES made BY department, no one should deduct TDS u/s 194Q.

Note:- A "Public sector Undertaking" OR "corporation established under Central or State Act" OR "any other SUCH body, authority or entity", would, however, be REQUIRED TO COMPLY with the provisions of section 194Q and tax shall be deducted accordingly.

4) **Non-applicability of provisions of section 206C(1G) to a non-resident individual visiting India:-**
[Notification No. 20/2022 dated 30.03.2022]

A) Tax is collectible u/s 206C(1G) by:-

i) an authorised dealer who receives amount under LRS of RBI **for** overseas remittance **from** a buyer, being a person remitting such amount OUT OF India; AND

ii) a seller of an Overseas Tour Package who receives any amount from the buyer who purchases the package.

B) However, TCS u/s 206C(1G) would **NOT** be applicable, **IF** the buyer is an individual who:-

i) is NOT a resident in India [in terms of section 6(1) **and** (1A)]; AND

ii) who is VISITING India.