P3A INCOME TAX [CONCEPT BOOK]

[Updated with Finance Act 2022]

[Covered All Amendments up to 30TH April 2023]

[Relevant for May 2024 Exam Onwards]

1. BASICS OF INCOME TAX

Part 1	**Basic Introduction about Income tax, Finance Act and Charging Section**
Part 2	**Definitions, Concept of P.Y. and A.Y.**
Part 3	**Rates of Tax [Normal Rates of Tax, Special Rates of Tax, Surcharge, Marginal Relief and 87A Rebate]**
Part 4	**Special Issues**

PART 1 – INTRODUCTION

A. MEANING OF TAX

Taxes are levied by the Governments to meet the common welfare expenditure of the society. The reason for levy of taxes is that they constitute the basic source of revenue to the Government. Revenue so raised is utilized for meeting the expenses of Government like defence, provision of education, health-care, infrastructure facilities like roads, dams etc.

There are 2 types of taxes:

1. **DIRECT TAXES:** If tax is levied directly on the income or wealth of a person, then, it is a direct tax. The person who pays the tax to the Government cannot recover it from somebody else i.e., the burden of a direct tax cannot be shifted. e.g., Income-tax.
2. **INDIRECT TAXES:** If tax is levied on the price of a good or service, then, it is an indirect tax e.g., Goods and Services Tax (GST) or Custom Duty. In the case of indirect taxes, the person paying the tax passes on the incidence to another person.

B. CONSTITUTIONAL POWERS TO LEVY TAXES

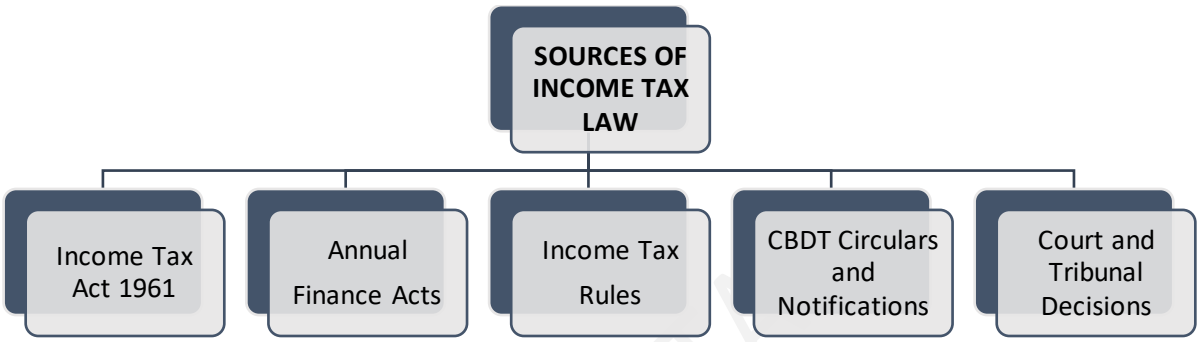
1. **Article 265:** As per Article 265, *"No tax shall be levied or collected except by authority of law."* Accordingly for levy of any tax, a law needs to be framed by the government. The Constitution gives the power to levy and collect taxes, whether direct or indirect, to the Central and State Government.
2. **Article 246:** The Parliament and State Legislatures are empowered to make laws on the matters enumerated in the 7th Schedule by virtue of Article 246 of the Constitution of India.
3. **7th Schedule to Article 246** contains 3 lists which list outs the matters under which the Parliament and the State Legislatures have the authority to make laws for the purpose of levy of taxes.
4. The following are the lists:
    a. **Union List:** Parliament has the exclusive power to make laws on the matters contained in Union List.
    b. **State List:** The Legislatures of any State has the exclusive power to make laws on the matters contained in the State List.
    c. **Concurrent List:** Both Parliament and State Legislatures have the power to make laws on the matters contained in the Concurrent list.

ENTRY 82 OF THE UNION LIST

List I in the 7th Schedule to Article 246 of the Constitution of India has given the power to the Parliament to make laws on:

Taxes on income other than agricultural income.

C. OVERVIEW OF INCOME TAX LAW



1. **INCOME-TAX ACT, 1961:** The levy of income-tax in India is governed by the Income-tax Act, 1961.
   - **a.** It extends to the whole of India.
   - **b.** It came into force on 1st April, 1962.
   - **c.** It contains sections 1 to 298 and schedules I to XIV.

1. **Sub section and Clauses:** A section may have sub-sections or clauses and sub-clauses.
   a. **Clause:** When each part of the section is independent of each other and one is not related with other, such parts are called a "Clause".
   b. **Sub Section:** "Sub section" refers to such parts of a section where each part is related with other and all sub sections taken together completes the concept propounded in that section.
   c. **Examples:**
      i. The clauses of section 2 define the meaning of terms used in the Income-tax Act, 1961. Clause (1A) defines "agricultural income", clause (1B) defines "amalgamation" and so on. Each one of them is independent of other clause of the same section.
      ii. Likewise, the clauses of section 10 contain the exemptions in respect of certain income, like clause (1) provides for exemption of agricultural income and clause (2) provides for exemption of share income of a member of a Hindu Undivided Family and so on.

iii. Section 5 defining the scope of total income has two subsections (1) and (2). Sub-section (1) defines the scope of total income of a resident and sub-section (2) defines the scope of total income of a non-resident. Each sub section is related with the other in the sense that only when one reads them all, one gets the complete idea related with scope of total income.

2. **Provisos and Explanation:** A section may also have **Provisos and Explanations.**
   a. **Proviso:** The Proviso(s) to a section/sub-section/clause spells out the exception(s)/condition(s) to the provision contained in the respective section/sub-section/clause, i.e., the proviso spells out the cases where the provision contained in the respective section/sub-section/clause would not apply or where the provision would apply with certain modification.
   b. **Explanation:** The Explanation to a section/sub-section/clause gives a clarification relating to the provision contained in the respective section/sub-section/clause.
   c. **Examples:**
      i. Sections 80GGB and 80GGC provides for deduction from gross total income in respect of contributions made by companies and other persons, respectively, to political parties or an electoral trust.
      ii. The proviso to sections 80GGB and 80GGC provides that no deduction shall be allowed under those sections in respect of any sum contributed by cash to political parties or an electoral trust. Thus, the provisos to these sections spell out the circumstance when deduction would not be available thereunder in respect of contributions made.

The Explanation below section 80GGC provides that for the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951. Thus, the Explanation clarifies that the political party has to be a registered political party.

[Direct Question – 3 / 4 Marks]

2. **THE FINANCE ACT**: [Direct Question – 3 / 4 Marks]
   d. The Income-tax Act, 1961 undergoes change every year with additions and substitutions brought in by the Annual Finance Act passed by Parliament. Sometimes, the Income-tax Act, 1961 is also amended through other legislations like Taxation Laws (Amendment) Act.
   e. Every year, the Finance Minister of the Government of India introduces the Finance Bill in the Parliament's Budget Session. When the Finance Bill is passed by both the houses of the Parliament and gets the assent of the President, it becomes the Finance Act. Amendments are made every year to the Income-tax Act, 1961 and other tax laws by the Finance Act.
   f. The 1st Schedule to the Finance Act contains 4 parts which specify the rates of tax:

i. **Part I – Rates of Income Tax:** Part 1 of the 1st Schedule to the Finance Act specifies the rates of tax applicable for the current Assessment Year. Accordingly, Part I of the First Schedule to the Finance Act, 2022 specifies the rates of tax for A.Y. 2022-23.
ii. **Part II – Rates of TDS:** Part 2 specifies the rates at which tax is deductible at source for the current Financial Year. Accordingly, Part II of the First Schedule to the Finance Act, 2022 specifies the rates at which tax is deductible at source for F.Y. 2022-23
iii. **Part III – Salaries and Advance Tax:** Part III gives the rates for calculating income-tax for deducting tax from income chargeable under the head "Salaries" and computation of advance tax for F.Y. 2022-23.
iv. **Part IV** gives the rules for computing net agricultural income.

Note: Part III of the 1st Schedule to the Finance Act, 2022 will become Part I of the First Schedule to the Finance Act, 2023 and so on.

3. **INCOME-TAX RULES, 1962:** The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT).
   a. The CBDT is empowered to make rules for carrying out the purposes of the Act. For the proper administration of the Income-tax Act, 1961, the CBDT frames rules from time to time. These rules are collectively called **Income-tax Rules, 1962.**
   b. Rules also have sub-rules, provisos and Explanations. The proviso to a Rule/Sub-rule spells out the exception to the limits, conditions, guidelines, basis of valuation, as the case may be, spelt out in the Rule/Sub-rule. The Explanation gives clarification for the purposes of the Rule.
   c. It is important to keep in mind that along with the Income-tax Act, 1961, these rules should also be studied.

4. **CIRCULARS AND NOTIFICATIONS:** [Direct Question – 3 / 4 Marks]
   a. **Circulars:**
      i. Circulars are issued by the CBDT from time to time to deal with certain specific problems and to clarify doubts regarding the scope and meaning of certain provisions of the Act.
      ii. Circulars are issued for the guidance of the officers and/or assessees.
      iii. The department is bound by the circulars. While such circulars are **not binding on the assessees**, they can take advantage of beneficial circulars.

      [Relevant for MCQ]

   b. **Notifications:** Notifications are issued by the Central Government to give effect to the provisions of the Act. The CBDT is also empowered to make and amend rules for the purposes of the Act by issue of notifications which are **binding on both department and assessees**.

[Relevant for MCQ]

5. **CASE LAWS:**
   a. Case Laws refer to decision given by courts. The study of case laws is an important and unavoidable part of the study of Income-tax law. It is not possible for Parliament to conceive and provide for all possible issues that may arise in the implementation of any Act. Hence the judiciary will hear the disputes between the assessees and the department and give decisions on various issues.
   b. The Supreme Court is the Apex Court of the Country and the law laid down by the Supreme Court is the law of the land. The decisions given by various High Courts will apply in the respective states in which such High Courts have jurisdiction.

[Relevant for MCQ]

D. CHARGING SECTION TO INCOME TAX [Sec. 4]

Income tax is a tax levied on the total income of the previous year of every person.

Note: A person includes an individual, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI), a firm, a company etc.

Snap Shot of Charging Section as per Income tax Act, 1961 As amended by Finance Act 2022

CHAPTER II
BASIS OF CHARGE

Charge of income-tax.

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :

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.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

Points to be Noted:

1. Tax shall be charged at the rates prescribed for the year by the Annual Finance Act or the Income-tax Act, 1961 or both.
2. The charge is on every person specified under section 2(31).
3. Tax is chargeable on the total income earned during the previous year and not the assessment year. (There are certain exceptions provided by sections 172, 174, 174A, 175 and 176);
4. Tax shall be levied in accordance with and subject to the various provisions contained in the Act.

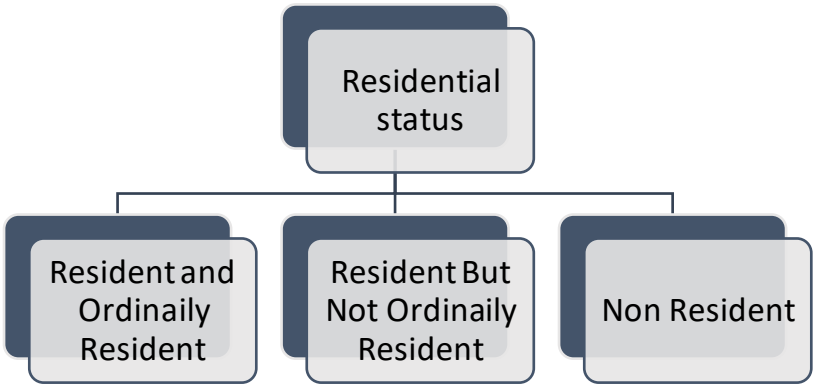
E. COMPUTATION OF TOTAL INCOME AND TAX PAYABLE

Income-tax is levied on an assessee's total income. Such total income has to be computed as per the provisions contained in the Income-tax Act, 1961.

Let us go step by step to understand the procedure for computation of total income of an individual for the purpose of levy of income tax.

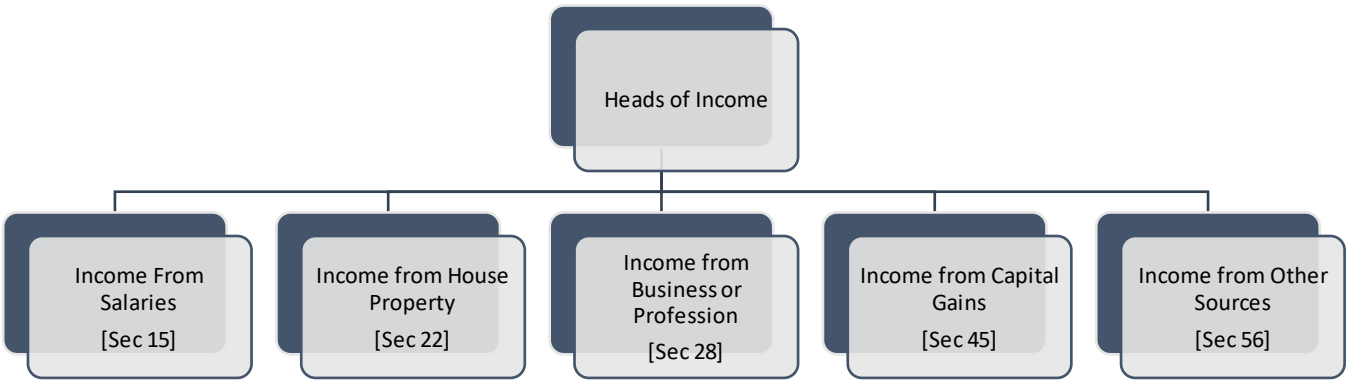
Step 1: Determination of residential status:

The residential status of a person has to be determined to ascertain which income is to be included in computing the total income. The residential status as per the Income-tax Act, 1961 can be classified as under:



Step 2: Classification of income under different heads

a. A person may earn income from different sources. For example, a salaried person earns income by way of salary. He also gets interest from bank savings account/fixed deposit. Apart from this, if he has invested in shares, he would be getting dividend and when he sells these shares, he may earn profit on such sale. If he owns a residential property which he has let out, he would earn rental income.
b. Under the Income-tax Act, 1961, for computation of total income, all income of a tax payer is classified into 5 different heads of income.
c. There is a charging section under each head of income which defines the scope of income chargeable under that head. These heads of income exhaust all possible types of income that can accrue to or be received by the tax payer.
d. These are shown below:



Step 3: Computation of income under each head

Step 4: Clubbing of income of spouse, minor child etc.

Step 5: Set-off or carry forward and set-off of losses

Step 6: Computation of Gross Total Income

The final figures of income or loss under each head of income, after allowing the deductions, allowances and other adjustments, are then aggregated, after giving effect to the provisions for clubbing of income and set-off and carry forward of losses, to arrive at the gross total income.

Step 7: Deductions under Chapter VIA from Gross Total Income

Step 8: Total income

1. The income arrived at, after claiming the above deductions from the Gross Total Income is known as the Total Income.
2. It should be rounded off to the nearest multiple of ₹ 10 as per section 288A. The process of computation of total income is shown hereunder.

Step 9: Application of the rates of tax on the total income to compute Basic Tax:

1. The rates of tax for the different classes of assessees are prescribed by the Annual Finance Act.
2. For individuals, HUF etc., there is a slab rate and basic exemption limit. At present, the basic exemption limit is ₹ 2,50,000 for individuals. This means that no tax is payable by individuals with total income of up to ₹ 2,50,000.
3. However, section 115BAC provides an option for concessional slab rates to individual and HUF subject to certain conditions, which have been discussed later on in this chapter.
4. The tax rates have to be applied on the total income to arrive at the income-tax liability.
5. For certain special Income (like Long Term Capital Gains, Lottery Income, Specified Short Term Capital Gains etc.), slab rates are not applicable. These incomes are taxable at special rates of taxation.
6. While slab rates are given in Annual Finance Act, special rates are contained in the Income-tax Act itself.

Step 10: Surcharge / Rebate under section 87A

1. **Surcharge:** Surcharge is an additional tax payable over and above the income tax. Surcharge is levied as a percentage of income-tax, where total income exceeds ₹ 50 lakhs.
2. **Rebate under section 87A:** In order to provide tax relief to the individual tax payers who are in the 5% tax slab, section 87A provides a rebate from the tax payable by an assessee, being an individual resident in India, whose total income **does not exceed ₹ 5,00,000.** The rebate shall be:
    a. An amount of income - tax payable on the total income for any assessment year [Basic Tax as computed] **or**
    b. an amount of ₹12,500

    whichever is **Less**.

Step 11: Health and education cess on income-tax

The income-tax, as increased by the surcharge or as reduced by the rebate under section 87A, if applicable, is to be further increased by an additional surcharge called **health and education cess** on income-tax **@4% of income-tax plus surcharge**, if applicable.

Step 12: Advance tax and tax deducted at source

1. Although the tax liability of an assessee is determined only at the end of the year, tax is required to be paid in advance in 4 instalments on the basis of estimated income i.e., on or before 15th June, 15th September, 15th December and 15th March.
2. However, residents opting for presumptive taxation scheme can pay advance tax in 1 installment on or before 15th March instead of 4 instalments.
3. In certain cases, tax is required to be deducted at source from the income by the payer at the rates prescribed in the Income-tax Act, 1961 or the Annual Finance Act.

Step 13: Tax Payable/Tax Refundable

1. After adjusting the advance tax and tax deducted at source, the assessee would arrive at the amount of net tax payable or refundable.
2. Such amount should be rounded off to the nearest multiple of ₹ 10 as per section 288B.
3. The assessee has to pay the amount of tax payable (called self-assessment tax) on or before the due date of filing of the return. Similarly, if any refund is due, assessee will get the same after filing the return of income.

Step 14: Filing of Return of Income

1. The Income-tax Act, 1961 contains provisions for filing of return of income. Return of income is the format in which the assessee furnishes information as to his total income and tax payable. The format for filing of returns by different assessees is notified by the CBDT.
2. The particulars of income earned under different heads, gross total income, deductions from gross total income, total income and tax payable by the assessee are required to be furnished in the return of income. In short, a return of income is the declaration of income by the assessee in the prescribed format.
3. The Act has prescribed due dates for filing return of income in case of different assessees. Companies and firms have to mandatorily file their return of income before the due date.

PART 2 – IMPORTANT DEFINITIONS

CLARIFICATION:

Terms defined in the Act: Section 2 gives definitions of the various terms and expressions used therein. If a particular definition is given in the Act itself, we have to be guided by that definition. For e.g., the term 'perquisite' has been defined under section 17(2) for the purpose of taxation of salaries.

Terms not defined under the Act: If a particular definition is not given in the Act, reference can be made to the General Clauses Act or dictionaries. Students should note this point carefully because certain terms like "dividend", "transfer", etc. have been given a wider meaning in the Income-tax Act, 1961 than they are commonly understood.

CONCEPT OF PREVIOUS YEAR AND ASSESSMENT YEAR

ASSESSMENT YEAR [Section 2(9)]:

1. This means a period of 12 months commencing on 1st April every year.
2. The year in which income is earned is the previous year and such income is taxable in the immediately following year which is the assessment year. Income earned in the previous year 2022-23 is taxable in the assessment year 2023-24.

PREVIOUS YEAR [Section 3]:

1. It means the financial year immediately preceding the assessment year. As mentioned earlier, the income earned during the previous year is taxable in the assessment year.
2. If a source of income comes into existence in the said financial year, then, the previous year will commence from the date on which the source of income newly comes into existence and will end with 31st March of the financial year.

Example: A is running a business from 1993 onwards. Determine the previous year for the assessment year 2023-24.

Ans. The previous year will be 1.4.2022 to 31.3.2023.

Example: A chartered accountant sets up his profession on 1st July, 2022. Determine the previous year for the assessment year 2023-24.

Ans. The previous year will be from 1.7.2022 to 31.3.2023.

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
vi. 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.

ASSESSEE [Section 2(7)]:

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

1. Every person in respect of whom any proceeding under this Act has been taken for the assessment of
    a. his income; or
    b. the income of any other person in respect of which he is assessable or
    c. the loss sustained by him or by such other person or
    d. the amount of refund due to him or to such other person.
2. Every person who is deemed to be an assessee under any provision of this Act.
3. Every person who is deemed to be an assessee-in-default under any provision of this Act.

ASSESSMENT [Section 2(8)]:

This is the procedure by which the income of an assessee is determined. It may be by way of a normal assessment or by way of reassessment of an income previously assessed.

PERSON [Section 2(31)]: Includes:

1. an individual,
2. a Hindu undivided family,
3. a company,
4. a firm,
5. an association of persons or a body of individuals, whether incorporated or not,
6. a local authority, and
7. every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation: For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains.

Detailed Explanation of the above Terms: [Not Imp from Exam View Point]

INDIVIDUAL

1. The term 'individual' means only a natural person, i.e., a human being.
2. It includes both males and females.
3. It also includes a minor or a person of unsound mind. But the assessment in such a case may be made on the guardian or manager of the minor or lunatic who is entitled to receive his income. In the case of deceased person, assessment would be made on the legal representative.

HUF

1. "Hindu undivided family" has not been defined under the Income-tax Act.
2. The expression is, however, defined under the Hindu Law as a family, which consists of all males lineally descended from a common ancestor and includes their wives and daughters.
3. Some members of the HUF are called co-parceners. They are related to each other and to the head of the family [Called as Karta].
4. A Hindu Coparcenary includes those persons who acquire an interest in joint family property by birth.
5. Earlier, only male descendants were considered as coparceners. With effect from 6th September, 2005, daughters have also been accorded coparcenary status. It may be noted that only the coparceners have a right to partition.
6. A daughter of coparcener by birth shall become a coparcener in her own right in the same manner as the son. Being a coparcener, she can claim partition of assets of the family. The rights of a daughter in coparcenary property are equal to that of a son. However, other female members of the family, for example, wife or daughter-in-law of a coparcener are not eligible for such coparcenary rights.
7. Under section 161(1) The relation of a HUF does not arise from a contract but arises from status. There need not be more than one male member or one female coparcener w.e.f. 6th September, 2005 to form a HUF.
8. The Income-tax Act, 1961 also does not indicate that a HUF as an assessable entity must consist of at least 2 male members or two coparceners.
9. Under the Income-tax Act, 1961, Jain undivided families and Sikh undivided families would also be assessed as a HUF.
10. School of Hindu Law:
    a. Dayabaga School [West Bengal and Assam]
    b. Mitakshara School [Rest of India]

Dayabaga school of Hindu law	Mitakshara school of Hindu law

Prevalent in West Bengal and Assam	Prevalent in rest of India
• Nobody acquires the right, share in the property by birth as long as the head of family is living. • Thus, the children do not acquire any right, share in the family property, as long as his father is alive and only on death of the father, the children will acquire right/share in the property. • Hence, the father and his brothers would be the coparceners of the HUF	• One acquires the right to the family property by his birth and not by succession irrespective of the fact that his elders are living. • Thus, every child born in the family acquires a right/share in the family property.

COMPANY [Section 2(17)]

For all purposes of the Act, the term 'Company', has a much wider connotation than that under the Companies Act. Under the Act, the expression 'Company' means:

1. any Indian company as defined in section 2(26) or
2. any body corporate incorporated by or under the laws of a country outside India, i.e., any foreign company or
3. any institution, association or body which is assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 or for any assessment year commencing on or before 1.4.1970 under the present Act or
4. any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by a general or special order of the CBDT to be a company for such assessment years as may be specified in the CBDT's order.

DOMESTIC COMPANY [Section 2(22A)]

It means an Indian company or any other company which, in respect of its income liable to income-tax, has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, payable out of such income.

INDIAN COMPANY [Section 2(26)]

2 conditions should be satisfied so that a company can be regarded as an Indian company:

1. the company should have been formed and registered under the Companies Act, 1956 / 2013 and
2. the registered office or the principal office of the company should be in India.

The expression 'Indian Company' also includes the following provided their registered or principal office is in India:

i. a corporation established by or under a Central, State or Provincial Act (like Financial Corporation or a State Road Transport Corporation);
ii. an institution or association or body which is declared by the Board to be a company under section 2(17)(iv);

iii. a company formed and registered under any law relating to companies which was or is in force in any part of India [other than Jammu and Kashmir and Union territories mentioned in sub-clause (v) below];

iv. in the case of Jammu and Kashmir, a company formed and registered under any law for the time being in force in Jammu and Kashmir;

v. in the case of any of the Union territories of Dadra and Nagar Haveli, Daman and Diu, and Pondicherry or State of Goa, a company formed and registered under any law for the time being in force in that Union territory or State, respectively.

FOREIGN COMPANY [Section 2(23A)]

Foreign company means a company which is not a domestic company.

FIRM [Section 2(23)]

1. The terms 'firm', 'partner' and 'partnership' have the same meanings as assigned to them in the Indian Partnership Act, 1932.
2. In addition, the definitions also include the terms limited liability partnership and a partner of limited liability partnership as they have been defined in the Limited Liability Partnership Act, 2008.
3. However, for income-tax purposes a minor admitted to the benefits of an existing partnership would also be treated as partner.

ASSOCIATION OF PERSONS (AOP)

1. When persons combine together for promotion of joint enterprise, they are assessable as an AOP, if they do not in law constitute a partnership.
2. In order to constitute an association, persons must join for a **common purpose or action** and their object must be to produce income. It is not enough that the persons receive the income jointly. Co-heirs, co-legatees or co-donees joining together for a common purpose or action would be chargeable as an AOP.

For e.g., Mr. Yash, AB & Co. (Firm) and X (P) Ltd. join together to carry on construction activity otherwise than as a partnership firm, such an association will be recognized as an association of persons.

BODY OF INDIVIDUALS (BOI)

1. It denotes the status of persons like executors or trustees who merely receive the income jointly and who may be assessable in like manner and to the same extent as the beneficiaries individually. Thus, co-executors or co-trustees are assessable as a BOI as their title and interest are indivisible. Income-tax shall not be payable by an assessee in respect of the receipt of share of income by him from BOI and on which the tax has already been paid by such BOI. For e.g., mutual trade associations, members club, etc.
2. Section 2(31) further explains that an association of persons/body of individuals or a local authority or an artificial juridical person shall be treated as a person, whether or not it was formed with the object of deriving income, profits or gains. Accordingly, even if such entities

have been formed or not for earning any income/ profit still they are "person" for the purpose of the Act and are covered by the provisions of the Act.

Difference between AOP and BOI:

1. In case of a BOI, only individuals can be the members, whereas in case of AOP, any person can be its member i.e., entities like company, firm etc. can be the member of AOP but not of BOI.
2. In case of an AOP, members voluntarily come together with a common will for a common intention or purpose, whereas in case of BOI, such common will may or may not be present.

LOCAL AUTHORITY

The term means a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund.

Note: A local authority is taxable in respect of that part of its income which arises from any business carried on by it in so far as that income does not arise from the supply of a commodity or service within its own jurisdictional area. However, income arising from the supply of water and electricity even outside the local authority's own jurisdictional area is exempt from tax.

ARTIFICIAL JURIDICAL PERSONS

1. Artificial Juridical Persons are the entities which are not natural persons but are separate entities in the eyes of law.
2. This is a residual category could cover all artificial persons with a juristic personality not falling under any other category of persons.
3. Deities, Bar Council, Universities are some important examples of Artificial Juridical Persons.

INCOME [Section 2(24)]: [Not Imp from Exam View Point]

The definition of income as per the Income-tax Act, 1961 begins with the words "Income includes". Therefore, it is an inclusive definition and not an exhaustive one. Such a definition does not confine the scope of income but leaves room for more inclusions within the ambit of the term.

Section 2(24) of the Act gives a statutory definition of income. At present, the following items of receipts are specifically included in income:

1. Profits and gains.
2. Dividends.
3. **DONATIONS:** Voluntary contributions received by a trust/institution created wholly or partly for charitable or religious purposes or by certain research association or universities and other educational institutions or hospitals and other medical institutions or an electoral trust.
4. **SALARIES - PERKS:** The value of any perquisite or profit in lieu of salary taxable under section 17(2)/(3).

5. **SALARIES - OFFICE ALLOWNCES:** Any special allowance or benefit, other than the perquisite included above, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit.
6. **SALARIES - PERSONAL ALLOWANCES:** Any allowance granted to the assessee to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.
7. The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company or by a relative of the director or such person and any sum paid by any such company in respect of any obligation which, but for such payment would have been payable by the director or other person aforesaid.
8. The value of any benefit or perquisite, whether convertible into money or not, which is obtained by any representative assessee or by any beneficiary and any amount paid by the representative assessee for the benefit of the beneficiary which the beneficiary would have ordinarily been required to pay.
9. Deemed profits chargeable to tax under section 41 or section 59.
10. **PGBP:** Profits and gains of business or profession chargeable to tax under section 28.
11. **CAPITAL GAINS:** Any capital gains chargeable under section 45.
12. **PGBP – INSUANCE BUSINESS:** The profits and gains of any insurance business carried on by Mutual Insurance Company or by a cooperative society or any surplus taken to be such profits and gains by virtue of the provisions contained in the First Schedule to the Act.
13. **PGBP – BANKING BUSINESS:** The profits and gains of any banking business (including providing credit facilities) carried on by a co-operative society with its members.
14. **OTHER SOURCES:** Any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling, or betting of any form or nature whatsoever. For this purpose,
    a. "Lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
    b. "Card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;
15. **EMPLOYEE CONTRIBUTION TO WELFARE FUNDS:** Any sum received by the assessee from his employees as contributions to any provident fund (PF) or superannuation fund or Employees State Insurance Fund (ESI) or any other fund for the welfare of such employees.
16. **MATURITY UNDER KEYMAN POLICIES:** Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy will constitute income.
    "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person where the latter is or was an employee of former or is or was connected in any manner whatsoever with the former's business. It also includes such policy which has been assigned to a person with or without any consideration, at any time during the term of the policy.

17. Any sum referred to in section 28(va).
    NON COMPETE FEES: Thus, any sum, whether received or receivable in cash or kind, under an agreement for not carrying out any activity in relation to any business or profession; or not sharing any knowhow, patent, copy right, trade-mark, licence, franchise, or any other business or commercial right of a similar nature, or information or technique likely to assist in the manufacture or processing of goods or provision of services, shall be chargeable to income tax under the head "profits and gains of business or profession";
18. **PGBP:** Fair market value of inventory which is converted into, or treated as a capital asset [Section 28(iva)]
19. **OTHER SOURCES:** Any consideration received for issue of shares as exceeds the fair market value of the shares [Section 56(2)(viib)]
20. **ADVANCE FORFEITED:** Any sum of money received as advance, if such sum is forfeited consequent to failure of negotiation for transfer of a capital asset [Section 56(2)(ix)]
21. **GIFTS:** Any sum of money or value of property received without consideration or for inadequate consideration by any person [Section 56(2)(x)]
22. Any compensation or other payment, due to or received by any person, in connection with termination of his employment or the modification of the term and conditions relating thereto [Section 56(2)(xi)]
23. **GOVERNMENT GRANTS:** 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 is included in the definition of income.
    GRANTS RELATED TO DEPRECIATBLE ASSETS – NOT INCOME: However, subsidy or grant or reimbursement which has been taken into account for determination of the actual cost of the depreciable asset in accordance with Explanation 10 to section 43(1) shall not be included in the definition of income.

PART 3 – RATES OF INCOME TAX

[Normal Rates of Tax, Special Rates of Tax, Surcharge, Marginal Relief and 87A Rebate]

A. RATES OF TAX FOR A.Y. 2023 – 2024 [FINANCE ACT 2022]

[ASSESSEE SPECIFIC TAX RATES] [DIFFERENT FROM SPECIAL RATES OF TAX]

SLAB RATES FOR INDIVIDUAL/ HINDU UNDIVIDED FAMILY (HUF)/ ASSOCIATION OF PERSONS (AOP)/ BODY OF INDIVIDUALS (BOI)/ ARTIFICIAL JURIDICAL PERSON

1.	Where the total income does not exceed ₹ 2,50,000 [Basic Exemption Limit]	NIL
2.	Where the total income exceeds ₹ 2,50,000 but does not exceed ₹ 5,00,000	5% of the amount by which the total income exceeds ₹ 2,50,000
3.	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 12,500 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
4.	Where the total income exceeds ₹ 10,00,000	₹ 1,12,500 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

SLAB RATES FOR INDIVIDUAL SENIOR CITIZENS:

(BEING RESIDENT INDIVIDUALS OF THE AGE OF 60 YEARS OR MORE BUT LESS THAN 80 YEARS)

1.	Where the total income does not exceed ₹ 3,00,000 [Basic Exemption Limit]	NIL
2.	Where the total income exceeds ₹ 3,00,000 but does not exceed ₹ 5,00,000	5% of the amount by which the total income exceeds ₹ 3,00,000
3.	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 10,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
4.	Where the total income exceeds ₹ 10,00,000	₹ 1,10,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

SLAB RATES FOR INDIVIDUAL SUPER SENIOR CITIZENS / VERY SENIOUS CITIZENS:

For **Resident individuals** of the age of 80 years or more at any time during the previous year

1.	where the total income does not exceed ₹ 5,00,000	NIL
2.	where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	20% of the amount by which the total income exceeds ₹ 5,00,000

3.	where the total income exceeds ₹ 10,00,000	₹ 1,00,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

Circular No. 28/2016, dated 27-07-2016:

The CBDT has, vide this Circular, clarified 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**. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would be decided on the basis of above criteria.

Therefore, a resident individual whose 60th birthday falls on 1st April, 2023, would be treated as **having attained the age of 60 years in the P.Y.2022-23** and would be eligible for higher basic exemption limit of ₹ 3 lakh in computing his tax liability for A.Y.2023-24.

Likewise, a resident individual whose 80th birthday falls on 1st April, 2023, would be treated as having attained the age of 80 years in the P.Y.2022-23, and would be eligible for higher basic exemption limit of ₹ 5 lakh in computing his tax liability for A.Y.2023-24.

CONCESSIONAL RATES OF TAX FOR INDIVIDUALS AND HUFS [Section 115BAC]:

1. As per section 115BAC, individuals [Resident or Non Resident] and HUFs have an option to pay tax in respect of their total income (other than income chargeable to tax at special rates under Chapter XII like llong term capital gains u/s 112 or 112A, Short term capital gains u/s 111A, Casual income u/s 115BB etc.) at following concessional rates, if they do not avail certain exemptions / deductions like Leave Travel Concession, standard deduction under the head "Salaries", interest on housing loan on self- occupied property, deductions under Chapter VI-A [other than 80CCD(2) or section 80JJAA] etc.

2. **No Higher BEL for SC / SSC:** The below slabs are equally applicable for Resident Individuals who are Senior citizens and Very Senior citizens as well. Which **means under CTR they cannot avail higher BEL**.

3. **Rates of CTR:**

1.	Up to ₹ 2,50,000	Nil
2.	From ₹ 2,50,001 to ₹ 5,00,000	5%
3.	From ₹ 5,00,001 to ₹ 7,50,000	10%
4.	From ₹ 7,50,001 to ₹ 10,00,000	15%
5.	From ₹ 10,00,001 to ₹ 12,50,000	20%
6.	From ₹ 12,50,001 to ₹ 15,00,000	25%
7.	Above ₹ 15,00,000	30%

4. **No AMT:** Individuals and HUF exercising option u/s 115BAC are not liable to alternate minimum tax u/s 115JC.

(Refer Illustration 1)

TAX RATES FOR FIRMS/LLP / LOCAL AUTHORITY

30% Flat Rate of Tax on Whole of Total Income of the Firm / LLP / LOCAL AUTHORITY.

TAX RATES FOR CO-OPERATIVE SOCIETY

1.	Where the total income does not exceed ₹ 10,000	10% of the total income
2.	Where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by which the total income exceeds ₹ 10,000
3.	Where the total income exceeds ₹ 20,000	₹ 3,000 plus 30% of the amount by which the total income exceeds ₹ 20,000

Note: Co-operative society, resident in India, can opt for concessional rate of tax @25.168% (i.e., tax@22% plus surcharge@10% plus health and education cess @4%) under section 115BAD in respect of its total income computed without giving effect to deduction under section 10AA, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC, additional depreciation under section 32(1)(iia), deductions under Chapter VIA (other than section 80JJAA) etc. and set off of loss and depreciation brought forward from earlier years relating to the above deductions. The provisions of alternate minimum tax under section 115JC would not be applicable to co-operative society opting for section 115BAD.

Note: Cooperative Societies Taxation will be dealt with in detailed at Final level.

TAX RATES FOR DOMESTIC COMPANIES

1. If the total turnover or gross receipt in the P.Y.2020-21 ≤ ₹ 400 crore	Tax @ 25% of the total income
2. In any other case	Tax @ 30% of the total income

Sec 115BAB: In case of a domestic manufacturing company (set up and registered on or after 1.10.2019 and commences manufacture of article or thing* before 31.3.2024) exercising option u/s 115BAB:

Tax rate - 15% of income derived from or incidental to manufacturing or production of an article or thing

* Business of Generation of electricity

Sec 115BAA: In case of a domestic company exercising option u/s 115BAA

Tax rate - 22% of total income

Domestic company can opt for section 115BAA or section 115BAB, as the case may be, subject to certain conditions. The total income of such companies would be computed without giving effect to deductions under section 10AA, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD, Chapter VI-A (except section 80JJAA or section 80M), additional depreciation under section 32(1) (iia) etc. and without set-off of brought forward loss and unabsorbed depreciation attributable to such deductions.

These sections will be dealt with in detail at Final Level.

COMPANIES OTHER THAN DOMESTIC COMPANIES [FOREIGN COMPANIES]

Royalties and fees for rendering technical services (FTS) received from Government or an Indian concern in pursuance of an agreement, approved by the Central Government, made by the company with the Government or Indian concern between 1.4.1961 and 31.3.1976 (in case of royalties) and between 1.3.1964 and 31.3.1976 (in case of FTS)	50%
Other income	40%

B. SPECIAL RATES OF TAX ON CERTAIN INCOMES

[INCOME SPECIFIC TAX RATE IRRESPECTIVE OF TYPE OF ASSESSEE]

S. No.	Section	Income	Rate of Tax
1.	112	Long term capital gains (other than LTCG taxable as per section 112A)	20%
2.	112A	Long term capital gains on transfer of: a. Equity shares in a company b. Unit of an equity-oriented fund c. Unit of business trust Condition for availing the benefit of this concessional rate is that **securities transaction tax should have been paid**:	10% [On LTCG > ₹ 1 lakh]

In case of (Capital Asset)	Time of payment of STT
Equity shares in a company	**BOTH** at the time of acquisition and transfer
Unit of equity-oriented fund or unit of business trust	at the time of transfer

		Note: LTCG upto ₹ 1 lakh is exempt. LTCG exceeding ₹ 1 lakh is taxable @10%.	
3.	111A	Short-term capital gains on transfer of: a. Equity shares in a company b. Unit of an equity-oriented fund c. Unit of business trust The conditions for availing the benefit of this concessional rate are: 1. the transaction of sale of such equity share or unit should be entered into on or after 1.10.2004 and 2. such transaction should be **chargeable to securities transaction tax**.	15%
4.	115BB	Winnings from 1. Lotteries. 2. Crossword puzzles. 3. Races including horse races. 4. Card games and other games of any sort. 5. Gambling or betting of any form or nature	30%
5.	115BBE	Unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.	60%

UNEXPLAINED MONEY, INVESTMENTS ETC. TO ATTRACT TAX@60% [Section 115BBE]

1. In order to control laundering of unaccounted money by availing the benefit of basic exemption limit, the unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D would be taxed at the rate of 60% plus surcharge @25% of tax.
2. Thus, **the effective rate of tax** (including surcharge@25% of tax and cess@4% of tax and surcharge) **is 78%.**
3. No basic exemption or allowance or expenditure shall be allowed to the assessee under any provision of the Income-tax Act, 1961 in computing such deemed income.
4. Further, no set off of any loss shall be allowable against income brought to tax under sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

C. SURCHARGE & MARGINAL RELIEF [Tax on Tax]

The rates of surcharge applicable for A.Y.2023-24 are as follows:

INDIVIDUAL/HUF/AOP (OTHER THAN AN AOP CONSISTING OF ONLY COMPANIES AS MEMBERS) / BOI / ARTIFICIAL JURIDICAL PERSON

SURCHARGE

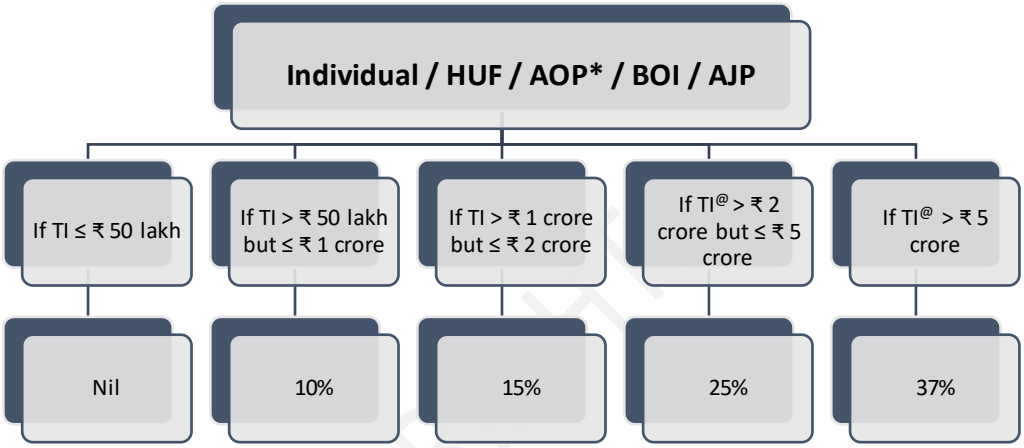
Income-tax computed in accordance with the provisions of Normal Rates of Tax or Special Rates as given under section 111A or section 112 or section 112A or section 115BAC would be increased by surcharge given under the following table:

	Particulars	Rate of surcharge on income-tax	Example	
			Components of total income	Applicable rate of Surcharge
1.	Where the total income (**Including** dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) **> ₹ 50 lakhs but ≤ ₹ 1 crore**	10%	**Example 1:**	
			• Dividend ₹ 10 lakhs. • STCG u/s 111A ₹ 20 lakhs. • LTCG u/s 112 ₹ 15 lakhs. • LTCG u/s 112A ₹ 20 lakhs and • Other income ₹ 25 lakhs	Surcharge would be levied@10% on income-tax computed on total income of ₹ 90 lakhs.
2.	Where total income (**Including** dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) **> ₹ 1 crore but ≤ ₹ 2 crore**	**15%**	**Example 2:**	
			• Dividend income ₹ 10 lakhs. • STCG u/s 111A ₹ 40 lakhs. • LTCG u/s 112 ₹ 55 lakhs • LTCG u/s 112A ₹ 35 lakhs and • Other income ₹ 50 lakhs	Surcharge would be levied@15% on income-tax computed on total income of ₹ 1.90 crores.
3.	Where total income (**Excluding** dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) **> ₹ 2 crore but ≤ ₹ 5 crore**	**25%**	**Example 3:**	
			• Dividend income ₹ 51 lakhs. • STCG u/s 111A ₹ 44 lakh. • LTCG u/s ₹ 42 lakhs. • LTCG u/s 112A ₹ 55 lakh. and	Surcharge@15% would be levied on income-tax on: • Dividend income of ₹ 51 lakhs.

	Rate of surcharge on the income-tax payable <u>on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A</u>	**Not exceeding 15%**	• **Other income ₹ 3 crores**	• STCG of ₹ 44 lakhs chargeable to tax u/s 111A. • LTCG of ₹ 42 lakhs chargeable to tax u/s 112 and • LTCG of ₹ 55 lakhs chargeable to tax u/s 112A. Surcharge@25% would be leviable on income-tax computed on other income of ₹ 3 crores included in total income
4.	Where total income (**Excluding** dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) **> ₹ 5 crore**	**37%**	**Example 4:**	
			• Dividend income ₹ 60 lakhs. • STCG u/s 111A ₹ 50 lakhs. • LTCG u/s ₹ 42 lakhs. • LTCG u/s 112A ₹ 65 lakhs and • **Other income ₹ 6 crore**	Surcharge@15% would be levied on income-tax on: • Dividend income of ₹ 60 lakhs. • STCG of ₹ 50 lakhs chargeable to tax u/s 111A. • LTCG of ₹ 42 lakhs chargeable to tax u/s 112; and • LTCG of ₹ 65 lakhs chargeable to tax u/s 112A. Surcharge@37% would be leviable on the income-tax computed on other income of ₹ 6 crores included in total income.
	Rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	**Not exceeding 15%**		
5.		**15%**	**Example 5:**	

	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) ***> ₹ 2 crore in cases not covered under (iii) and (iv) above***		• Dividend income ₹ 55 lakhs. • STCG u/s 111A ₹ 60 lakhs. • LTCG u/s ₹ 42 lakhs. • LTCG u/s 112A ₹ 55 lakhs and • **Other income ₹ 1.10 crore**	Surcharge would be levied@15% on income-tax computed on total income of ₹ 3.22 crore.

SUMMARY:



@ However, surcharge on dividend, LTCG chargeable u/s 112/112A, STCG chargeable u/s 111A **cannot exceed 15%.**

* Other than an AOP consisting of only companies as its members.

SURCHARGE FOR AOP CONSISTING OF ONLY COMPANIES AS MEMBERS

TOTAL INCOME EXEEDING 50 LAKHS BUT NOT EXCEEDING 1 CRORE:

Where the total income exceeds ₹ 50 lakhs but does not exceed ₹ 1 crore, surcharge is payable at the rate of 10% of income-tax computed at normal rates of tax AND on Incomes taxed at special rates under section 111A or section 112 or section 112A.

TOTAL INCOME EXCEEDING 1 CRORE:

Where the total income exceeds ₹ 1 crore, surcharge is payable at the rate of 15% of income-tax computed at normal rates of tax AND on Incomes taxed at special rates under section 111A or section 112 or section 112A.

MARGINAL RELIEF FOR THE ABOVE ASSESSES

The purpose of marginal relief is to ensure that the increase in amount of tax payable (including surcharge) due to increase in total income of an assessee beyond the prescribed limit should not exceed the amount of increase in total income.

Marginal relief is available in case of such persons referred to in above i.e.,

	Particulars	Marginal relief	Example
(i)	Where the total income > ₹ 50 lakhs but ≤ ₹ 1 crore	**Step 1:** Compute **Basic tax on total income** and **ADD** surcharge@10% on such Basic Tax - **(A)** **Step 2:** Compute Basic tax **on ₹ 50 lakhs** **Step 3:** Total income (-) ₹ 50 lakhs **Step 4:** Add the amount computed in Step 2 and Step 3 - **(B)** **Step 5:** Income-tax payable on total income (along with surcharge) would be the **lower of the amount arrived** at in Step 1 (i.e., **A**) or Step 4 (i.e., **B**). Consequently, if **A > B**, the marginal relief would be **A – B**. **Note:** If A Minus B is Negative, No Marginal Relief and Hence Ignore.	**Refer illustration 2**
(ii)	Where the total income > ₹ 1 crore but ≤ ₹ 2 crores	**Step 1:** Compute **Basic tax on total income** and **ADD** surcharge@15% on income tax - **(C)** **Step 2:** Compute Basic Tax on total income of ₹ 1 crore + surcharge on such Basic tax @10% **Step 3:** Total income (-) ₹ 1 crore **Step 4:** Add the amount computed in Step 2 and Step 3 **(D)** **Step 5:** Income-tax payable on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., **C**) or Step 4 (i.e., **D**). Consequently, if **C > D**, the marginal relief would be **C – D**. **Note:** If C Minus D is Negative, No Marginal Relief and Hence Ignore.	**Refer illustration 3**

(iii)	Where the total income > ₹ 2 crores but ≤ ₹ 5 crore	**Step 1:** Compute **Basic tax on total income** and **ADD** surcharge@25% or 15 %***** on Basic Tax **(E)** **Step 2:** Compute income-tax payable on total income of ₹ 2 crore + surcharge on such income - tax@15% **Step 3:** Total income (-) ₹ 2 crore **Step 4:** Add the amount computed in Step 2 and Step 3 **(F)** **Step 5:** Income-tax payable on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., **E**) or Step 4 (i.e., **F**). Consequently, if **E > F,** the marginal relief would be **E – F**. **Note:** If E Minus F is Negative, No Marginal Relief and Hence Ignore.	**Refer illustration 4**
(iv)	Where the total income > ₹ 5 crores	**Step 1:** Compute **Basic tax on total income** and **ADD** surcharge@37% or 15%***** on Basic Tax - **(G)** **Step 2:** Compute **Basic tax** on total income of ₹ 5 crore + surcharge on such income - tax@25% **Step 3:** Total income (-) ₹ 5 crore **Step 4:** Add the amount computed in Step 2 and Step 3 **(H)** **Step 5:** Income-tax payable on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., **G**) or Step 4 (i.e., **H**). Consequently, if **G > H**, the marginal relief would be **G – H**. **Note:** If G Minus H is Negative, No Marginal Relief and Hence Ignore.	**Refer illustration 5**

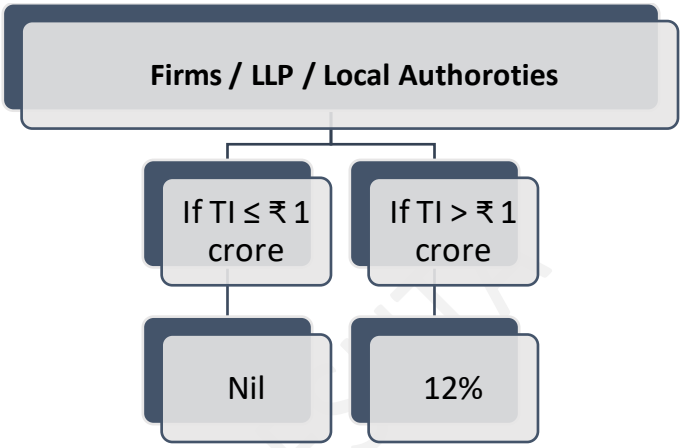
*****In case the total income includes dividend income, long term capital gains taxable under section 112/ 112A or short-term capital gains taxable under section 111A, surcharge on tax payable on such dividend income and capital gains cannot exceed 15%. This must be kept in mind while computing marginal relief in cases referred to in (iii) and (iv) above.

FOR FIRM/LIMITED LIABILITY PARTNERSHIP/LOCAL AUTHORITY

SURCHARGE: Where the total income exceeds ₹ 1 crore, **surcharge is payable at the rate of 12%** of income-tax computed at normal rates and at Special rates for incomes under section 111A or section 112 or section 112A.

MARGINAL RELIEF: Marginal relief is available in case of such persons having a total income exceeding ₹ 1 crore i.e., the total amount of income-tax payable (together with surcharge) on such income should not exceed the amount of income-tax payable on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Note: Computation format is Similar to for Individuals



CO-OPERATIVE SOCIETY IN CASE OF A CO-OPERATIVE SOCIETY (OTHER THAN A CO-OPERATIVE SOCIETY OPTING FOR SECTION 115BAD)

WHOSE TOTAL INCOME > ₹ 1 CRORE BUT IS ≤ ₹ 10 CRORE

SURCHARGE: Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at **the rate of 7%** of income-tax computed at normal rates and for special incomes as per section 111A or section 112 or section 112A.

MARGINAL RELIEF: Marginal relief is available in case of such co-operative societies i.e., the total amount of income-tax payable (together with surcharge) on such income should not exceed the amount of income-tax payable on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

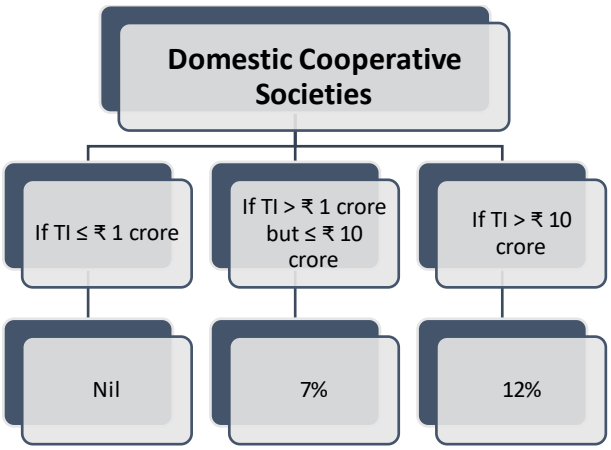
Note: Computation format is Similar to for Individuals

WHOSE TOTAL INCOME > ₹ 10 CRORE

SURCHARGE: Where the total income exceeds ₹ 10 crore, surcharge is payable **at the rate of 12%** of income-tax computed at normal rates and for special incomes as per section 111A or section 112 or section 112A.

MARGINAL RELIEF: Marginal relief is available in case of such co-operative socities i.e., the total amount of income-tax payable (together with surcharge) on such income should not exceed the amount of income-tax and surcharge payable on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

Note: Computation format is Similar to for Individuals



IN CASE OF A CO-OPERATIVE SOCIETY OPTING FOR SECTION 115BAD

Surcharge @10% of income-tax computed under section 115BAD would be leviable. Since there is no threshold limit for applicability of surcharge, consequently, there would be no marginal relief.

DOMESTIC COMPANY
(OTHER THAN A DOMESTIC COMPANY OPTING FOR SECTION 115BAA OR SECTION 115BAB)

WHOSE TOTAL INCOME > ₹ 1 CRORE BUT IS ≤ ₹ 10 CRORE:

SURCHARGE: Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable **at the rate of 7% of income-tax** computed at Normal rates and at special rates for Incomes under section 111A or section 112 or section 112A.

MARGINAL RELIEF: Marginal relief is available in case of such companies i.e., the total amount of income-tax payable (together with surcharge) on such income should not exceed the amount of income-tax payable on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

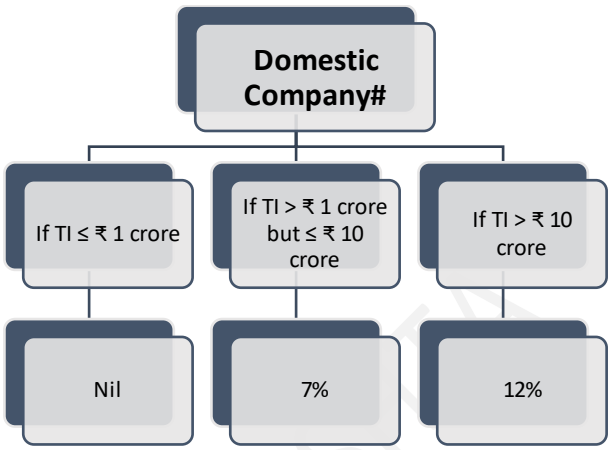
Note: Computation format is Similar to for Individuals

WHOSE TOTAL INCOME > ₹ 10 CRORE

SURCHARGE: Where the total income exceeds ₹ 10 crore, surcharge is payable **at the rate of 12% of income-tax** computed at Normal rates and at special rates for Incomes under section 111A or section 112 or section 112A.

MARGINAL RELIEF: Marginal relief is available in case of such companies i.e., the total amount of income-tax payable (together with surcharge) on such income should not exceed the amount of income-tax and surcharge payable on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

Note: Computation format is Similar to for Individuals



other than a company opting for section 115BAA or 115BAB and other than a co-operative society opting for section 115BAD

DOMESTIC COMPANY OPTING FOR SECTION 115BAA OR SECTION 115BAB

Surcharge @10% of income-tax computed under section 115BAA or section 115BAB would be leviable. Since there is no threshold limit for applicability of surcharge, consequently, there would be no marginal relief.

FOREIGN COMPANY

WHOSE TOTAL INCOME > ₹ 1 CRORE BUT IS ≤ ₹ 10 CRORE:

SURCHARGE: Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the **rate of 2% of income-tax computed** at Normal rates and at special rates for Incomes under section 111A or section 112 or section 112A.

MARGINAL RELIEF: Marginal relief is available in case of such companies i.e., the total amount of income-tax payable (together with surcharge) on such income should not exceed the amount of

income-tax payable on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

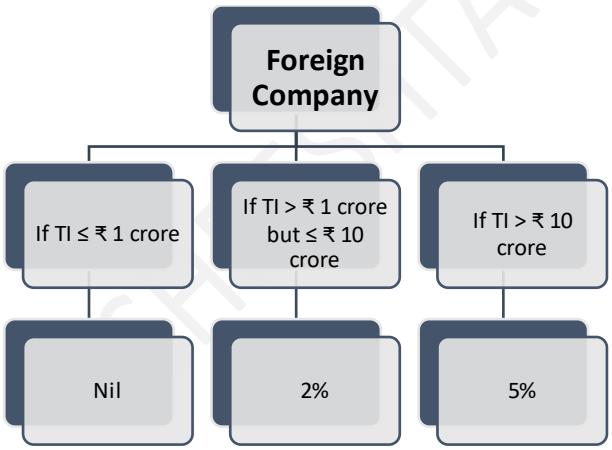
Note: Computation format is Similar to for Individuals

WHOSE TOTAL INCOME > ₹ 10 CRORE

SURCHARGE: Where the total income exceeds ₹ 10 crore, surcharge is payable **at the rate of 5% of income-tax computed** at Normal rates and at special rates for Incomes under section 111A or section 112 or section 112A.

MARGINAL RELIEF: Marginal relief is available in case of such companies i.e., the total amount of income-tax payable (together with surcharge) on such income should not exceed the amount of income-tax and surcharge payable on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

Note: Computation format is Similar to for Individuals



D. REBATE FOR RESIDENT INDIVIDUALS [Section 87A]

In order to provide tax relief to the individual tax payers who are in the 5% tax slab, section 87A provides a rebate from the tax payable by an assessee, **being an individual resident** in India, whose total income does not exceed **₹ 5,00,000**.

The rebate shall be equal to the amount of income-tax payable on the total income for any assessment year **or** an amount of **₹ 12,500**, **whichever is less.**

(Rebate under section 87A is allowed from tax payable before adding Health and education cess on income-tax).

Note: Rebate under section 87A is, however, not available in respect of tax payable @10% on long-term capital gains taxable under section 112A.

E. HEALTH AND EDUCATION CESS ON INCOME-TAX

1. It is leviable to fulfil the commitment of the Government to provide and finance quality health services and universalised quality basic education and secondary and higher education.
2. The amount of income-tax as increased by the union surcharge, if applicable, should be further increased by an additional surcharge called the **"Health and Education cess on income-tax"**, calculated at the rate of 4% of such income-tax and surcharge, if applicable.
3. Health and education cess is leviable in the case of all assessees i.e., individuals, HUF, AOP/BOI, firms, local authorities, co-operative societies and companies.

(Refer Illustration 6 & 7)

PART 4 – SPECIAL ISSUES

A. CONCEPT OF INCOME UNDER THE INCOME-TAX ACT, 1961

[Relevant for MCQs and Theory Questions]

1. **REGULAR RECEIPT vs CASUAL RECEIPT:** Income, in general, means a periodic monetary return which accrues or is expected to accrue regularly from definite sources. However, under the Income-tax Act, 1961, even certain casual receipts which do not arise regularly are treated as income for tax purposes e.g., Winnings from lotteries, crossword puzzles.

2. **NET RECEIPT vs GROSS RECEIPT:**
   a. Income means net receipts and not gross receipts. Net receipts are arrived at after deducting the expenditure incurred in connection with earning such receipts. The expenditure which can be deducted while computing income under each head is prescribed under the Income-tax Act, 1961.
   b. Income from certain eligible businesses/ professions is also determined on presumptive basis i.e., as a certain percentage of gross receipts.

3. **DUE BASIS vs RECEIPT BASIS:**
   a. Income is taxable either on due basis or receipt basis.
   b. For computing income under the heads "Profits and gains of business or profession" and "Income from other sources", the method of accounting regularly employed by the assessee should be considered, which can be either cash system or mercantile system.
   c. Some receipts are taxable only on receipt basis, like, income by way of interest received on compensation or enhanced compensation.

4. **REVENUE RECEIPT vs CAPITAL RECEIPT:**
   a. Income normally refers to revenue receipts. Capital receipts are generally not included within the scope of income in general parlance. However, the Income-tax Act, 1961 has specifically included certain capital receipts within the definition of income e.g., Capital gains i.e., gains on sale of a capital assets like land.
   b. 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.
   c. 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.
   d. The following are some of the important criteria which may be applied to distinguish between capital and revenue receipts:

i. **Fixed capital or Circulating capital:**
   1. A receipt referable to fixed capital would be a capital receipt whereas a receipt referable to circulating capital would be a revenue receipt. The former is not taxable while the latter is taxable.
   2. Tangible and intangible assets which the owner keeps in his possession for making profits are in the nature of fixed capital. The circulating capital is one which is turned over and yields income or loss in the process.

ii. **Income from transfer of capital asset or trading asset:** Profits arising from the sale of a capital asset are chargeable to tax as capital gains under section 45 whereas profits arising from the sale of a trading asset being of revenue nature are taxable as income from business under section 28 provided that the sale is in the regular course of assessee's business or the transaction constitutes an adventure in the nature of trade.

e. The following additional tests can be applied to determine whether a particular receipt is a capital or revenue receipt:

i. **REGULAR COURSE OF BUSINESS – REVENUE RECEIPTS:** Profits arising from transactions which are entered into in the course of the business regularly carried on by the assessee, or are incidental to, or associated with the business of the assessee would be revenue receipts chargeable to tax.

Example: A banker's or financier's dealings in foreign exchange or sale of shares and securities, a shipbroker's purchase of ship in his own name, a share broker's purchase of shares on his own account would constitute transactions entered and yielding income in the ordinary course of their business. Whereas building and land would constitute capital assets in the hands of a trader in shares, the same would constitute stock-in-trade in the hands of a property dealer.

ii. **SHARES AND SECURITIES:** In the case of profit arising from the sale of shares and securities, the nature of the profit has to be ascertained from the motive, intention or purpose with which they were bought:
   1. **Capital Receipt:** If the shares were acquired as an investor or with a view to acquiring a controlling interest or for obtaining a managing or selling agency or a directorship, the profit or loss on their sale would be of a capital nature.
   2. **Revenue Receipt:** If the shares were acquired in the ordinary course of business as a dealer in shares, it would constitute his stock-in-trade. If the shares were acquired with speculative motive, the profit or loss (although of a revenue nature) would have to be dealt with separately from the profit or loss of other businesses.

Note: *However, securities held by Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992 would be treated as a capital asset. Even if the nature of such security in the hands of the Foreign Portfolio Investor is*

stock-in-trade, the same would be treated as a capital asset and the profit on transfer would be taxable as capital gains.

iii. **A SINGLE TRANSACTION - CAN IT CONSTITUTE BUSINESS?**

1. Even a single transaction may constitute a business or an adventure in the nature of trade even if it is outside the normal course of the assessee's business. Repetition of such transactions is not necessary. Thus, a bulk purchase followed by a bulk sale or a series of retail sales or bulk sale followed by a series of retail purchases would constitute an adventure in the nature of trade and consequently, the income arising therefrom would be taxable.
2. Purchase of any article with no intention to resell it, but resold under changed circumstances would be a transaction of a capital nature and capital gains arise.
3. However, where an asset is purchased with the intention to resell it, the question whether the profit on sale is capital or revenue in nature depends upon:
    a. The conduct of the assessee,
    b. The nature and quantity of the article purchased,
    c. The nature of the operations involved,
    d. Whether the venture is on capital or revenue account, and
    e. Other related circumstances of the case.

iv. **LIQUIDATED DAMAGES – ALWAYS CAPITAL RECEIPT:** Receipt of liquidated damages directly and intimately linked with the procurement of a capital asset, which lead to delay in coming into existence of the profit-making apparatus, is a capital receipt. The amount received by the assessee towards compensation for sterilization of the profit earning source is not in the ordinary course of business. Hence, it is a capital receipt in the hands of the assessee.

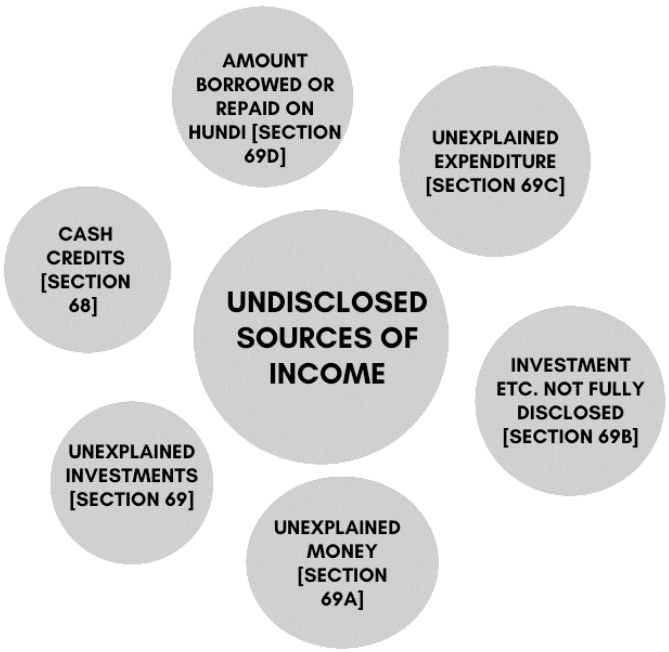
v. **COMPENSATION ON TERMINATION OF AGENCY/SERVICE CONTRACT:**

1. **TERMINATION OF ONE AND ONLY AGENCY – CAPITAL RECEIPT:** Where an assessee receives compensation on termination of the agency business being the only source of income, the receipt is of capital nature, but taxable under section 28(ii)(c).
2. **TERMINATION OF ONE OF THE AGENCIES – REVENUE RECEIPT:** However, where the assessee has a number of agencies and one of them is terminated and compensation is received therefor, the receipt would be of a revenue nature since taking up an agency and exploiting the same for earning income is in the ordinary course of business. The loss of one agency would be made good by profit from another agency.

3. **FROM EMPLOYER – CAPITAL RECEIPT UNDER SALARIES:** Compensation received from the employer or from any person for premature termination of the service contract is a capital receipt, but is taxable as profit in lieu of salary under section 17(3) or as income from other sources under section 56(2)(xi), respectively.
4. Compensation received or receivable in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income.

vi. **GIFTS – CAPITAL RECEIPT:** 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). For example, any sum of money or value of property received without consideration or for inadequate consideration by any person, other than a relative, is chargeable under the head "Income from Other Sources.

B. TAXABILITY OF UNDISCLOSED INCOME DISCOVERED IN PREVIOUS YEAR



1. UNEXPLAINED CASH CREDITS [SECTION 68]:

a. Where any sum is found credited in the books of the assessee and the assessee offers no explanation about the nature and source or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged as income of the assessee **of that previous year.**

b. **Exception for other than CHC:** However, where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by the assessee in whose books such sum is credited shall not be deemed to be satisfactory, unless

i. the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited and
ii. such explanation in the opinion of the Assessing Officer has been found to be satisfactory.

c. **Exception for CHC:** Further, any explanation offered by a closely held company in respect of any sum credited as share application money, share capital, share premium or any such amount, by whatever name called, in the accounts of such company shall be deemed to be not satisfactory, unless
   i. the person, being a resident, in whose name such credit is recorded in the books of such company also explains about the nature and the source of such sum so credited and
   ii. such explanation in the opinion of the Assessing Officer has been found to be satisfactory

d. **Exception for VCF / VCC:** These additional conditions would not apply if the person, in whose name the sum is recorded, is a Venture Capital Fund or Venture Capital Company registered with SEBI.

2. UNEXPLAINED INVESTMENTS [Section 69]:

Where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account and the assessee offers no explanation about the nature and the source of investments or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the value of the investments is taxed as deemed income of the assessee **of such financial year.**

3. UNEXPLAINED MONEY etc. [Section 69A]

Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and the same is not recorded in the books of account and the assessee offers no explanation about the nature and source of acquisition of such money, bullion etc. or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the money and the value of bullion etc. may be deemed to be the income of the assessee **for such financial year.**

4. INVESTMENTS ETC., NOT FULLY DISCLOSED IN THE BOOKS OF ACCOUNT [Section 69B]

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article and the Assessing Officer finds that the amount spent on making such investments or in acquiring such articles exceeds the amount recorded in the books of account maintained by the assessee and he offers no explanation for the difference or the explanation offered is unsatisfactory in the opinion of the Assessing Officer, such excess may be deemed to be the income of the assessee **for such financial year.**

Example:
If the assessee is found to be the owner of say 300 Grams of gold (market value of which is ₹ 25,000) during the financial year ending 31.3.2023 but he has recorded to have spent ₹ 15,000 in acquiring it, the Assessing Officer can add ₹ 10,000 (i.e., the difference of the market value of such gold and ₹ 15,000) as the income of the assessee, if the assessee offers no satisfactory explanation thereof.

5. UNEXPLAINED EXPENDITURE [Section 69C]

a. Where in any financial year an assessee has incurred any expenditure and he offer no explanation about the source of such expenditure or the explanation is unsatisfactory in the opinion of the Assessing Officer, Assessing Officer can treat such unexplained expenditure as the income of the assessee **for such financial year**.
b. Such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as deduction under any head of income.

6. AMOUNT BORROWED OR REPAID ON HUNDI [Section 69D]

a. Where any amount is borrowed on a hundi or any amount due thereon is repaid other than through an account-payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying **for the previous year in which the amount was borrowed or repaid**, as the case may be.
b. However, where any amount borrowed on a hundi has been deemed to be the income of any person, he will not be again liable to be assessed in respect of such amount on repayment of such amount. The amount repaid shall include interest paid on the amount borrowed.

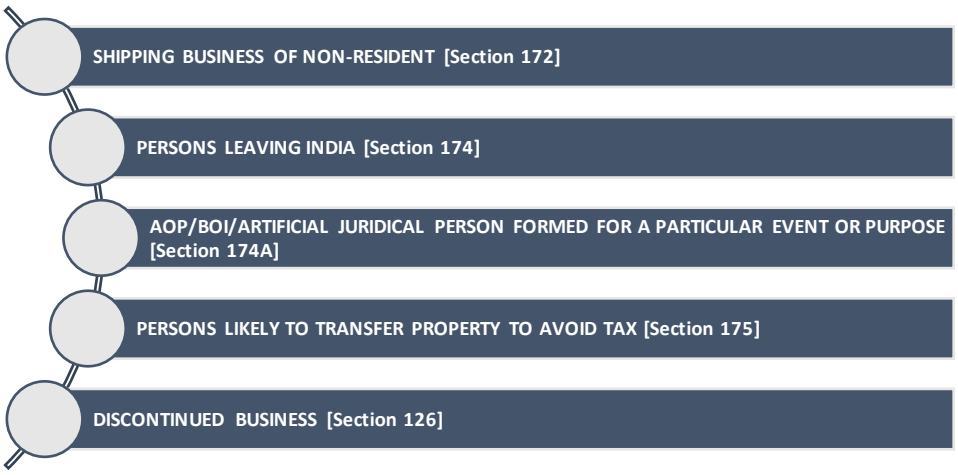
Section 115BBE provides the above undisclosed incomes or expenditure or investments are taxed at 60% Flat Rate.
No Deductions are allowed while taxing the above sums.

AGGREGATION OF INCOME IN ALL THE ABOVE CASES: The Assessing Officer may require the assessee to furnish explanation in above cases. If the assessee does not offer any explanation or the explanation offered by the assessee is not satisfactory, the amounts referred to in these sections would be deemed to be the income of the assessee. Such amounts have to be aggregated with the assessee's income.

C. CASES WHEN INCOME OF A PREVIOUS YEAR WILL BE ASSESSED IN THE PREVIOUS YEAR ITSELF

1. **GENERAL RULE:** The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. For instance, income of previous year 2022-23 is assessed during 2023-24. Therefore, 2023-24 is the assessment year for assessment of income of the previous year 2022-23.

2. **EXCEPTION:** However, in a few cases, this rule does not apply and the income is taxed in the previous year in which it is earned. These exceptions have been made to protect the interests of revenue.



SHIPPING BUSINESS OF NON-RESIDENT [Section 172]

1. Where a ship, belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax has been paid or satisfactory arrangement has been made for payment thereof.
2. A deemed income of 7.5% of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India on account of such carriage is deemed to be his income which is **charged to tax in the same year** in which it is earned.

PERSONS LEAVING INDIA [Section 174]

Where it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and he has no present intention of returning to India, the total income of such individual for the period from the expiry of the respective previous year up to the probable date of his departure from India is **chargeable to tax in that assessment year.**

Example:
Suppose Mr. X is leaving India for USA on 10.6.2022 and it appears to the Assessing Officer that he has no intention to return. Before leaving India, Mr. X may be asked to pay income-tax on the income earned during the P.Y. 2021-22 as well as on the total income earned during the period 1.4.2022 to 10.06.2022.

AOP/BOI/ARTIFICIAL JURIDICAL PERSON FORMED FOR A PARTICULAR EVENT OR PURPOSE [Section 174A]:

If an AOP/BOI etc. is formed or established for a particular event or purpose and the Assessing Officer apprehends that the AOP/BOI is likely to be dissolved in the same year or in the next year, he

can make assessment of the income up to the date of dissolution **as income of the relevant assessment year.**

PERSONS LIKELY TO TRANSFER PROPERTY TO AVOID TAX [Section 175]

During the current assessment year, if it appears to the Assessing Officer that a 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.**

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**.

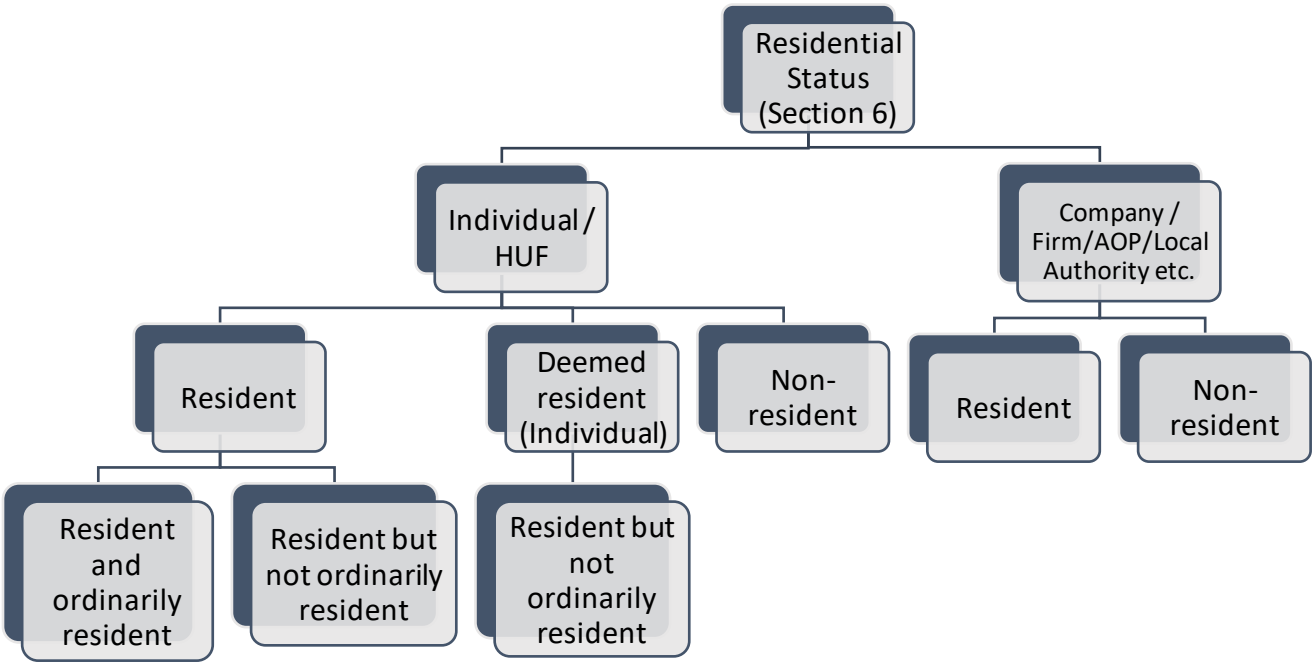
2. RESIDENCE AND SCOPE OF TOTAL INCOME

PART I	**A. Basic Introduction to Residential Status**
	B. Residential Status of INDIVIDUALS [Section 6(1), (1A) and (6)]
	C. Residential Status of HUF's [Section 6(2) Read with 6(6)]
	D. Residential Status of Firms, AOP's and BOI's [Section 6(2)]
	E. Residential Status of Companies [Section 6(3)]
	F. Residential Status of Any other Person [Section 6(4)]
PART 2	**Scope of Total Income [Section 5]**
PART 3	**Income Deemed to be received in India [Section 7]**
PART 4	**Income Deemed to Accrue or Arise in India [Section 9]**

PART 1 – RESIDENTIAL STATUS

A. BASIC INTRODUCTION

1. The incidence of tax on any assessee depends upon his residential status under the Act. For all purposes of income-tax, taxpayers are classified into 3 broad categories on the basis of their residential status viz.
    a. Resident and ordinarily resident
    b. Resident but not ordinarily resident
    c. Non-resident
2. The residential status of an assessee must be ascertained with reference to each previous year. E.g., A person who is resident and ordinarily resident in one year may become non-resident or resident but not ordinarily resident in another year or vice versa.



B. RESIDENTIAL STATUS OF INDIVIDUALS [Section 6(1), (1A) and Section 6(6)]

1. **BASIC CRITERIAS FOR RESIDENTIAL STATUS [Section 6(1):** An individual is said to be resident in India in any previous year, if he satisfies **ANY ONE** of the following conditions:
    a. **BASIC CRITERIA 1:** He has been in India during the previous year for a total period of 182days or more, **OR**
    b. **BASIC CRITERIA 2:**
        i. He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more **AND**
        ii. Has been in India for **at least 60 days in the relevant previous year**. **[Refer Exceptions]**

    If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

2. **EXCEPTIONS: As per Explanation 1 to Sec 6(1),**

    The following categories of individuals will be treated as resident in India only if the period of their stay during the relevant previous year amounts to 182 days or more. In other words, even if such persons were in India for 60 days or more (but less than 182 days) in the relevant previous year, they will not be treated as resident due to the reason that their stay in India was for 365 days or more during the 4 immediately preceding years.

    a. Indian citizen, who leaves India during the relevant previous year as a member of the crew of an Indian ship or
    b. Indian citizen, who leaves India during the relevant previous year for purposes of employment outside India, or
    c. Indian citizen or person of Indian origin who, being outside India comes on a visit to India during the relevant previous year.

    Author Note: Simply, in all the above 3 cases, ONLY 182 Days shall be considered and Not 60 Days in BC2.

3. **EXCEPTION TO THE EXCEPTION: As per Explanation 1(b) to Sec 6(1):** [Finance Act 2020]

    However, if an Indian Citizen or person of Indian Origin **having total income**, other than the income from foreign sources ***[i.e., income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India]***, exceeding ₹ 15 lakhs during the previous year will be **treated as resident** in India if **ANY ONE** of the following criteria is satisfied:

    a. **BASIC CRITERIA 1:** The period of his stay during the relevant previous year amounts to 182 days or more, **OR**
    b. **BASIC CRITERIA 2:**
        i. He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more **AND**
        ii. Has been in India for "ATLEAST **120 DAYS** in the previous year"

4. ADDITIONAL CONDITIONS FOR ORDINARILY RESIDENTIAL STATUS:

Only individuals and HUF can be "resident but not ordinarily resident" in India. All other classes of assessees can be either a resident or non-resident.

A not ordinarily resident person is one who satisfies any one of the conditions specified u/s 6(6).

a. If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
b. If such individual has, during the 7 previous years preceding the relevant previous year, been in India for a period of 729 days or less, or
c. If such individual is an Indian citizen or person of Indian origin (who, being outside India, comes on a visit to India in any previous year) having total income, other than the income from foreign sources ***[i.e., income which accrues or arises outside India (other than income derived from a business controlled in or profession set up in India) and which is not deemed to accrue or arise in India]***, exceeding ₹ 15 lakhs during the previous year, who has been in India for 120 days or more **but less than 182 days** during that previous year, or
d. If such individual is an Indian citizen who is deemed to be resident in India under section 6(1A).

Notes:

a. The term "stay in India" includes stay in the territorial waters of India (i.e., 12 nautical miles into the sea from the Indian coastline). Even the stay in a ship or boat moored in the territorial waters of India would be sufficient to make the individual resident in India.
b. It is not necessary that the period of stay must be continuous or active nor is it essential that the stay should be at the usual place of residence, business or employment of the individual.
c. For the purpose of counting the number of days stayed in India, **both the date of departure as well as the date of arrival are considered to be in India**.
d. The residence of an individual for income-tax purpose has nothing to do with citizenship, place of birth or domicile. An individual can, therefore, be resident in more countries than one even though he can have only one domicile.
e. A person is said to be of Indian origin if he or either of his parents or either of his grandparents was born in undivided India.

5. DATERMINATION OF STAY IN INDIA FOR AN INDIAN CITIZEN, BEING A CREW MEMBER:

According to Rule 126, for the purposes of section 6(1), in case of an individual, being a citizen of India and a member of the crew of a ship, the **period or periods of stay in India shall**, in respect of an eligible voyage, **not include the following period**:

Period to be excluded

Period commencing from		Period ending on
The date entered into the CDC in respect of **JOINING** the ship by the said individual for the eligible voyage	and	The date entered into the CDC in respect of **SIGNING OFF** by that individual from the ship in respect of such voyage.

MEANING OF CERTAIN TERMS:

TERMS		MEANING
(a)	**Continuous Discharge Certificate [CDC]**	This term has the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificatecum Seafarer's Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958.
(b)	**Eligible voyage**	A voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where: 1. for the voyage having originated from any port in India, has as its destination any port outside India and 2. for the voyage having originated from any port outside India, has as its destination any port in India.

(Refer Illustration 1, 2, 3)

6. DEEMED RESIDENT [Section 6(1A)]:

An individual, being an Indian citizen, having total income, other than the income from foreign sources ***[i.e., income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India],*** exceeding ₹ 15 lakhs during the previous year would be deemed to be resident in India in that previous year, **IF** he is **NOT** liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

MEANING OF "LIABLE TO TAX": Liable to tax, in relation to a person and with reference to a country, means:

1. that there is an income-tax liability on such person under the law of that country for the time being in force.
2. *It also includes a person who has subsequently been exempted from such liability under the law of that country.*

Notes:

1. This provision will not apply in case of an individual who is a resident of India in the previous year as per section 6(1).
2. Deemed Resident is always a Resident BUT NOT ORDINARILY RESIDENT.

C. RESIDENTIAL STATUS OF HUF's [Section 6(2) read with Section 6(6)]

1. BASIC RESIDENTIAL STATUS OF HUF:

RESIDENT: A HUF would be resident in India if the control and management of its affairs is situated wholly or **partly** in India.

NON-RESIDENT: If the control and management of the affairs is situated **wholly** outside India, it would become a non-resident.

Meaning of the term "control and management"

a. The expression 'control and management' refers to the central control and management and not to the carrying on of day-to-day business by servants, employees or agents.
b. 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 adventure is situated.
c. The place of control may be different from the usual place of running the business and sometimes even the registered office of the assessee. This is because the control and management of a business need not necessarily be done from the place of business or from the registered office of the assessee.
d. But control and management do imply the functioning of the controlling and directing power at a particular place with some degree of permanence.

2. RESIDENT AND ORDINARILY RESIDENT/RESIDENT BUT NOT ORDINARILY RESIDENT:

If Karta of resident HUF satisfies BOTH the following additional conditions (as applicable in case of individual) then, resident HUF will be resident and ordinarily resident, otherwise it will be resident but not ordinarily resident.

a. Karta of resident HUF should be resident in at least 2 previous years out of 10 previous years immediately preceding relevant previous year **AND**
b. Stay of Karta during 7 previous years immediately preceding relevant previous year should be 730 days or more.

(Refer Illustration 4)

D. RESIDENTIAL STATUS OF FIRMS | AOP's | BOI's [Section 6(2)]

RESIDENT: A Firm, AOP and BOI would be resident in India if the control and management of its affairs is situated wholly or **partly** in India.

NON-RESIDENT: Where the control and management of the affairs is situated wholly outside India, the firm, AoP and BoI would become a non-resident.

E. RESIDENTIAL STATUS OF COMPANIES [Section 6(3)]

A company would be resident in India in any previous year, if:

1. It is an Indian company; or
2. Its place of effective management **[POEM]**, in that year, is in India.

"Place of effective management" to mean 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 [Explanation to section 6(3)]

F. RESIDENTIAL STATUS OF LOCAL AUTHORITIES AND ARTIFICIAL JURIDICAL PERSONS [Section 6(4)] [SIMILAR TO FIRMS]

RESIDENT: Local authorities and artificial juridical persons would be resident in India if the control and management of its affairs is situated wholly or **partly** in India.

NON-RESIDENT: Where the control and management of the affairs is situated **wholly** outside India, they would become non-residents.

PART 2 – SCOPE OF TOTAL INCOME [SEC. 5]

The incidence of tax on any person depends upon his residential status. The scope of total income of an assessee depends upon the following 3 important considerations:

1. The residential status of the assessee.
2. The place of accrual or receipt of income, whether actual or deemed and
3. The point of time at which the income had accrued to or was received by or on behalf of the assessee.

Scope of total Income	Resident and Ordinarily Resident [ROR] [Sec 5(1)]	Resident but not Ordinarily Resident [RNOR] [Proviso to Sec 5(1)]	Non-Resident [NR] [Sec 5(2)]
Income received or deemed to be received **IN INDIA** during the previous year	Taxable	Taxable	Taxable
Income accruing or arising or deeming to accrue or arise **IN INDIA** during the previous year	Taxable	Taxable	Taxable
Income accruing or arising **OUTSIDE INDIA** during the previous year	Taxable, even if such income is not received or brought into India during the previous year	Taxable Only if such income is derived from a business controlled in or profession set up in India. Otherwise, No.	Not Taxable

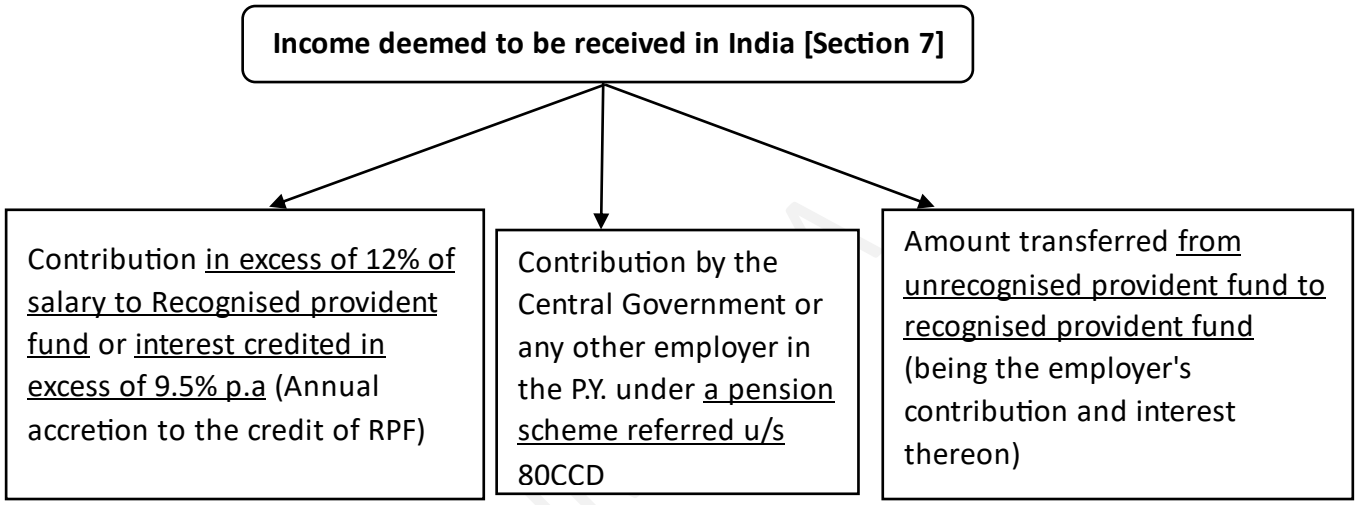
Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank [Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017]

Income by way of salary, received by non-resident seafarers, for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) and received into the NRE bank account maintained with an Indian bank shall not be included in the total income.

(Refer Illustration 5)

PART 3 – INCOME RECEIVED OR DEEMED TO BE RECEIVED

1. All assessees are liable to tax in respect of the income received or deemed to be received by them **IN INDIA** during the previous year irrespective of their residential status, and the place of its accrual.
2. Income is to be included in the total income of the assessee immediately on its actual or deemed receipt.
3. The receipt of income refers to only the first occasion when the recipient gets the money under his control. Therefore, when once an amount is received as income, remittance or transmission of that amount from one place or person to another does not constitute receipt of income in the hands of the subsequent recipient or at the place of subsequent receipt.



PART 4 – INCOME 'ACCRUING' AND 'ARISING'

1. Accrue refers to the right to receive income, whereas due refers to the right to enforce payment of the same.
   For e.g., salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31st December or 1st January.
2. Similarly, on Government securities, interest payable on specified dates arises during the period of holding, day to day, but will become due for payment on the specified dates.
   E.g., Interest on Government securities is usually payable on specified dates, say on 1st January and 1st July. In all such cases, the interest would be said to accrue from 1st July to 31st December and on 1st January, it will fall due for payment.
3. It must be noted that income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation.

Note: Explanation 1 to section 5 specifically provides that an item of income accruing or arising outside India shall not be deemed to be received in India merely because it is taken into account in a balance sheet prepared in India.

Note: Explanation 2 to section 5 makes it clear that once an item of income is included in the assessee's total income and subjected to tax on the ground of its accrual/deemed accrual, it cannot again be included in the person's total income and subjected to tax either in the same or in a subsequent year on the ground of its receipt - whether actual or deemed.

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

The following types of income are **DEEMED** to accrue or arise IN INDIA even though they may actually accrue or arise outside India:

[Section 9(1)(i)]
BUSINESS CONNECTION IN INDIA OR ANY PROPERTY IN INDIA OR ANY ASSET OR SOURCE IN INDIA OR CAPITAL ASSET IN INDIA

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, [Refer A]
b. Through or from any property in India, [Refer B]
c. Through or from any asset or source of income in India or [Refer B]
d. Through the transfer of a capital asset situated in India [Refer C]

would be deemed to accrue or arise in India.

A. BUSINESS CONNECTION IN INDIA [EXPLANATION 2 TO Section 9(1)(i)]

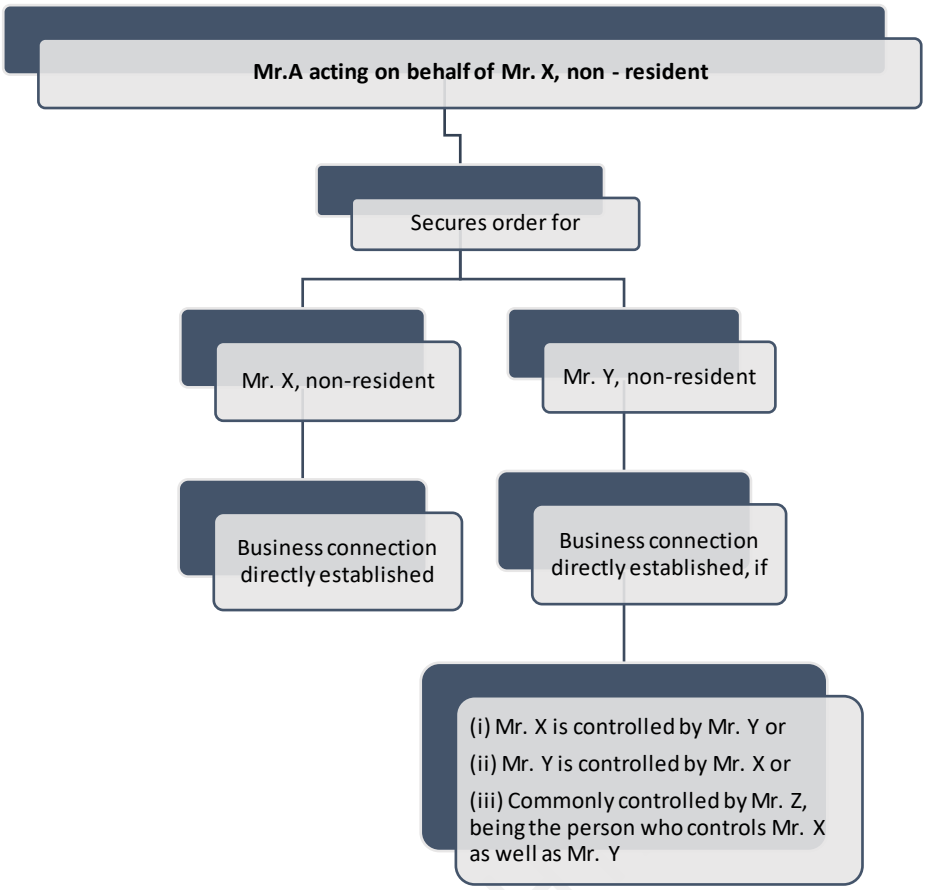
'Business connection' shall include any business activity carried out through a person acting on behalf of the non-resident.

1. **SITUATION 1:** For a business connection to be established, the person acting on behalf of the non-resident:
   i. Must have an authority, which is habitually exercised in India, to conclude contracts on behalf of the non-resident or
   ii. Habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and such contracts should be
   a. In the name of the non-resident or
   b. For the transfer of the ownership of, or **for the granting of the right to use**, property owned by that non-resident or that **non-resident has the right to use** or
   c. For the provision of services by that non-resident, or
2. **SITUATION 2:** In a case, 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, or
3. **SITUATION 3:** Habitually secures orders in India, mainly or wholly for the non-resident.

   Further, there may be situations when the person acting on behalf of the non-resident secures order **for other non-residents**. In such situation, business connection for **other non-residents** is established if,

   i. such other non-resident controls the non-resident or
   ii. such other non-resident is controlled by the non-resident or
   iii. such other non-resident is subject to same control as that of non-resident.

4. In all the 3 situations, business connection is established, where a person habitually secures orders in India, mainly or wholly for such non-residents.



5. **AGENTS HAVING INDEPENDENT STATUS ARE NOT INCLUDED IN BUSINESS CONNECTION: [Proviso to Explanation 2]**
   i. Business connection, however, shall not be established, where the non-resident carries on business activity through a broker, general commission agent or any other agent having an independent status, if such a person is acting in the ordinary course of his business.
   ii. 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.
   iii. He will, however, not be considered to have an independent status in the 3 situations explained above, where he works mainly or wholly on behalf of such a non-resident.

Note: Where a business is carried on in India through a person referred to in the 3 situations as above, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

6. **SIGNIFICANT ECONOMIC PRESENCE [Explanation 2A to section 9(1)(i)]:** Significant economic presence of a non-resident in India shall also **constitute business connection** in India. **Significant economic presence** means: ***[Newly added in Finance Act 2022]***

	Nature of transaction	**Condition**
(a)	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	Aggregate of payments arising from such transaction or transactions during the previous year should **exceed ₹ 2 crores**.

(b)	systematic and continuous soliciting of business activities or engaging in interaction with users in India	The number of users should be at least **3 lakhs.**

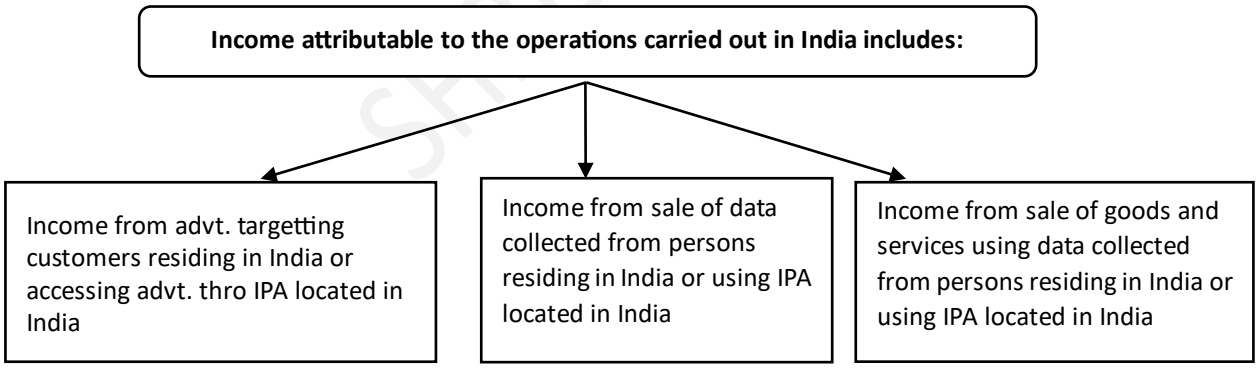
Further, the above transactions or activities shall constitute significant economic presence in India, **whether or not:**

1. The agreement for such transactions or activities is entered in India.
2. The non-resident has a residence or place of business in India or
3. The non-resident renders services in India

However, where a business connection is established by reason of significant economic presence in India, **only so much of income as is attributable to the transactions or activities** referred to in (a) or (b) above shall be deemed to accrue or arise in India.

7. ADDITIONAL EXCLUSIONS TO BUSINESS CONNECTION IN INDIA IN THE CASE OF A NON-RESIDENT: [Explanation 1 to section 9(1)(i)]:

i. **In the case of a business, in respect of which all the operations are not carried out in India [Explanation 1(a) to section 9(1)(i)]:** In the case of a business, other than the business having business connection in India on account of significant economic presence, of which all the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India.



IPA – Internet Protocol Address

The above provisions would also apply to the income attributable to the transactions or activities referred to in Explanation 2A to section 9(1)(i).

ii. **Purchase of goods in India for export [Explanation 1(b) to section 9(1)(i)]:** In the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.

iii. **Collection of news and views in India for transmission out of India [Explanation 1(c) to section 9(1)(i)]:** In the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income

shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India.

iv. **Shooting of cinematograph films in India [Explanation 1(d) to section 9(1)(i)]:** In the case of a non-resident, no income shall be deemed to accrue or arise in India through or from operations which are confined to the shooting of any cinematograph film in India, if such non-resident is:

   a. An individual, who is not a citizen of India or
   b. A firm which does not have any partner who is a citizen of India or who is resident in India or
   c. A company which does not have any shareholder who is a citizen of India or who is resident in India.

v. **Activities confined to display of rough diamonds in SNZs [Explanation 1(e) to section 9(1)(i)]:** In order to facilitate the Foreign Mining Companies (FMCs) to undertake activity of display of uncut diamond (without any sorting or sale) in a Special Notified Zone (SNZ), ***clause (e) has been inserted in Explanation 1 to section 9(1)(i) to provide that*** in the case of a foreign company engaged in the business of mining of diamonds, **no income shall be deemed to accrue or arise in India** to it through or from the activities which are confined to display of uncut and unassorted diamonds in any special zone notified by the Central Government in the Official Gazette in this behalf.

B. INCOME FROM PROPERTY, ASSET OR SOURCE OF INCOME IN INDIA

Any income which arises from any property situated in India (movable, immovable, tangible and intangible property) would be deemed to accrue or arise in India.

Examples:

1. Hire charges or rent paid outside India for the use of the machinery or buildings situated in India,
2. Deposits with an Indian company for which interest is received outside India etc.

C. INCOME THROUGH TRANSFER OF CAPITAL ASSET SITUATED IN INDIA

1. Capital gains arising through the transfer of a capital asset situated in India would be deemed to accrue or arise in India in all cases irrespective of the fact whether
   a. The capital asset is movable or immovable, tangible or intangible
   b. The place of registration of the document of transfer etc., is in India or outside and
   c. The place of payment of the consideration for the transfer is within India or outside.

2. Accordingly, the expression "through" shall mean and include and shall be deemed to have always meant and include "by means of", "in consequence of" or "by reason of" **[Explanation 4 to section 9(1)(i)].**

3. Further, an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the **share or interest derives, directly or indirectly, its value substantially from the assets located in India**. **[Explanation 5 to section 9(1)(i)]**

Declaration of dividend by a foreign company outside India does not have the effect of transfer of any underlying assets located in India.
Circular No. 4/2015, dated 26-03-2015, therefore, clarifies that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India **would NOT be deemed to be income accruing or arising in India** by virtue of the provisions of section 9(1)(i).

[Section 9(1)(ii)]
INCOME FROM SALARIES EARNED IN INDIA

Income, which falls under the head "Salaries", is deemed to accrue or arise in India, 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)(iii)]
INCOME FROM SALARIES PAYABLE BY THE GOVERNMENT FOR SERVICES RENDERED OUTSIDE INDIA

Income from 'Salaries' which is payable by the Government to a citizen of India for services rendered outside India would be deemed to accrue or arise in India.

However, allowances and perquisites paid or allowed outside India by the Government **to an Indian citizen for services rendered outside India is EXEMPT, by virtue of section 10(7).**

(Refer Illustration 6)

[Section 9(1)(iv)]
DIVIDEND PAID BY AN INDIAN COMPANY OUTSIDE INDIA

Dividends paid by an Indian company outside India is deemed to be accrue or arise in India and would be taxable in the hands of shareholders.

[Section 9(1)(v)]: INTEREST

Under section 9(1)(v), an interest is deemed to accrue or arise in India if it is payable by:

1. The Government.
2. A person who is resident in India.
   Exception: Where it is payable in respect of any debt incurred or money borrowed and used for the purposes of a business or profession carried on by him **outside India** or for the purposes of making or earning any income from **any source outside India**, it **will not be deemed to accrue or arise in India.**
3. A person who is a non-resident, when it is payable in respect of any debt incurred or moneys borrowed and used for the purpose of a business or profession **carried on in India by him.**
   Exception: Interest on moneys borrowed by the non-resident for any purpose in India **other than a business or profession**, will not be deemed to accrue or arise in India.

   Example: If a non-resident 'A' borrows money from a non-resident 'B' and invests the same in shares of an Indian company, interest payable by 'A' to 'B' will not be deemed to accrue or arise in India.

[Section 9(1)(vi)]
ROYALTY

Royalty will be deemed to accrue or arise in India when it is payable by:

1. The Government.
2. A person who is a resident in India.
   Exception: where it is payable in respect for the transfer of any right or the use of any property or information used or for the utilization of services for the purposes of a business or profession carried on by such person **outside India** or for the purposes of making or earning any income from any source **outside India** or
3. A person who is a non-resident, only when the royalty is payable in respect of any right, property or information used or services utilised for purposes of a business or profession **carried on in India** or for the purposes of making or earning **any income from any source in India.**

IMPORTANT POINTS RELATED TO ROYALTY:

1. The definition of 'royalty' for this purpose is wide enough to cover both industrial royalties as well as copyright royalties. The definition specially excludes income which should be chargeable to tax under the head 'capital gains'
2. **LUMPSUM ROYALTY NOT DEEMED TO ACCRUE ARISE IN INDIA:** Lumpsum royalty payments made by a resident for the transfer of all or any rights (including the granting of a licence) in respect of **computer software** supplied by a non-resident manufacturer along with computer hardware under any scheme approved by the Government under the Policy on Computer Software Export, Software Development and Training, 1986 shall not be deemed to accrue or arise in India.

3. **MEANING OF ROYALTY:** The term 'royalty' **means consideration** ***(including any lumpsum*** *consideration but excluding any consideration which would be the income of the recipient chargeable under the head 'Capital gains')* **for**:
    i. the transfer of all or any rights (including the granting of licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;
    ii. the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;
    iii. the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;
    iv. the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
    v. the use or right to use any industrial, commercial or scientific equipment[2];
    vi. the transfer of all or any rights (including the granting of licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.
    Note: Consideration for sale, distribution or exhibition of cinematographic films is covered within the scope of royalty.

    [2]but not including the amounts referred to in section 44BB containing presumptive tax provisions relating to non-resident engaged in the business of exploration, etc., of mineral oils. [Not in CA Inter Syllabus]

    vii. the rendering of **any service in connection with the activities listed above**.

4. **CONSIDERATION FOR USE OR RIGHT TO USE OF COMPUTER SOFTWARE IS ROYALTY WITHIN THE MEANING OF SECTION 9(1)(VI)**

    The consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

5. **CONSIDERATION IN RESPECT OF ANY RIGHT, PROPERTY OR INFORMATION – IS IT ROYALTY?**
    Royalty includes and has always included consideration in respect of any right, property or information, whether or not,
    a. the possession or control of such right, property or information is with the payer.
    b. such right, property or information is used directly by the payer.
    c. the location of such right, property or information is in India.

6. **MEANING OF PROCESS:** The term "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for downlinking

of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

[Section 9(1)(vii)]
FEES FOR TECHNICAL SERVICES

Any fees for technical services will be deemed to accrue or arise in India if they are payable by:

1. The Government.
2. A person who is resident in India.
   Exception: Where the fees are payable in respect of technical services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India.
3. A person who is a non-resident, only where the fees are payable in respect of services utilised in a business or profession carried on by the non-resident in India or where such services are utilised or the purpose of making or earning any income from any source in India.

Fees for technical services means any consideration (including any lumpsum consideration) for the rendering of any managerial, technical or consultancy services (including providing the services of technical or other personnel).

However, it does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head 'Salaries'.

Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services to be taxed irrespective of territorial nexus (Explanation to section 9)

Income by way of interest, royalty or fees for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not:

1. The non-resident has a residence or place of business or business connection in India or
2. The non-resident has rendered services in India.

In effect, the income by way of fees for technical services, interest or royalty, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

(Refer Illustration 7)

[Section 9(1)(viii)]
ANY SUM OF MONEY PAID BY A RESIDENT INDIAN TO A NON-CORPORATE NON-RESIDENT OR FOREIGN COMPANY

Income arising outside India, being any sum of money paid without consideration, by an Indian resident person to a non-corporate non-resident or foreign company would be deemed to accrue or arise in India if the same is chargeable to tax under section 56(2)(x) i.e., if the aggregate of such sum received by a non-corporate non-resident or foreign company exceeds ₹ 50,000.

It may be noted that this deeming provision applies to only sum of money paid outside India to a non-corporate non-resident or foreign company, and not in respect of property, movable or immovable, transferred outside India without consideration or for inadequate consideration to a non-corporate non-resident or foreign company.

(Refer Illustration 8)

3. INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

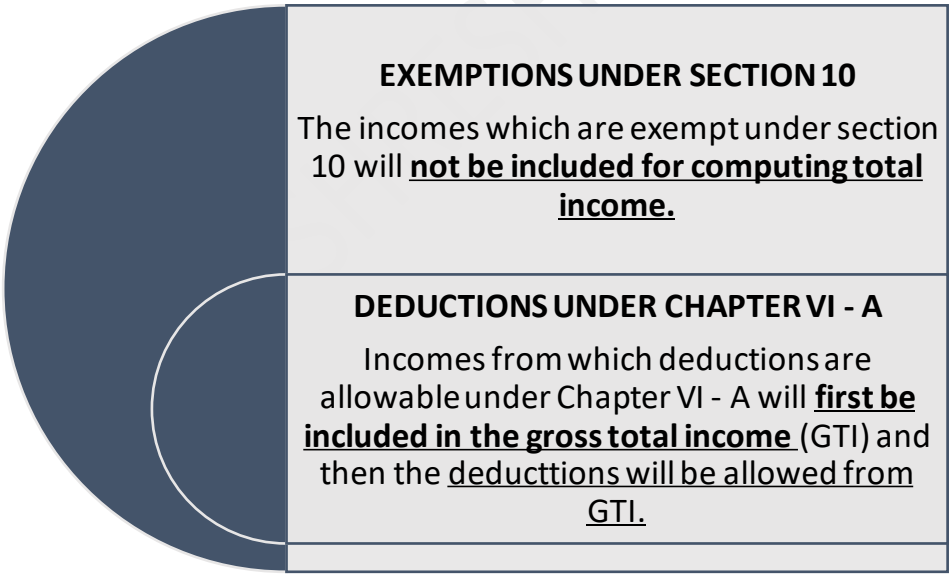
PART 1	**BASIC INTRODUCTION**
PART 2	**AGRICULTURE INCOME [Section 10(1)]**
PART 3	**OTHER EXEMPTED INCOMES [Section 10 Series]**
PART 4	**EXEMPTIONS FOR UNITS ESTABLISHED IN SEZ's [Section 10AA]**
PART 5	**EXPENDITUE IN RESPECT OF EXEMPTED INCOME [Section 14A]**

PART 1 – BASIC INTRODUCTION

A. EXEMPTION UNDER SECTION 10 vs DEDUCTION UNDER CHAPTER VI-A:

EXEMPTED INCOMES: The items of income referred in section 10 are excluded from the total income of an assessee. These incomes are known as exempted incomes. Consequently, they will not be considered as part of Gross Total Income Computation.

DEDUCTIONS: there are certain other incomes which are included in Gross total income but are wholly or partly allowed as deductions under Chapter VI-A in computation of total income.



B. EXEMPTIONS WHICH ARE DISCUSSED UNDER THE RELEVANT CHAPTERS

INCOME FROM SALARIES

1. Leave travel concession
2. Allowance payable outside India by the Government to a citizen of India
3. Gratuity
4. Commutation of pension
5. Leave Encashment

6. Retrenchment Compensation
7. Voluntary Retirement Receipts
8. Income-tax paid by employer on non-monetary perquisite
9. Payment from Provident Fund
10. Payment from Superannuation Fund
11. House Rent Allowance
12. Special Allowance or benefit to meet expenses relating to duties or personal expenses

INCOME FROM CAPITAL GAINS

1. Income received on buy-back of shares of domestic company
2. Capital gain on compulsory acquisition of agricultural land within specified urban limits
3. Income received in transaction of reverse mortgage

INCOME FROM OTHER SOURCES

1. Interest income arising to certain persons
2. Family pension received by widow/children/nominated heirs of armed forces members

Income of Other Persons Included in Assessee's Total Income [CLUBBING PROVISIONS]

Exemption in respect of minor's income included in the hands of parent

DEDUCTIONS FROM GROSS TOTAL INCOME

1. Receipts from LIC/ULIP
2. Payment from NPS Trust to an assessee on closure of his account or on his opting out of the pension scheme
3. Payment from NPS Trust to an employee on partial withdrawal

PART 2 – EXEMPTION OF AGRICULTURAL INCOME

[Section 10(1)]

A. INTRODUCTION:

Section 10(1) provides that agricultural income is not to be included in the total income of the assessee. The reason for total exemption of agricultural income from the scope of central income-tax is that **under the Constitution**, the Central Government has no power to levy a tax on agricultural income.

B. **DEFINITION OF AGRICULTURAL INCOME [Section 2(1A)]:** Agricultural income may arise in any one of the following 3 ways:

1. **RENT:** It may be rent or revenue derived from land situated in India and **used for agricultural purposes.**
2. **SALE OF PRODUCE:** It may be income derived from such land by
    a. Agriculture or
    b. The performance of a process ordinarily employed by a cultivator or receiver of rent in kind to render the produce fit to be taken to the market or
    c. The sale, by a cultivator or receiver of rent in kind, of such agricultural produce raised or received by him, in respect of which no process has been performed other than a process of the nature mentioned in point (b) above.
3. **FARM BUILDING:** Lastly, agricultural income may be derived from any farm building required for agricultural operations.

C. DETAILED EXPLANATION FOR VARIOUS COMPONENTS OF THE ABOVE DEFINITION:

1. **Rent or revenue derived from land situated in India and used for agricultural purposes:** The following 3 conditions have to be satisfied for income to be treated as agricultural income:
    a. Rent or revenue should be derived from land.
    b. Land has to be situated in India (If agricultural land is situated in a foreign country, the entire income would be taxable) and
    c. Land should be used for agricultural purposes.

    MEANING OF RENT: 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 to the other conditions mentioned above.

    The scope of the term "**Revenue**" is much broader than rent. It includes income other than rent. For example, fees received for renewal for grant of land on lease would be revenue derived from land.

2. **Income derived from such land by Agriculture:**

    a. **AGRICULTURE**

    The term "Agriculture" has not been defined in the Act. However, cultivation of a field involving human skill and labour on the land can be broadly termed as agriculture.

    "Agriculture" means tilling of the land, sowing of the seeds and similar operations. It involves basic operations and subsequent operations.

Basic Operations	Those operations by agriculturists which are absolutely necessary for the purpose of effectively raising produce from the land are the basic operations.
Subsequent Operations	Operations to be performed after the produce sprouts from the land (e.g., weeding, digging etc.) are subsequent operations. These subsequent operations would be agricultural operations only when taken in conjunction with and as a continuation of the basic operations.

Note:

The term 'agriculture' cannot be extended to all activities which have some distant relation to land like dairy farming, breeding and rearing of livestock, butter and cheese making and poultry farming.
Whether income from nursery constitutes agricultural income? 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**.

b. **PROCESS ORDINARILY EMPLOYED TO RENDER THE PRODUCE FIT TO BE TAKEN TO THE MARKET:**

1) The income from the process employed to render the produce fit to be taken to the market would be agricultural income. However, it must be a process ordinarily employed by the cultivator or receiver of rent in kind and the process must be applied to make the produce fit to be taken to the market.

2) The ordinary process employed to render the produce fit to be taken to market includes thrashing, winnowing, cleaning, drying, crushing etc.

For example, the process ordinarily employed by the cultivator to obtain the rice from paddy is to first remove the hay from the basic grain, and thereafter to remove the chaff from the grain. The grain has to be properly filtered to remove stones etc. and finally the rice has to be packed in gunny bags for sale in the market.

After such process, the rice can be taken to the market for sale. This process of making the rice ready for the market may involve manual operations or mechanical operations. All these operations constitute the process ordinarily employed to make the product fit for the market. The produce must retain its original character in spite of the processing unless there is no market for selling it in that condition.

3) However, if marketing process is performed on a produce which can be sold in its raw form, income derived therefrom is partly agricultural income and partly business income.

c. **SALE OF SUCH AGRICULTURAL PRODUCE IN THE MARKET:**

1) Any income from the sale of any produce to the cultivator or receiver of rent-in kind is agricultural income provided it is from the land situated in India and used for agricultural purposes. However, if the produce is subjected to any process other than process ordinarily employed to make the produce fit for market, the income arising on sale of such produce would be partly agricultural income and partly non-agricultural income.

2) Similarly, if other agricultural produce like tea, cotton, tobacco, sugarcane etc. are subjected to manufacturing process and the manufactured product is sold, the profit on such sale will consist of agricultural income as well as business income. That portion of the profit representing agricultural income will be exempted.

APPORTIONMENT OF INCOME BETWEEN BUSINESS INCOME AND AGRICULTURAL INCOME

Rule 7 – Income from growing and manufacturing of ANY Product:

Where income is partially agricultural income and partially income chargeable to income-tax as business income, the market value of any agricultural produce which has been raised by the assessee or received by him as rent in kind and which has been utilised as raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted. **No further deduction** shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

Determination of market value - There are 2 possibilities here:

1. 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.

2. 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. [E.g., Industry average profit]

(Refer Illustration 1)

Rule 7A – Income from growing and manufacturing of RUBBER:

This rule is applicable when income derived from the sale of centrifuged latex or cenex or latex based crepes or brown crepes or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants grown by the seller in India.

In such cases 35% profits on sale is taxable as business income under the head "profits and gains from business or profession", and the balance 65% is agricultural income and is exempt.

(Refer Illustration 2)

Rule 7B – Income from growing and manufacturing of COFFEE

In case of income derived from the sale of coffee grown and cured by the seller in India, 25% profits on sale are taxable as business income under the head "Profits and gains from business or profession", and the balance 75% is agricultural income and is exempt.

In case of income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, with or without mixing chicory or other flavoring ingredients, 40% profits on sale is taxable as business income under the head "Profits and gains from business or profession", and the balance 60% is agricultural income and is exempt.

Rule 8 - Income from growing and manufacturing of tea - This rule applies only in cases where the assessee himself grows tea leaves and manufactures tea in India.

In such cases 40% profits on sale is taxable as business income under the head "Profits and gains from business or profession", and the balance 60% is agricultural income and is exempt.

SUMMARY			
Rule	**Apportionment of income in certain cases**	**Agricultural Income**	**Business Income**
7A	Income from sale of **RUBBER** products derived from rubber plant grown by the seller in India.	65%	35%
7B	Income from sale of COFFEE - grown and cured by the seller in India - grown, cured, roasted and grounded by the seller in India	 75% 60%	 25% 40%
8	Income from sale of TEA grown and manufactured by the seller in India	60%	40%

3. **INCOME FROM FARM BUILDING:**
   a. Income from the farm building which is owned and occupied by the receiver of the rent or revenue of any such land or occupied by the cultivator or the receiver of rent in kind, of any land with respect to which, or the produce of which, any process discussed above is carried on, would be agricultural income.
   b. However, the income arising from the use of such 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.
   c. Further, the income from such farm building would be agricultural income only if the following conditions are satisfied:
      i. The building should be on or in the immediate vicinity of the land; and
      ii. 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.
      iii. 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** where the land is not so assessed to land revenue in India or is not subject to local rate:
         1. 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
         2. It should not be situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder:

	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 kms	> 10,000
(ii)	>2 kms but ≤ 6 kms	>1,00,000
(iii)	>6 kms but ≤ 8kms	>10,00,000

Example 1:

	Area	**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**	**Would income derived from farm building situated in this area be treated as agricultural income?**
(i)	A	1 km 9,000 Yes	9,000	Yes
(ii)	B	1.5 kms	12,000	No
(iii)	C	2 kms	11,00,000	No
(iv)	D	3 kms	80,000	Yes
(v)	E	4 kms	3,00,000	No
(vi)	F	5 kms	12,00,000	No
(vii)	G	6 kms	8,000	Yes
(viii)	H	7 kms	4,00,000	Yes
(ix)	I	8 kms	10,50,000	No
(x)	J	9 kms	15,00,000	Yes

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

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.

Example 2: Suppose A sells agricultural land situated in New Delhi for ₹ 10 lakhs and makes a surplus of ₹ 8 lakhs over its cost of acquisition. This surplus will not constitute agricultural income exempt under section 10(1) and will be taxable under section 45.

What about Indirect Connection with Land?

We have seen above that agricultural income is exempt, whether it is received by the tiller or the landlord. However, non-agricultural income does not become agricultural merely on account of its indirect connection with the land. The following examples will illustrate the above point.

Example 3: A rural society has as its principal business the selling on behalf of its member societies, butter made by these societies from cream sold to them by farmers. The making of butter was a factory process separated from the farm.

The butter resulting from the factory operations separated from the farm was not an agricultural product and the society was, therefore, not entitled to exemption under section 10(1) in respect of such income.

Example 4: X was the managing agent of a company. He was entitled for a commission at the rate of 10% p.a. on the annual net profits of the company. A part of the company's income was agricultural income. X claimed that since his remuneration was calculated with reference to income of the company, part of which was agricultural income, such part of the commission as was proportionate to the agricultural income was exempt from income tax.

Since, X received remuneration under a contract for personal service calculated on the amount of profits earned by the company; such remuneration does not constitute agricultural income.

Example 5: Y owned 100 acres of agricultural land, a part of which was used as pasture for cows. The lands were purely maintained for manuring and other purposes connected with agriculture and only the surplus milk after satisfying the assessee's needs was sold. The question arose whether income from such sale of milk was agricultural income.

The regularity with which the sales of milk were effected and quantity of milk sold showed that the assessee carried on regular business of producing milk and selling it as a commercial proposition. Hence, it was not agricultural income.

Example 6: In regard to forest trees of spontaneous growth which grow on the soil unaided by any human skill and labour there is no cultivation of the soil at all. Even though operations in the nature of forestry operations performed by the assessee may have the effect of nursing and fostering the growth of such forest trees, it cannot constitute agricultural operations.

*Income from the sale of such forest trees of spontaneous growth **does not**, therefore, constitute agricultural income.*

Various Examples and Clarifications on Agri and Non Agri Incomes

Agricultural income

1. Income derived from the sale of seeds.
2. Income from growing of flowers and creepers.
3. Rent received from land used for grazing of cattle required for agricultural activities.
4. Income from growing of bamboo.

Non-agricultural income

1. Income from breeding of livestock.
2. Income from poultry farming.
3. Income from fisheries.
4. Income from dairy farming.

D. <u>COMPUTATION OF TAX WHEN ASSESSEES INCOMES INCLUDES AGRICULTURE AND NON-AGRICULTURE INCOME</u>

<u>[AGGREGATION OF AGRICULTURAL INCOME WITH NON AGRI INCOME]:</u>

1. A method has been laid down to levy tax on agricultural income in an indirect way. This concept is known as **partial integration of agricultural income** with non-agricultural income. It is applicable to individuals, HUF, AOPs, BOIs and artificial juridical persons. **2 conditions** which need to be satisfied for partial integration are:
    a. The net agricultural income should exceed ₹ 5,000 p.a., and
    b. <u>Non-agricultural income should exceed the maximum amount not chargeable to tax.</u> (i.e., ₹ 5,00,000 for resident very senior citizens, ₹ 3,00,000 for resident senior citizens, ₹ 2,50,000 for all others).
2. It may be noted that <u>aggregation provisions do not apply to company, LLP, firm, co-operative society and local authority</u>. The object of aggregating the net agricultural income with non-agricultural income is to tax the non-agricultural income at higher rates.

3. Tax calculation in such cases is as follows:

    Step 1: Add non-agricultural income with net agricultural income. Compute tax on the aggregate amount.

    Step 2: Add net agricultural income and the maximum exemption limit available to the assessee (i.e., ₹ 2,50,000/ ₹ 3,00,000/ ₹ 5,00,000). Compute tax on the aggregate amount.

    Step 3: Deduct the amount of income tax calculated in step 2 from the income tax calculated in step 1 i.e., Step 1 – Step 2.

    Step 4: The sum so arrived at shall be increased by surcharge, if applicable. It would be reduced by the rebate, if any, available u/s 87A.

    Step 5: Thereafter, it would be increased by health and education cess @4%.

(Refer Illustration 3)

PART 3 – OTHER EXEMPTED INCOMES

[Section 10(2)]: Amounts received by a member from the income of the HUF

1. In order to prevent double taxation of one and the same income, once in the hands of the HUF which earns it and again in the hands of a member when it is paid out to him, section 10(2) provides that members of a HUF do not have to pay tax in respect of any amounts received by them from the family.
2. The exemption applies only in respect of a payment made by the HUF to its member
    a. out of the income of the family or
    b. out of the income of the impartible estate belonging to the family.

(Refer Illustration 4)

[Section 10(2A)]: Share income of a partner

This clause exempts from tax a partner's share in the total income of the firm. In other words, the partner's share in the total income of the firm determined in accordance with the profit-sharing ratio will be exempt from tax.

Taxability of partner's share, where the income of the firm is exempt under Chapter III/ deductible under Chapter VI-A [Circular No. 8/2014 dated 31.03.2014]

The CBDT has clarified that the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Therefore, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes Nil in the hands of the firm on account of any exemption or deduction available under the provisions of the Act.

[Section 10(4)(ii)]: Interest on moneys standing to the credit of individual in his NRE A/c

1. In the case of an individual, any income by way of interest on moneys standing to his credit in a **Non-resident (External) Account (NRE A/c)** in any bank in India in accordance Foreign Exchange Management Act, 1999 (FEMA, 1999), and the rules made thereunder, would be exempt, provided such individual:
    a. is a person resident outside India, as defined in FEMA, 1999, or
    b. is a person who has been permitted by the Reserve Bank of India to maintain such account.
2. In this context, it may be noted that the joint holders of the NRE Account do not constitute an AOP by merely having these accounts in joint names. The benefit of exemption under section

10(4)(ii) will be available to such joint account holders, subject to fulfilment of other conditions contained in that section by each of the individual joint account holders.

[Section 10(6)]: Remuneration received by individuals, who are not citizens of India

Individual assessees who are not citizens of India are entitled to certain exemptions:

[Section 10(6)(ii)]: Remuneration received by officials of Embassies etc. of Foreign States

1. The remuneration received by a person for services as an official of an embassy, high commission, legation, commission, consulate or the trade representation of a foreign State or as a member of the staff of any of these officials is exempt.
2. **Conditions:**
    a. The remuneration received by our corresponding Government officials or members of the staff resident in such foreign countries should be exempt.
    b. The above-mentioned members of the staff should be the subjects of the respective countries represented and should not be engaged in any other business or profession or employment in India.

[Section 10(6)(vi)]: Remuneration received for services rendered in India as an employee of foreign enterprise

3. Remuneration received by a foreign national as an employee of a foreign enterprise for service rendered by him during his stay in India is also exempt from tax.
4. **Conditions:**
    a. The foreign enterprise is not engaged in any business or trade.
    b. The employee's stay in India does not exceed 90 days during the previous year.
    c. The remuneration is not liable to be deducted from the employer's income chargeable to tax under the Act.

[Section 10(6)(viii)]: Salary received by a non-citizen non-resident for services rendered in connection with employment on foreign ship

Salary income received by or due to a non-citizen of India who is also non - resident for services rendered in connection with his employment on a foreign ship is exempt where his total stay in India does not exceed 90 days during the previous year.

[Section 10(6)(xi)]: Remuneration received by Foreign Government employees during their stay in India for specified training

Any remuneration received by employees of foreign Government from their respective Government during their stay in India, is exempt from tax, if such remuneration is received in connection with their training in any establishment or office of or in any undertaking owned by:

a. The Government or
b. Any company wholly owned by the Central or any State Government(s) or jointly by the Central and one or more State Governments; or
c. Any company which is subsidiary of a company referred to in (b) above; or
d. Any statutory corporation; or
e. Any society registered under the Societies Registration Act, 1860 or any other similar law, which is wholly financed by the Central Government or any State Government(s) or jointly by the Central and one or more State Governments.

[Section 10(10BC)]: Compensation received on account of disaster

1. This clause exempts any amount received or receivable as compensation by an individual or his legal heir on account of any disaster.
2. Such compensation should be granted by the Central Government or a State Government or a local authority.
3. However, exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.
4. "Disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence.
   a. It should have the effect of causing -
      i. substantial loss of life or human suffering or
      ii. damage to, and destruction of, property or
      iii. damage to, or degradation of, environment.
   b. It should be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

(Refer Illustration 5)

[Section 10(11A)]: Payment from Sukanya Samriddhi Account

Any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014, made under the Government Savings Bank Act, 1873, shall not be included in the total income of the assessee.

Accordingly, the interest accruing on deposits in, and withdrawals from any account under the said scheme would be exempt.

[Section 10(16)]: Educational scholarships

The value of scholarship granted to meet the cost of education would be exempt from tax in the hands of the recipient irrespective of the amount or source of scholarship.

[Section 10(17)]: Payments to MPs & MLAs

The following incomes of Members of Parliament or State Legislatures will be exempt:

1. **Daily Allowance:** Daily allowance received by any Member of Parliament or of any State Legislatures or any Committee thereof.
2. **Constituency Allowance of MPs:** In the case of a Member of Parliament, any allowance received under Members of Parliament (Constituency Allowance) Rules, 1986 and
3. **Constituency allowance of MLAs:** Any constituency allowance received by any person by reason of his membership of any State Legislature under any Act or rules made by that State Legislature.

[Section 10(17A)]: Awards by the Government

Any award instituted in the public interest by the Central/State Government or by any other body approved by the Central Government and a reward by Central/State Government for such purposes as may be approved by the Central Government in public interest, will enjoy exemption under this clause.

[Section 10(18)]: Pension received by recipient of gallantry awards

1. Any income by way of pension received by an individual is exempt from income-tax if:
    - such individual was an employee of Central or State Government and
    - has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or **such other gallantry award** notified by the Central Government in this behalf.
2. In case of the death of such individual, any income by way of family pension received by any member of the family of such individual shall also be exempt under this clause.
3. Family, in relation to an individual, means:
    - The spouse and children of the individual and

- The parents, brothers and sisters of the individuals or any of them, **wholly or mainly dependent on the individual**.

Exemption of disability pension granted to disabled personnel of armed forces who have been invalided on account of disability attributable to or aggravated by such service [Circular No. 13/2019, dated 24.6.2019]

The **entire disability pension**, i.e., "disability element" and "service element" of pension granted to members of naval, military or air forces who have been invalided out of naval, military or air force service on account of bodily disability attributable to or aggravated by such service would be exempt from tax.

The CBDT has, vide this circular, clarified that exemption in respect of disability pension would be available to all armed forces personnel (**irrespective of rank**) who have been invalided out of such service on account of bodily disability attributable to or aggravated by such service.

However, such tax exemption will be available only to armed forces personnel who have been invalided out of service on account of bodily disability attributable to or aggravated by such service **and not to personnel who have been retired on superannuation or otherwise**.

[Section 10(26AAA)]: Specified income of a Sikkimese Individual

1. The following income, which accrues or arises to a Sikkimese individual, would be exempt from income-tax:
    a. Income from any source in the State of Sikkim or
    b. Income by way of dividend or interest on securities.
2. However, this exemption will not be available to a Sikkimese woman who, on or after 1st April, 2008, marries a non-Sikkimese individual.

(Refer Illustration 6)

PART 4 – TAX HOLIDAY FOR UNITS ESTABLISHED IN SPECIAL ECONOMIC ZONES [SECTION 10AA]

A. ELIGIBLE ASSESSEES:

1. Exemption is available to all categories of assessees who derive any profits or gains from an undertaking, being a unit, engaged in the manufacturing or production of articles or things or provision of any service.
2. Such assessee should be an entrepreneur referred to in section 2(j) of the SEZ Act, 2005 i.e., a person who has been granted a letter of approval by the Development Commissioner under section 15(9) of the said Act.

B. CONDITIONS FOR EXEMPTION: The exemption shall apply to an undertaking which fulfils the following conditions:

1. It has begun to manufacture or produce articles or things or provide any service in any SEZ during the previous year relevant to A.Y.2006- 07 or any subsequent assessment year but not later than A.Y.2020-21.

However, in case where letter of approval, required to be issued in accordance with the provisions of the SEZ Act, 2005, has been issued on or before 31st March, 2020 and the manufacture or production of articles or things or providing services has not begun on or before 31st March, 2020 then, the date for manufacture or production of articles or things or providing services has been extended to 31st March, 2021 or such other date after 31st March, 2021, as notified by the Central Government.

For e.g. If the SEZ unit has received the necessary approval by 31.3.2020 and begins manufacture or production of articles or things or providing services on or before 31st March, 2021, then it would be deemed to have begun manufacture or production of articles or things or providing services during the A.Y. 2020-21 and would be eligible for exemption under section 10AA. [The Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020]

2. The assessee should furnish in the prescribed form, before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1), the report of a chartered accountant certifying that the deduction has been correctly claimed.

Example 9: An individual, subject to tax audit u/s 44AB, claiming deduction u/s 10AA is required to furnish return of income on or before 31.10.2023 and the report of a chartered accountant before 30.9.2023, certifying the deduction claimed u/s 10AA.

C. PERIOD AND AMOUNT OF EXEMPTION BY WAY OF DEDUCTION:

The unit of an entrepreneur, which begins to manufacture or produce any article or thing or provide any service in a SEZ on or after 1.4.2005, shall be allowed **a deduction of:**

1. **FIRST 5 YEARS:** 100% of the profits and gains derived from the export, of such articles or things or from services for a period of 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, and
2. **6TH TO 10TH YEARS:** 50% of such profits and gains for further 5 assessment years.
3. **11TH TO 15TH YEAR:** So much of the amount not exceeding 50% of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and **credited to a reserve account** (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilised in the manner laid down under section 10AA (2) for next 5 consecutive years. The following additional Conditions shall be satisfied for claiming deduction after 10 years: [Sec 10AA (2)]
    a. The amount credited to the Special Economic Zone Re-investment Reserve Account is utilised:
        1. for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of 3 years following the previous year in which the reserve was created.
        2. until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking. However, it should not be utilized for:
            i. distribution by way of dividends or profits
            ii. for remittance outside India as profits.
            iii. for the creation of any asset outside India.
    b. The particulars, as may be specified by the CBDT in this behalf, have been furnished by the assessee in respect of machinery or plant. Such particulars include details of
        1. The new plant / machinery,
        2. Name and address of the supplier of the new plant/machinery,
        3. Date of acquisition and date on which new plant/machinery was first put to use.

        Such particulars have to be furnished along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

Explanation to section 10AA(1): It is here to clarify that "amount of deduction under section 10AA shall be allowed from the total income of the assessee computed in accordance with the provisions of the Act before giving effect to the provisions of this section and the deduction under section 10AA **shall not exceed** such total income of the assessee"

Example 10:

An undertaking is set up in a SEZ and begins manufacturing on 15.10.2008. The deduction under section 10AA shall be allowed as under:

(a) 100% of profits of such undertaking from exports from A.Y.2009-10 to A.Y.2013-14.

(b) 50% of profits of such undertaking from exports from A.Y.2014-15 to A.Y. 2018-19.

(c) 50% of profits of such undertaking from exports from A.Y.2019-20 to A.Y.2023-24 provided certain conditions are satisfied.

D. CONSEQUENCES OF MIS-UTILISATION/ NON-UTILISATION OF RESERVE [Section 10AA (3)]

Where any amount credited to the Special Economic Zone Re-investment Reserve Account:

a. has been utilised for any purpose other than those referred to in subsection (2), the amount so utilized shall be deemed to be the profits in the year in which the amount was so utilised and charged to tax accordingly or
b. has not been utilised before the expiry of the said period of 3 years, the amount not so utilised, shall be deemed to be the profits in the year immediately following the said period of 3 years and be charged to tax accordingly.

E. COMPUTATION OF PROFITS AND GAINS FROM EXPORTS OF SUCH UNDERTAKINGS:

The profits derived from export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking i.e.,

$$\text{Profits of Unit in SEZ} \times \frac{\text{Export turnover of Unit SEZ}}{\text{Total turnover of Unit SEZ}}$$

F. CLARIFICATIONS, DEFINITIONS AND OTHER ISSUES:

1. **Clarification on issues relating to export of computer software [Onsite Development]:** The profits and gains derived from the on-site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

2. **Meaning of Export turnover:** It means the consideration received in India or brought into India by the assessee in respect of export by the undertaking being the unit of articles or things or services. However, it does not include:
   a. freight
   b. telecommunication charges
   c. insurance

   attributable to the delivery of the articles or things outside India or expenses incurred in foreign exchange in rendering of services (including computer software) outside India.

Clarification on issues relating to deduction of freight, telecommunication charges and other expenses from total turnover:

1. "Export turnover", inter alia, does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India.
2. CBDT has, vide circular No. 4/2018, dated 14/08/2018, clarified that freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover', while working out deduction admissible under section 10AA to the extent they are attributable to the delivery of articles or things outside India.

3. Similarly, expenses incurred in foreign exchange for rendering services outside India are to be excluded from both "export turnover" and "total turnover" while computing deduction admissible under section 10AA.

3. Restriction on other tax benefits:

- **a.** The business loss under section 72(1) or loss under the head "Capital Gains" under section 74(1), in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.
- **b.** In order to claim deduction under this section, the assessee should furnish report from a Chartered Accountant in the prescribed form along with the return of income certifying that the deduction is correct.
- **c.** During the period of deduction, depreciation is deemed to have been allowed on the assets. **Written Down Value shall accordingly be reduced**.
- **d.** No deduction under section 80-IA and 80-IB1 shall be allowed in relation to the profits and gains of the undertaking.
- **e.** Where any goods or services held for the purposes of eligible business are transferred to any other business carried on by the assessee, or where any goods held for any other business are transferred to the eligible business and, in either case, if the consideration for such transfer as recorded in the accounts of the eligible business does not correspond to the market value thereof, then the profits eligible for deduction shall be computed by adopting market value of such goods or services on the date of transfer.

  In case of exceptional difficulty in this regard, the profits shall be computed by the Assessing Officer on a reasonable basis as he may deem fit. Similarly, where due to the close connection between the assessee and the other person or for any other reason, it appears to the Assessing Officer that the profits of eligible business is increased to more than the ordinary profits, the Assessing Officer shall compute the amount of profits of such eligible business on a reasonable basis for allowing the deduction.
- **f.** Where a deduction under this section is claimed and allowed in relation to any specified business eligible for investment-linked deduction under section 35AD, NO

deduction shall be allowed under section 35AD in relation to such specified business for the same or any other assessment year.

4. Deduction allowable in case of amalgamation and demerger:

In the event of any undertaking, being the Unit, which is entitled to deduction under this section, being transferred, **before the expiry of the period specified in this section**, to another undertaking, being the Unit in a scheme of amalgamation or demerger:

a. No deduction shall be admissible under this section to the amalgamating or the demerged Unit for the previous year in which the amalgamation or the demerger takes place and
b. The provisions of this section would apply to the amalgamated or resulting Unit, as they would have applied to the amalgamating or the demerged Unit had the amalgamation or demerger had not taken place.

(Refer Illustration 7)

PART 5 – EXPENDITURE IN RESPECT OF EXEMPTED INCOME [Section 14A]

1. As per section 14A, ***notwithstanding anything to the contrary***, expenditure incurred in relation to any exempt income is not allowed as a deduction while computing income under any of the 5 heads of income [Sub-section (1)].
2. The Assessing Officer is empowered to determine the amount of expenditure incurred in relation to such income which does not form part of total income in accordance with such method as may be prescribed [Sub-section (2)].
3. The method for determining expenditure in relation to exempt income is to be prescribed by the CBDT for the purpose of disallowance of such expenditure under section 14A. Such method should be adopted by the Assessing Officer in the following cases:
    a. If he is not satisfied with the correctness of the claim of the assessee, having regard to the accounts of the assessee. [Sub-section (2)] or
    b. Where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of total income [Sub-section (3)].

4. Rule 8D lays down the method for determining the amount of expenditure in relation to income not includible in total income. The expenditure in relation to income not forming part of total income shall be the aggregate of the following:
    a. The amount of expenditure directly relating to income which does not form part of total income.
    b. an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not form part of total income.

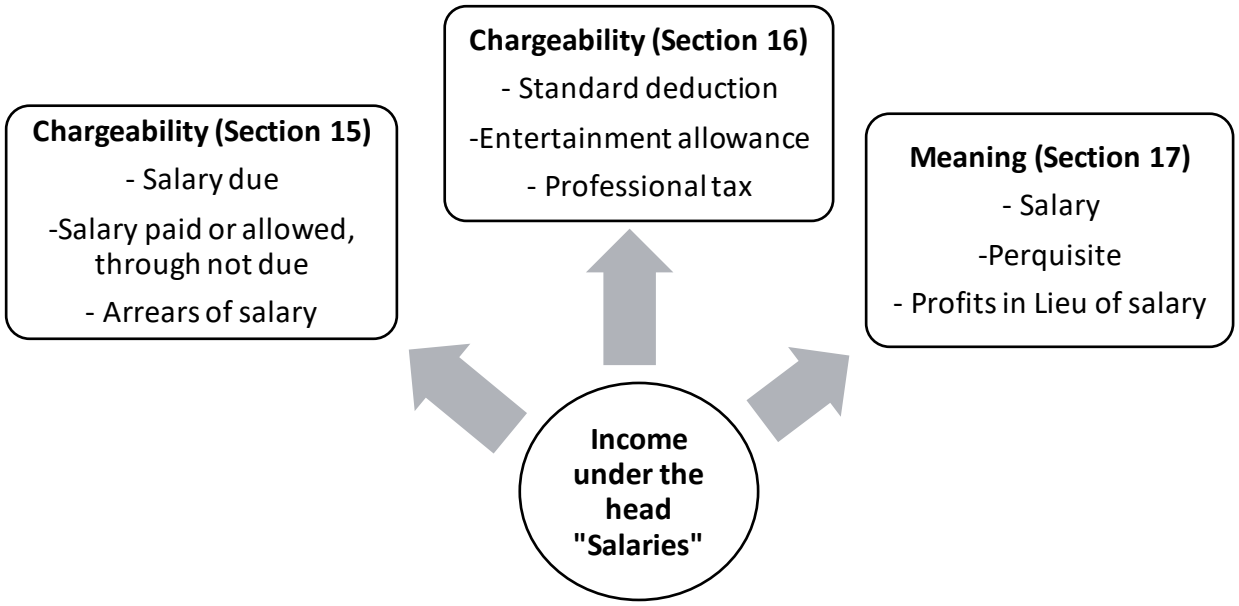
    However, the amount referred to in clause (a) and clause (b) shall not exceed the total expenditure claimed by the assessee.

Expenditure incurred during a previous year (say, P.Y. 2022-23) in relation to exempt income would be disallowed while computing total income of that previous year by applying the provisions of section 14A even though such exempt income has not accrued or arisen or has not been received during the said previous year.

4. INCOME FROM SALARIES

PART 1	**INTRODUCTION AND CHARGING SECTION [Section 15]**
PART 2	**MEANING OF SALARY [Section 17 (1)]**
	- Taxability of Various Allowances
	- House Rent Allowance u/s 10(13A)
	- Commuted Pension u/s 10(10A)
	- Gratuity u/s 10(10)
	- Leave Encashment u/s 10(10AA)
	- Provident Fund Exemption u/s 10(11) and 10 (12)
PART 3	**PROFITS IN LIEU OF SALARY [Section 17(3)]**
	- Retrenchment Compensation u/s 10(10B)
	- Voluntary Retirement Compensation u/s 10(10C)
PART 4	**PERQUISITES OVER VIEW [Section 17(2)]**
	- Fully Taxable Perquisites for All employees
	- Fully Exempted Perquisites
	- Taxable Perquisites only in hands of Specified Employees
PART 4A	**VALUATION OF PERQUISITES**
	- Rent Free Accommodation
	- Motor Car
	- Medical Facility, Education Facility and Gas & Water
	- Use or Transfer of Movable Asset
	- Sweat Equity or specified security
	- Club or Credit card
	- Travel Facility, Food, Beverages and Other refreshments
PART 5	**DEDUCTIONS FROM SALARY [Section 16]**
	- Standard Deduction
	- Entertainment allowance
	- Profession Tax
PART 6	**RELIEF [Section 89]**

PART 1 – INTRODUCTION & CHARGING SECTION



A. CONCEPT OF EMPLOYMENT AND SALARY:

1. Every payment made by an employer to his employee for service rendered would be chargeable to tax as salaries. Before an income can become chargeable under the head 'salaries', it is vital that there should exist between the payer and the payee, the relationship of an employer and an employee.

Example 1: Sujata, an actress, is employed in Chopra Films, where she is paid a monthly remuneration of ₹ 2 lakh. She acts in various films produced by various producers. The remuneration for acting in such films is directly paid to Chopra Films by the different producers.

In this case, ₹ 2 lakh will constitute salary in the hands of Sujata, since the relationship of employer and employee exists between Chopra Films and Sujata.

Example 2: In the above example, if Sujata acts in various films and gets fees from different producers, the same income will be chargeable as income from profession since the relationship of employer and employee does not exist between Sujata and the film producers.

Example 3: Commission received by a director from a company is salary if the Director is an employee of the company. If, however, the Director is not an employee of the company, the said commission cannot be charged as salary but has to be charged either as income from business or as income from other sources depending upon the facts.

Example 4: Salary paid to a partner by a firm is nothing but an 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. The same is to be charged as income from profits and gains of business or profession. This is primarily because the relationship between the firm and its partners is not that of an employer and employee.

2. **Full-time or part-time employment:** Once the relationship of employer and employee exists, the income is to be charged under the head "salaries". It does not matter whether the employee is a full-time employee or a parttime one.
   For E.g., an employee works with more than one employer, salaries received from all the employers should be clubbed and brought to charge for the relevant previous years.

3. **Forgoing of salary:** Once salary accrues, the subsequent waiver by the employee does not absolve him from liability to income-tax. Such waiver is only an application and hence, chargeable to tax.

Example 5:

Mr. A, an employee instructs his employer that he is not interested in receiving the salary for April 2022 and the same might be donated to a charitable institution.

In this case, Mr. A cannot claim that he cannot be charged in respect of the salary for April 2022. It is only due to his instruction that the donation was made to a charitable institution by his employer. It is only an application of income.

Hence, the salary for the month of April 2022 will be taxable in the hands of Mr. A. He is, however, entitled to claim a deduction under section 80G for the amount donated to the institution. [The concept of deductions is explained in detail in Chapter 7].

4. **Surrender of salary:** However, if an employee surrenders his salary to the Central Government under section 2 of the Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961, the salary so surrendered would be exempt while computing his taxable income.

5. **Salary paid tax-free:** This, in other words, means that the employer bears the burden of the tax on the salary of the employee. In such a case, the income from salaries in the hands of the employee will consist of his salary income and also the tax on this salary paid by the employer.

   However, as per section 10(10CC), the income-tax paid by the employer on non-monetary perquisites on behalf of the employee would be exempt in the hands of the employee.

6. **Place of accrual of salary:** Under section 9(1)(ii), salary earned 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.

   If an employee is paid pension abroad in respect of services rendered in India, the same will be deemed to accrue in India. Similarly, leave salary paid abroad in respect of leave earned in India is deemed to accrue or arise in India.

Example 6:

Suppose, Mr. A, a citizen of India, is posted in the United States as our Ambassador. Obviously, he renders his services outside India. He also receives his salary outside India. He is also a non-resident. The question, therefore, arises whether he can claim exemption in respect of his salary paid by the Government of India to him outside India.

Section 9(1)(iii) provides that salaries payable by the Government to a citizen of India for services outside India shall be deemed to accrue or arise in India. However, by virtue of section 10(7), any allowance or perquisites paid or allowed outside India by the Government to a citizen of India for rendering services outside India will be fully exempt.

Now, let us discuss the chargeability under section 15, the provisions explaining the meaning of Salary, Perquisite and Profits in lieu of salary contained in section 17 and the deductions under section 16.

B. BASIS OF CHARGE (SECTION 15):

1. Salary is chargeable to tax either on 'due' basis or on 'receipt' basis, whichever is earlier.
2. However, where any salary, paid in advance, is assessed in the year of payment, it cannot be subsequently brought to tax in the year in which it becomes due.
3. If the salary paid in arrears has already been assessed on due basis, the same cannot be taxed again when it is paid.
4. **ADVANCE SALARY:**
    a. Advance salary is taxable when it is received by the employee irrespective of the fact whether it is due or not.
    b. Loan is different from salary. When an employee takes a loan from his employer, which is repayable in certain specified installments, the loan amount cannot be brought to tax as salary of the employee.
    c. Similarly, advance against salary is different from advance salary. It is an advance taken by the employee from his employer. This advance is generally adjusted with his salary over a specified time period. It cannot be taxed as salary.
    d. Salary arrears must be charged on due basis. However, there are circumstances when it may not be possible to bring the same to charge on due basis.
    For E.g., If the Pay Commission is appointed by the Central Government and it recommends revision of salaries of employees with retrospective date, the arrears received in that connection will be charged on receipt basis.

Original Text of Sec 15 as per Income tax Act, 1961:

The following income shall be chargeable to income-tax under the head "Salaries"—

(a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;

(b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Explanation 1.— *For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.*

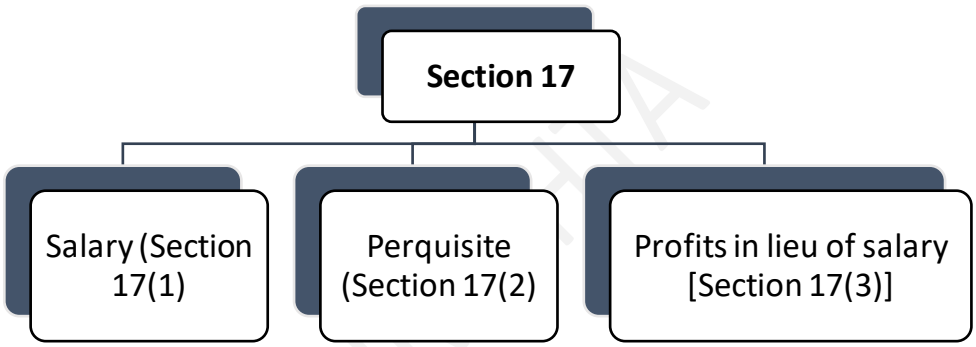
Explanation 2.— *Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary" for the purposes of this section.*

Example 7:

If A draws his salary in advance for the month of April 2023 in the month of March 2023 itself, the same becomes chargeable on receipt basis and is to be assessed as income of the P.Y.2022-23 i.e., A.Y.2023-24. However, the salary for the A.Y.2024-25 will not include that of April 2023.

Example 8: If the salary due for March 2023 is received by A later in the month of April 2023, it is still chargeable as income of the P.Y.2022-23 i.e., A.Y.2023-24 on due basis. Obviously, salary for the A.Y.2024-25 will not include that of March 2023.

PART 2 – MEANING OF SALARY, PERQUISITE AND PROFIT IN LIEU OF SALARY [Section 17]



A. MEANING OF SALARY: Section 17(1), defined the term "Salary". It is an inclusive definition and includes monetary as well as non-monetary items.

'Salary' under section 17(1), INCLUDES the following:	
(i)	Wages,
(ii)	any annuity or pension,
(iii)	any gratuity,
(iv)	any fees, commission, perquisites or profits in lieu of or in addition to any salary or wages,
(v)	any advance of salary,
(va)	any payment received in respect of any period of leave not availed by him i.e., leave salary or leave encashment,
	Provident Fund:
(vi)	- 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 and
(vii)	- transferred balance in recognized provident fund to the extent it is taxable,

(viii)	The contribution made by the Central Government or any other employer in the previous year to the account of an employee under a pension scheme referred to in section 80CCD.

B. WAGES: In common parlance, the term "wages" means fixed regular payment earned for work or services. The words "wages", "salary", "basic salary" is used interchangeably. Moreover, the payments in the form of Bonus, Allowances etc. made to the employee are also included within the meaning of salary.

C. ALLOWANCES: Generally, allowances are given to employees to meet some particular requirements like house rent, expenses on uniform, conveyance etc. Allowance is taxable on due or receipt basis, whichever is earlier. Various types of allowances normally in vogue are discussed below:

Overview of Various Allowances		
Fully Taxable	**Partly Taxable**	**Fully Exempt**
1. Entertainment Allowance 2. Dearness Allowance 3. Overtime Allowance 4. Fixed Medical Allowance 5. City Compensatory Allowance (to meet increased cost of living in cities) 6. Interim Allowance 7. Servant Allowance 8. Project Allowance 9. Tiffin/Lunch/Dinner Allowance 10. Any other cash allowance 11. Warden Allowance 12. Non-practicing Allowance 13. Transport allowance to employee other than blind / deaf and dumb/ orthopedically handicapped employee	1. House Rent Allowance [u/s 10(13A)] 2. Special Allowances [u/s 10(14)]	1. Allowances to High Court Judges 2. Allowance paid by the United Nations Organization 3. Compensatory Allowance received by a judge 4. Sumptuary allowance granted to High Court or Supreme Court Judges 5. Allowance granted to Government employees outside India.

D. ALLOWANCES WHICH ARE FULLY TAXABLE:

1. **City compensatory allowance:** City Compensatory Allowance is normally intended to compensate the employees for the higher cost of living in cities. It is taxable irrespective of the fact whether it is given as compensation for performing his duties in a particular place or under special circumstances.

2. **Entertainment allowance:** This allowance is given to employees to meet the expenses towards hospitality in receiving customers etc. The Act gives a deduction towards entertainment allowance only to a government employee. The details of deduction permissible are discussed later on in this Unit.
3. **Transport allowance:** Transport allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty is fully taxable. However, in case of blind/ deaf and dumb/ orthopedically handicapped employees exemption up to ₹ 3,200 p.m. is provided under section 10(14)(ii) read with Rule 2BB.

E. ALLOWANCES WHICH ARE PARTIALLY TAXABLE:

HOUSE RENT ALLOWANCE [Section 10(13A)]

HRA is a special allowance specifically granted to an employee by his employer towards payment of rent for residence of the employee. HRA granted to an employee is exempt to the extent of **LEAST** of the following:

Metro Cities (i.e., Delhi, Kolkata, Mumbai, Chennai)	Other Cities
1) HRA actually received for the relevant period	1) HRA actually received for the relevant period
2) Rent paid (-) 10% of **Salary*** for the relevant period	2) Rent paid (-) 10% of **Salary*** for the relevant period
3) **50% of Salary*** for the relevant Period	3) **40% of Salary*** for the relevant period

***Salary =** Basic + D.A. (As part of Terms of Employment) + Commission (% of T/O)

CLARIFICATIONS:

1. Exemption is not available to an assessee who lives in his own house, or in a house for which he has not incurred the expenditure of rent.
2. Relevant period means the period during which the said rented accommodation was occupied by the assessee during the previous year.

(Refer illustration 1)

SPECIAL ALLOWANCES [SECTION 10(14)] [Rule 2BB]

FOR OFFICIAL PURPOSE [Section 10(14)(i)]: Special allowances or benefit, not being in the nature of a perquisite, specifically granted to meet expenses incurred wholly, necessarily and exclusively in the performance of the duties of an office or employment of profit.

For the allowances under this category, there is NO limit on the amount which the employee can receive from the employer, but whatever amount is received **should be fully utilized** for the purpose for which it was given to him.

a. **TRAVELLING ALLOWANCE:** Any allowance granted to meet the cost of travel on tour or on transfer. "Allowance granted to meet the cost of travel on transfer" includes any sum paid in connection with the transfer, packing and transportation of personal effects on such transfer.
b. **DAILY ALLOWANCE:** Any allowance, whether granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.
c. **CONVEYANCE ALLOWANCE:** Any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit.
d. **HELPER ALLOWANCE:** Any allowance granted to meet the expenditure incurred on a helper where such helper is engaged in the performance of the duties of an office or employment of profit.
e. **RESEARCH ALLOWANCE:** Any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions.
f. **UNIFORM ALLOWANCE:** Any allowance granted to meet the expenditure on the purchase or maintenance of uniform for wear during the performance of the duties of an office or employment of profit**.**

Note: An employee, being an assessee, who opts for the provisions of section 115BAC would be entitled for exemption only in respect of travelling allowance, daily allowance and conveyance allowance mentioned in (a) to (c) above.

FOR PERSONAL PURPOSE [Section 10(14)(ii)]: Special allowances granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides or to compensate him for the increased cost of living.

Allowances prescribed for the purposes of section 10(14)(ii)

S. No.	Name of Allowance	Extent to which allowance is exempt
1.	Any Special Compensatory Allowance in the nature of Special Compensatory (Hilly Areas) Allowance or High-Altitude Allowance or Uncongenial Climate Allowance or Snow Bound Area Allowance or Avalanche Allowance.	₹ 800 or ₹ 300 per month depending upon the specified locations ₹ 7,000 per month in Siachen area of Jammu and Kashmir
2.	Any Special Compensatory Allowance in the nature of border area allowance or remote locality allowance or difficult area allowance or disturbed area allowance.	₹ 1,300 or ₹ 1,100 or ₹ 1,050 or ₹ 750 or ₹ 300 or ₹ 200 per month depending upon the specified locations

3.	Special Compensatory (Tribal Areas / Schedule Areas / Agency Areas) Allowance [Specified States].	₹ 200 per month
4.	Any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running such transport from one place to another, provided that such employee is not in receipt of daily allowance.	70% of such allowance up to a maximum of **₹ 10,000 per month**
5.	Children Education Allowance	₹ 100 per month per child up to a maximum of 2 children
6.	Any allowance granted to an employee to meet the hostel expenditure on his child.	₹ 300 per month per child up to a maximum of 2 children
7.	Compensatory Field Area Allowance [Specified areas in Specified States].	₹ 2,600 per month
8.	Compensatory Modified Field Area Allowance [Specified areas in Specified States].	₹ 1,000 per month
9.	Any special allowance in the nature of counter insurgency allowance granted to the members of the armed forces operating in areas away from their permanent locations.	₹ 3,900 per month
10.	Any **transport allowance** granted to an employee who is blind or deaf and dumb or orthopedically handicapped with disability of the lower extremities of the body, to meet his expenditure for commuting between his residence and place of duty.	₹ 3,200 per month
11.	Underground Allowance granted to an employee who is working in uncongenial, unnatural climate in underground mines.	₹ 800 per month
12.	Any special allowance in the nature of **high-Altitude allowance** granted to the member of	

	the armed forces operating in high altitude areas For altitude of 9,000 to 15,000 feet For above 15,000 feet	 ₹ 1,060 per month ₹ 1,600 per month
13.	Any special allowance in the nature of **special compensatory highly active field area allowance** granted to the member of the armed forces.	₹ 4,200 per month
14.	Any special allowance in the nature of **Island (duty) allowance** granted to the member of the armed forces in **Andaman & Nicobar and Lakshadweep Group of Islands.**	₹ 3,250 per month

Notes:

a. Any assessee claiming exemption in respect of allowances mentioned at serial numbers 7 & 8 and 9 shall not be entitled to exemption in respect of the allowance and disturbed area allowance referred at serial number 2, respectively.

b. An employee, being an assessee, who opts for the provisions of section 115BAC would be entitled for exemption only in respect of transport allowance granted to an employee who is blind or deaf and dumb or orthopedically handicapped with disability of the lower extremities of the body to the extent of ₹ 3,200 p.m.

(Refer illustration 2)

F. ALLOWANCES WHICH ARE FULLY EXEMPT:

1. **Allowance to Supreme Court/ High Court Judges:** Any allowance paid to a Judge of a High Court and Supreme Court under section 22A (2) of the High Court Judges (Conditions of Service) Act, 1954 and section 23(1A) of the Supreme Court Judges (Salaries and Conditions of services) Act, 1958, respectively, is not taxable.
2. **Allowance received from United Nations Organisation (UNO):** Allowance paid by the UNO to its employees is not taxable by virtue of section 2 of the United Nations (Privileges and Immunities) Act, 1947.
   Besides salary, any pension covered under the United Nations (Privileges and Immunities) Act and received from UNO is also exempt from tax.
3. **Compensatory allowance under Article 222(2) of the Constitution:** Compensatory allowance received by judge under Article 222(2) of the Constitution is not taxable since it is neither salary not perquisite.

4. **Sumptuary allowance:** Sumptuary allowance given to High Court Judges under section 22C of the High Court Judges (Conditions of Service) Act, 1954 and Supreme Court Judges under section 23B of the Supreme Court Judges (Conditions of Service) Act, 1958 is not chargeable to tax.
5. **Allowances payable outside India [Section 10(7)]:** Allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for services rendered outside India are exempt from tax.

G. ANNUITY:

1. Meaning of Annuity:

a. As per the definition, 'annuity' is treated as salary. Annuity is a sum payable in respect of a particular year. It is a yearly grant.
b. If a person invests some money entitling him to series of equal annual sums, such annual sums are annuities in the hands of the investor.

2. **Taxability of Annuity:**

a. Annuity received by a present employer is to be taxed as salary. It does not matter whether it is paid in pursuance of a contractual obligation or voluntarily.
b. Annuity received from a past employer is taxable as profit in lieu of salary.
c. Annuity received from person other than an employer is taxable as "income from other sources".

H. PENSION:

1. 'Pension' as a periodic payment made especially by Government or a company or other employers to the employee in consideration of past service payable after his retirement.

2. **Pension is of 2 types:**

a. **Uncommuted Pension:** Uncommuted pension refers to pension received periodically. It is fully taxable in the hands of both government and non-government employees.
b. **Commuted Pension:** Commutation means inter-change. Commuted pension means lump sum amount taken by commuting the whole or part of the pension. Many persons convert their future right to receive pension into a lumpsum amount receivable immediately.

Example 10:
Suppose a person is entitled to receive a pension of say ₹ 10,000 p.m. for the rest of his life. He may commute ¼th i.e., 25% of this amount and get a lumpsum of say ₹ 1,50,000. After commutation, his pension will now be the balance 75% of ₹ 10,000 p.m. = ₹ 7,500 p.m.

3. **Exemption in respect of Commuted Pension [Section 10(10A)]:** As per section 10(10A), the payment in respect of commuted pension is exempt, subject to the conditions specified therein. Its treatment is discussed below:
    a. **Employees of the Central Government/ local authorities/ Statutory Corporation/ members of the Civil Services/ Defence Services:** Any commuted pension received is fully exempt from tax.

    b. **For Other Employees [Receiving Gratuity]:** Any commuted pension received is exempt from tax to the extent of the following:

$$= \left[\frac{1}{3} \times \frac{\text{commuted pension received}}{\text{commutation \%}} \times 100\%\right]$$

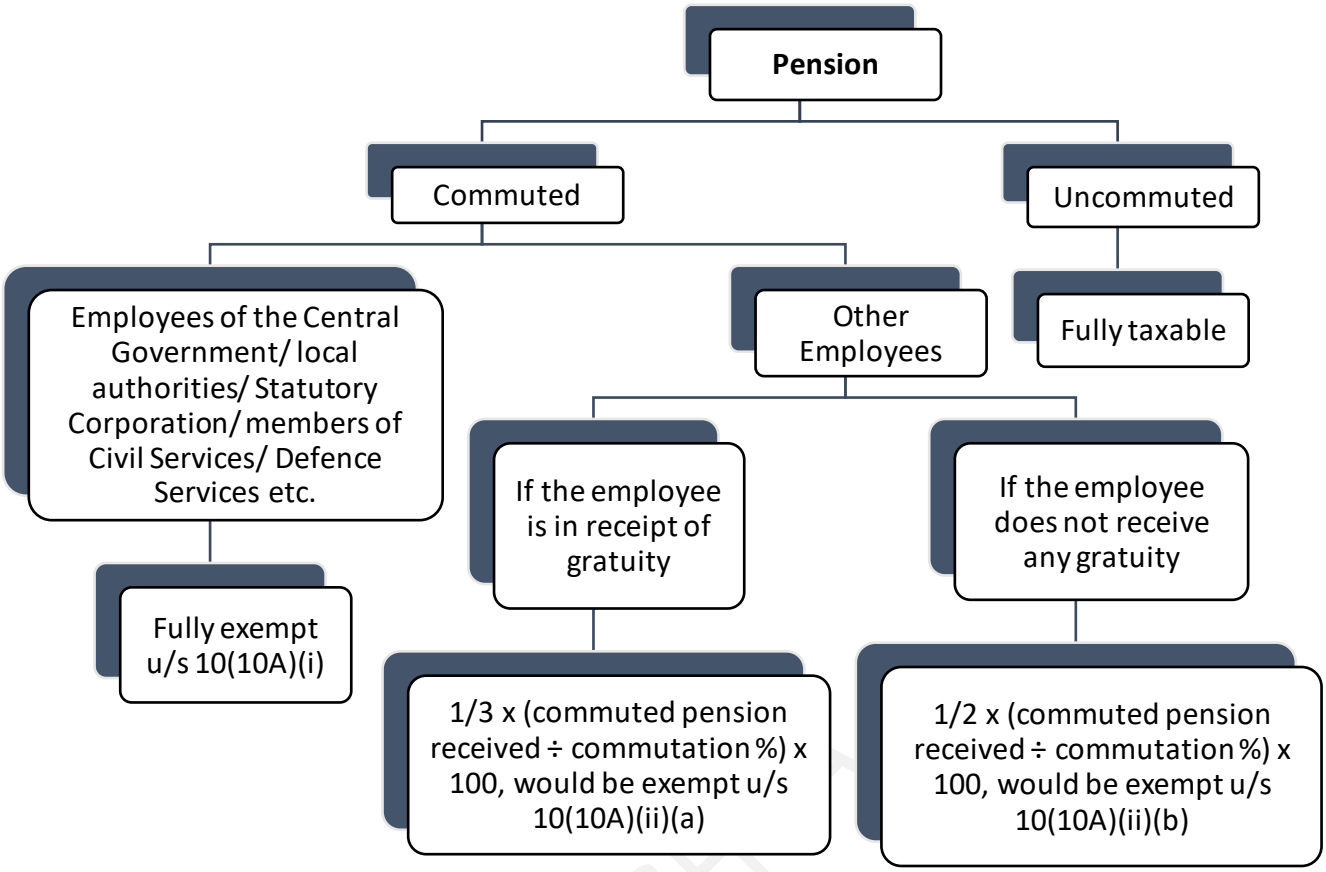
    c. **For Other Employees [NOT Receiving Gratuity]:** Any commuted pension received is exempt from tax to the extent of the following:

$$= \left[\frac{1}{2} \times \frac{\text{commuted pension received}}{\text{commutation \%}} \times 100\%\right]$$

Notes:

1. Judges of the Supreme Court and High Court will be entitled to exemption of the entire commuted portion.
2. Any commuted pension received by an individual out of annuity plan of the Life Insurance Corporation of India (LIC) from a fund set up by that Corporation will be exempted.

(Refer illustration 3)



I. GRATUITY AND EXEMPTION U/S 10(10):

1. **Under Pension Code – Exempt:** Retirement gratuity received under the Pension Code or Regulations applicable to members of the Defence Service is fully exempt from tax.

2. **Government Employees - Exempt:** Employees of Central Government/ Members of Civil Services/ local authority employees: Any death cum retirement gratuity is fully exempt from tax under section 10(10)(i).

3. **Other employees [Covered under Payment of Gratuity Act 1972]:** Any death-cum-retirement gratuity is exempt from tax to the extent of **LEAST** of the following:
   a. ₹ 20,00,000 or
   b. Gratuity actually received or
   c. 15 /26 days' **Salary*** based on last drawn salary for each completed year of service or part thereof in excess of 6 months.

$$= \frac{15}{26} * \textbf{Last Drawn Salary} * \textbf{Completed Years of Service or Part in excess of 6m}$$

Salary = Basic + D.A. [Any]

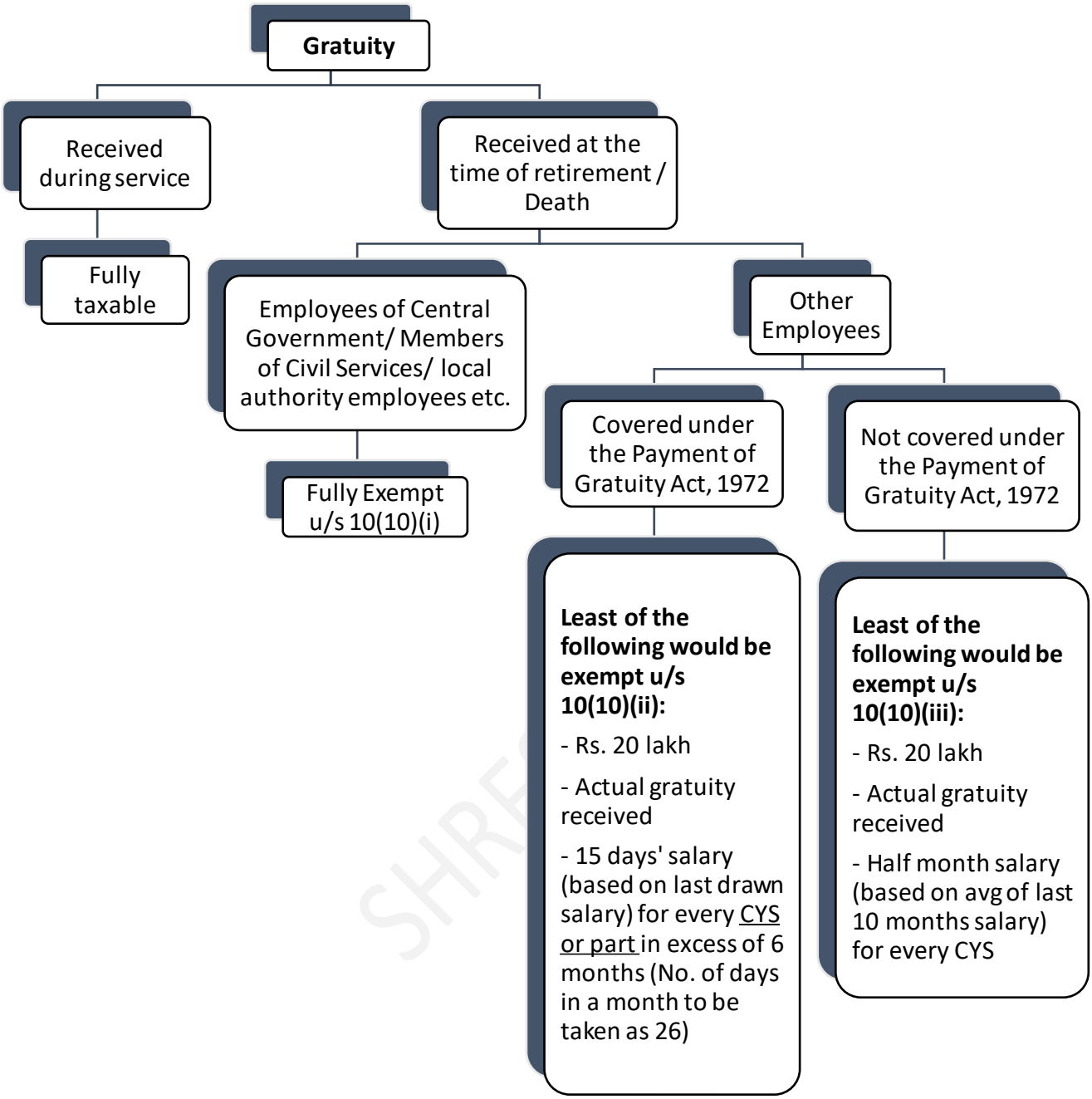
4. **Other employees [NOT Covered under Payment of Gratuity Act 1972]:** Any death cum retirement gratuity received by an employee on his retirement or his becoming incapacitated prior to such retirement or on his termination or any gratuity received by his widow, children or dependents on his death is exempt from tax to the extent of least of the following:
   a. ₹ 20,00,000.
   b. Gratuity actually received.
   c. **Half** month's **Salary*** (based on last 10 months' average salary immediately preceding the month of retirement or death) for each completed year of service (**fraction to be ignored**)

***Salary =** Basic + D.A. (As part of Terms of Employment) + Commission (% of T/O)

Notes:

1. Gratuity received during the period of service is fully taxable.
2. Where gratuity is received from 2 or more employers in the same previous year then aggregate amount of gratuity exempt from tax cannot exceed ₹ 20,00,000.
3. Where gratuity is received in any earlier previous year from former employer and again received from another employer in a later previous year, the limit of ₹ 20,00,000 will be reduced by the amount of gratuity exempt earlier.

(Refer illustration 4)



J. FEES, COMMISSION, PERQUISITES OR PROFITS IN LIEU OF OR IN ADDITION TO ANY SALARY OR WAGES:

The payment in the form of fees or commission by the employer to the employee are fully taxable. Commission may be paid as fixed percentage of turnover or net profits etc.

K. LEAVE SALARY OR LEAVE ENCASHMENT AND EXEMPTION U/S 10(10AA)]:

1. **Government employees:** Leave salary received at the time of retirement is fully exempt from tax.

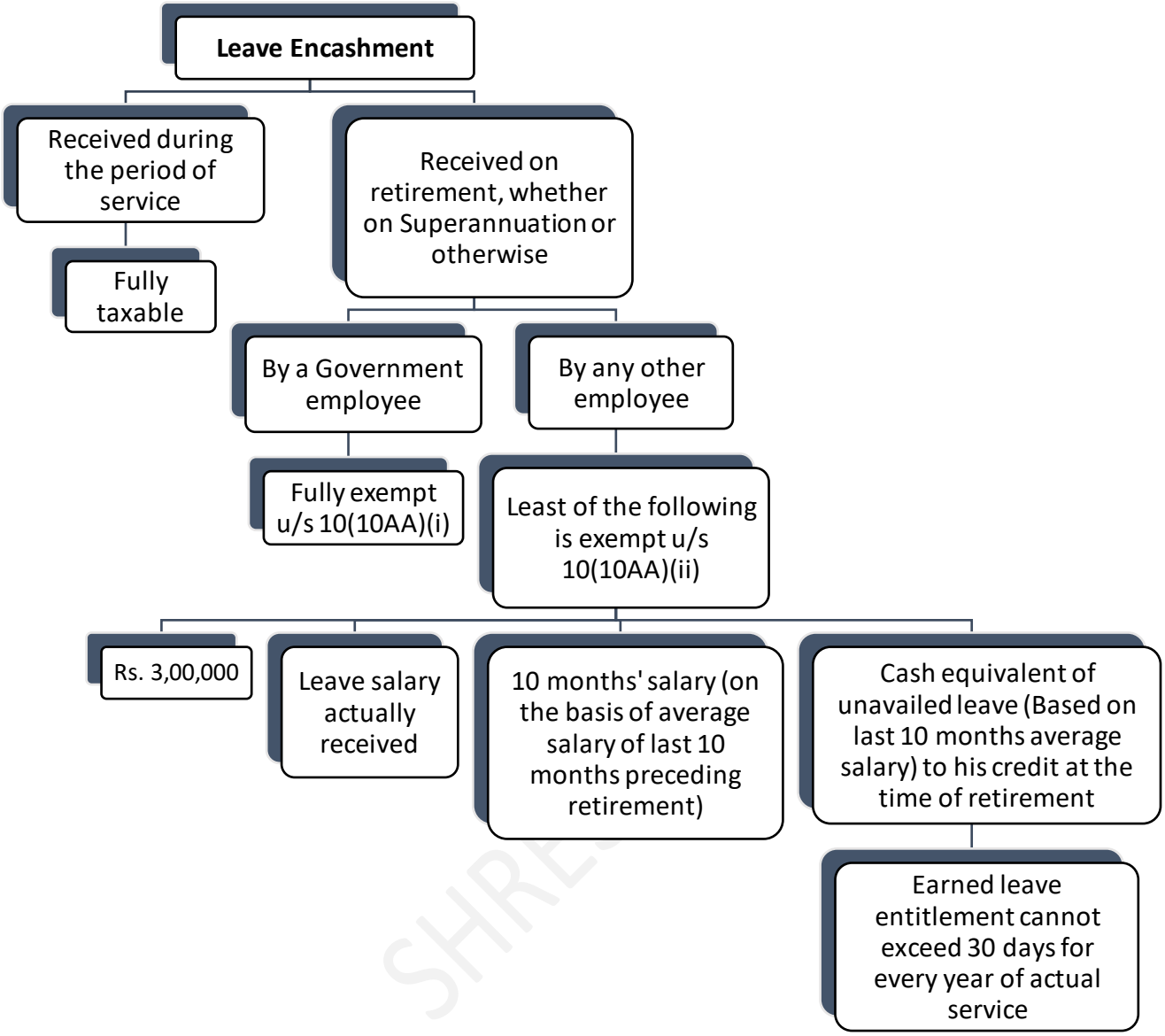
2. **Non-government employees:** Leave salary received at the time of retirement is exempt from tax to the extent of **least** of the following:
    a. ₹ 3,00,000
    b. Leave salary actually received
    c. 10 months' salary (on the basis of average salary of last 10 months)
    d. **Cash for Unutilised Leaves:** Cash equivalent of leave standing at the credit of the employee [based on average salary of last 10 months].
    [Earned leave entitlement **cannot exceed 30 days** for every year of actual service rendered for the employer from whose service he has retired]
    [**i.e.,** Actual Leaves / 30 Days – utilised Leaves] * CYS * Average Salary

***Salary =** Basic + D.A. (As part of Terms of Employment) + Commission (% of T/O)

Notes:

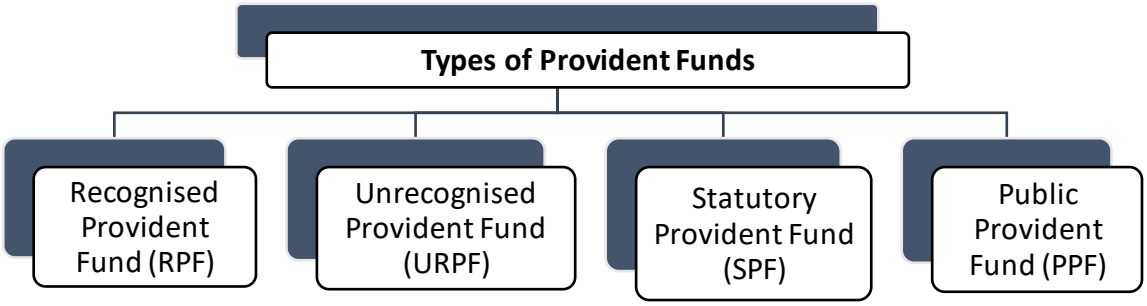
1. Leave salary received during the period of service is fully taxable.
2. Where leave salary is received from two or more employers in the same previous year, then the aggregate amount of leave salary exempt from tax cannot exceed ₹ 3,00,000.
3. Where leave salary is received in any earlier previous year from a former employer and again received from another employer in a later previous year, the limit of ₹ 3,00,000 will be reduced by the amount of leave salary exempt earlier.
4. 'Average salary' will be determined on the basis of the salary drawn during the period of 10 months immediately preceding the **date** of his retirement whether on superannuation or otherwise.

(Refer illustration 5)



L. PROVIDENT FUND:

1. The credit balance in a provident fund account of an employee consists of the following:
    a. Employee's contribution
    b. Interest on employee's contribution
    c. Employer's contribution
    d. Interest on employer's contribution.
2. The accumulated balance is paid to the employee at the time of his retirement or resignation. In the case of death of the employee, the same is paid to his legal heirs.



RECOGNISED PROVIDENT FUND (RPF):

1. Recognised provident fund means a provident fund recognised by the Commissioner of Income-tax for the purposes of income-tax. It is **governed by Part A of Schedule IV** to the Income-tax Act, 1961. This schedule contains various rules regarding the following:
    a. Recognition of the fund
    b. Employee's and employer's contribution to the fund
    c. Treatment of accumulated balance etc.
2. A fund constituted under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 will also be a Recognised Provident Fund.

UNRECOGNISED PROVIDENT FUND (URPF):

A fund not recognised by the Commissioner of Income-tax is Unrecognised Provident Fund.

STATUTORY PROVIDENT FUND (SPF):

The SPF is governed by Provident Funds Act, 1925. It applies to employees of government, railways, semi government institutions, local bodies, universities and all recognised educational institutions.

PUBLIC PROVIDENT FUND (PPF):

Public provident fund **is operated under the Public Provident Fund Act, 1968**. A membership of the fund is open to every individual though it is ideally suited to self-employed people. A salaried employee may also contribute to PPF in addition to the fund operated by his employer. An individual may contribute to the fund on his own behalf as also on behalf of a minor of whom he is the guardian.

TAX TREATMENT FOR PROVIDENT FUNDS

Particulars	Recognised PF	Unrecognised PF	Statutory PF	Public PF
Employer's Contribution	Contribution in excess of 12% of **Salary*** is taxable as "salary" u/s 17(1)	**Not taxable** at the time of contribution	Fully Exempt	N.A. (as there is only assessee's own contribution)
Employee's Contribution	Eligible for deduction u/s 80C	**Not eligible for Deduction**	Eligible for deduction u/s 80C	Eligible for deduction u/s 80C
Interest Credited on Employer's Contribution	Amount in excess of 9.5% p.a. is taxable as "salary" u/s 17(1)	**Not taxable** at the time of credit of interest	Fully exempt	N.A.
Interest Credited on Employee's Contribution	Amount in excess of 9.5% p.a. is taxable as "salary" u/s 17(1) **[Refer Additional Condition]**	**Not taxable** at the time of credit of interest	Exempt up to certain limit of contribution **[Refer Additional Conditions]**	Fully exempt
Amount withdrawn on retirement/ termination	**Exempt** u/s 10(12) subject to certain conditions detailed in the chart below	1. Employee's contribution is not taxable. 2. Interest on Employee's contribution is taxable under 'Income from Other Sources'. 3. Employer's contribution and interest thereon is taxable as "Profit in lieu of salary" u/s 17(3).	Exempt u/s 10(11)	Fully exempt u/s 10(11)

***Salary =** Basic + D.A. (As part of Terms of Employment) + Commission (% of T/O)

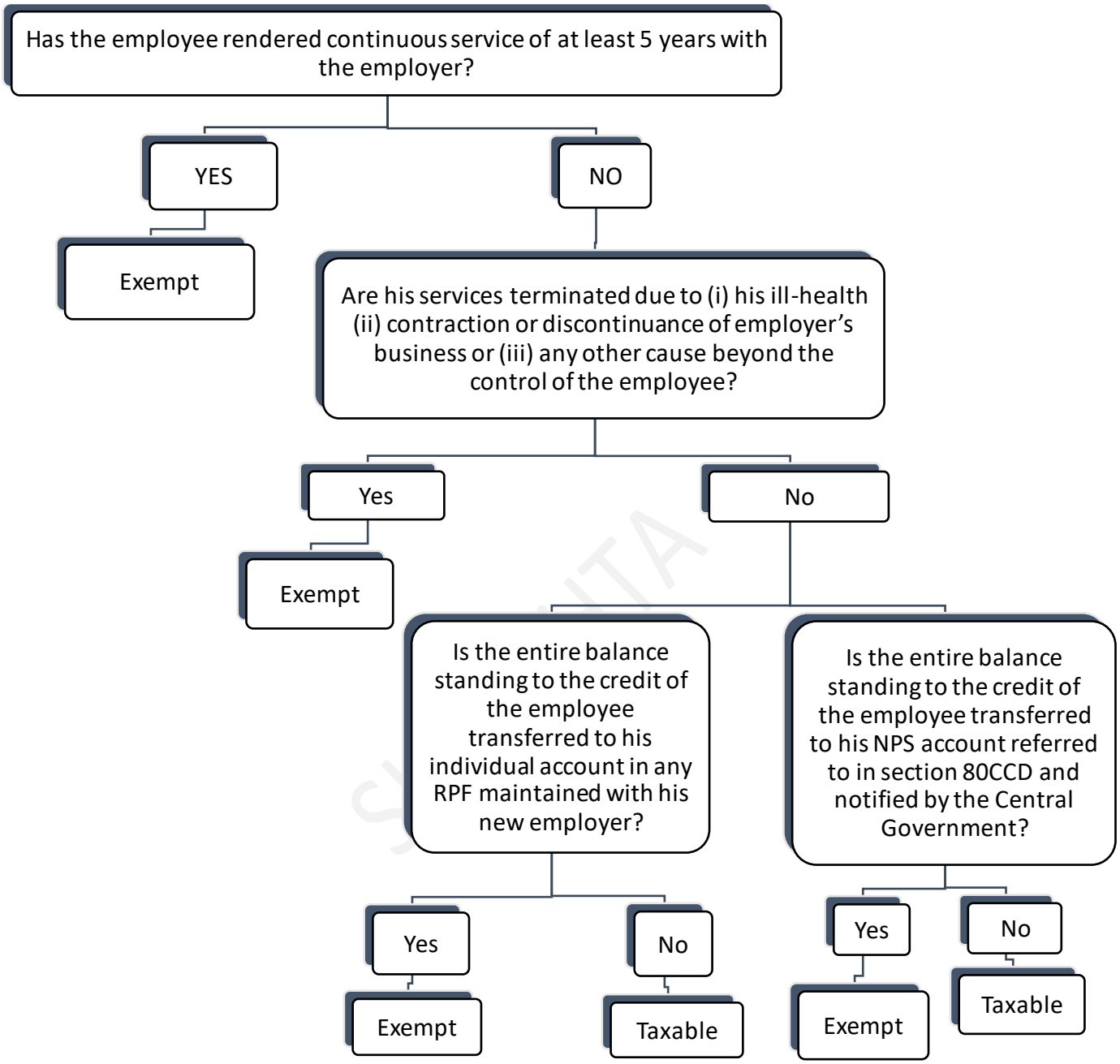
ADDITIONAL CONDITIONS:

1. The exemption under section 10(11) or 10(12) would not be available in respect of income by way of interest accrued during the previous year to the extent it relates to the amount or the aggregate of amounts of contribution made by that person/employee exceeding ₹ 2,50,000 in any previous year in that fund, on or after 1st April, 2021.
2. If the contribution by such person/employee is in a fund in which there is no employer's contribution, then, a higher limit of ₹ 5,00,000 would be applicable for such contribution, and interest accrued in any previous year in that fund, on or after 1st April, 2021 would be exempt up to that limit.
3. It may be noted that interest accrued on contribution to such funds up to 31st March, 2021 would be exempt without any limit, even if the accrual of income is after that date.
4. Interest income accrued during the previous year which is not exempt from inclusion in the total income of a person (taxable interest) shall be computed as the interest accrued during the previous year in the taxable contribution account.
5. For this purpose, separate accounts within the provident fund account shall be maintained during the previous year 2021-22 and all subsequent previous years for taxable contribution and non-taxable contribution made by a person.

(a)	**Non-taxable contribution account – Aggregate of:**
	(i) Closing balance in the account as on 31.03.2021.
	(ii) Any contribution made by the person in the account during the previous year 2021-22 and subsequent previous years, which is not included in the taxable contribution account and
	(iii) interest accrued on (i) and (ii),
	as reduced by the withdrawal, if any, from such account.
(b)	**Taxable contribution account – Aggregate of**
	(i) contribution made by the person in the account during the previous year 2021-22 and subsequent previous years, which is in excess of the yearly threshold limit and
	(ii) interest accrued on (i)
	as reduced by the withdrawal, if any, from such account.

Note: Please note that - Yearly threshold limit is ₹ 5,00,000, if the contribution by such person/employee is in a fund in which there is no employer's contribution and ₹ 2,50,000 in other cases.

TAXABILITY OF WITHDRAWAL FROM RECOGNISED PROVIDENT FUND



Notes:

1. Where the accumulated balance in Recognised Provident Fund becomes taxable, the tax payable in each of the years would be computed as if the fund had been an Unrecognised Provident Fund and the difference in tax would be payable by the employee.

2. If, after termination of his employment with one employer, the employee obtains employment under another employer, then, only so much of the accumulated balance in his provident fund account will be exempt which is transferred to his individual account in a recognised provident fund maintained by the new employer.
3. In such a case, for exemption of payment of accumulated balance by the new employer, the period of service with the former employer shall also be taken into account for computing the period of five years' continuous service.

(Refer illustration 6, 7 & 8)

M. CONTRIBUTION TO PENSION SCHEME REFERRED U/S 80CCD:

1. Employer's contribution to NPS account would form part of salary of employees under section 17(1).
2. However, while computing total income of the employee-assessee, a deduction under section 80CCD is allowed to the assessee in respect of the employer's as well as employee's contribution under a pension scheme referred therein.

PART 3 – PROFITS IN LIEU OF SALARY

Section 17(3)

A. MEANING OF PROFIT IN LIEU OF SALARY:

Bare Act Snap Shot:

(*3*) "profits in lieu of salary" includes—

(*i*) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;

(*ii*) any payment (other than any payment referred to in clause (*10*), clause (*10A*), clause (*10B*), clause (*11*), clause (*12*), clause (*13*) or clause (*13A*) of section 10), due to or received by an assessee from an employer or a former employer or from a provident or other fund, to the extent to which it does not consist of contributions by the assessee or interest on such contributions or any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this sub-clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (*10D*) of section 10;

(*iii*) 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.

Profit in Lieu of Salary includes the following:

1. Compensation on account of termination of his employment:

The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment.

2. Compensation on account of modification of the terms and conditions of employment;

a. The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the modification of the terms and conditions of employment.
b. Usually, such compensation is treated as a capital receipt. However, by virtue of this provision, the same is treated as a revenue receipt and is chargeable as salary.

Note: The payment must be arising due to master-servant relationship between the payer and the payee. If it is not on that account, but due to considerations totally unconnected with employment, such payment is not profit in lieu of salary.

3. Payment from provident fund or another fund:

Any payment due to or received by an assessee from his employer or former employer from a provident or **other fund OTHER THAN**

a. Gratuity [Section 10(10)]
b. Pension [Section 10(10A)]
c. Compensation received by a workman under Industrial Disputes Act, 1947 [Section 10(10B)]
d. from provident fund or public provident fund [Section 10(11)]
e. from recognized provident fund [Section 10(12)]
f. from approved superannuation fund [Section 10(13)]
g. any House Rent Allowance [Section 10(13A)],

to the extent to which it does not consist of employee's contributions or interest on such contributions.

Note: If any sum is paid to an employee at the time of maturity from an unrecognised provident fund it is to be dealt with as follows:

a. that part of the sum which represents the employer's contribution to the fund and interest thereon is taxable under the head "Salaries".
b. that part of the sum which represents employee's contribution is **not chargeable** to tax as no deduction or exemption was available at the time of contribution.
c. that part of the sum which represents the interest on employee's contribution is chargeable to tax as 'Income from other sources'.

4. Keyman Insurance policy

Any sum received by an assessee under a Keyman Insurance policy including the sum allocated by way of bonus on such policy.

5. Lumpsum Payment or otherwise

Any amount, whether in lumpsum or otherwise, due to the assessee or received by him, from any person:

a. before joining employment with that person, or
b. after cessation of his employment with that person.

B. RETRENCHMENT COMPENSATION [Section 10(10B)]:

1. The retrenchment compensation means the compensation paid under Industrial Disputes Act, 1947 or under any Act, Rule, Order or Notification issued under any law.
2. It also includes compensation paid on transfer of employment under section 25F or closing down of an undertaking under section 25FF of the Industrial Disputes Act, 1947.
3. **EXEMPTION UNDER Section 10(10B):** The retrenchment compensation would be exempt under section 10(10B), to the extent of **LEAST of the following:**

   a. Amount calculated in accordance with the provisions of section 25F of the Industrial Disputes Act, 1947
      i.e., 15 days average pay x completed years of service and part thereof in excess of 6 months

      (or)

   b. An amount, not less than ₹ 5,00,000 as may be notified by the Central Government in this behalf.

Notes:

1. The above limits will not be applicable to cases where the compensation is paid under any scheme approved by the Central Government for giving special protection to workmen under certain circumstances.

2. Average pay means average of the wages payable to a workman:
   a. in the case of monthly paid workman, in the 3 complete calendar months,
   b. in the case of weekly paid workman, in the 4 calendar weeks,
   c. in the case of daily paid workman, in the 12 full working weeks,

   preceding the date on which the average pay becomes payable if the workman had worked for 3 complete calendar months or 4 complete weeks or 12 full working days, as the case may be, and

   d. where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

3. Wages for this purpose means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, **and includes**
   a. such allowances including DA as the workman is for the time being entitled to.
   b. the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any other service or of any concessional supply of foodgrains or other articles.
   c. any travel concession and
   d. any commission payable on the promotion of sales or business or both

   However, it **does not include**

   a. any bonus.
   b. contribution to a retirement benefit scheme.
   c. any gratuity payable on the termination of his service.

In simple,

SALARY / WAGES = Basic + Any D.A. + Taxable Portion of allowances* + Taxable Portion of Facilities

[*Includes Commission]

C. VOLUNTARY RETIREMENT RECEIPTS [Section 10(10C)]

Lumpsum payment or otherwise received by an employee at the time of voluntary retirement would be taxable as "profits in lieu of salary". The following conditions shall be satisfied in order to claim exemption for VRS:

1. **Eligible Undertakings -** The employee of the following undertakings are eligible for exemption under this clause:
   a. Public sector company
   b. Any other company
   c. An authority established under a Central/State or Provincial Act

d. A local authority
e. A co-operative society
f. A University established or incorporated under a Central/State or Provincial Act and an Institution declared to be a University by the University Grants Commission
g. An Indian Institute of Technology
h. Such Institute of Management as the Central Government may, by notification in the Official Gazette, specify in this behalf
i. Any State Government
j. The Central Government
k. An institution, having importance throughout India or in any State or States, as the Central Government may specify by notification in the Official Gazette.

2. **Max Exemption Limit:** LOWER of the Following:
   a. The maximum limit of exemption should not exceed ₹ 5 lakh.
   b. The amount equivalent to 3 months' **Salary*** for each completed year of service or
   c. **Salary*** at the time of retirement multiplied by the balance months of service **left** before the date of his retirement or superannuation.

3. **Guidelines for Claiming exemption:** Such compensation should be at the time of his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or, in the case of public sector company, a scheme of voluntary separation. The exemption will be available even if such compensation is received in instalments. The schemes should be framed in accordance with such guidelines, as may be prescribed and should include the criteria of economic viability. Rule 2BA prescribes the following guidelines for the purposes of the above clause:

   a. It applies to an employee who has completed 10 years of service or completed 40 years of age. However, this requirement is not applicable in case of an employee of a public sector company under the scheme of voluntary separation framed by the company.
   b. It applies to all employees by whatever name called, including workers and executives of the company or the authority or a cooperative society **except directors of a company or a cooperative society.**
   c. The scheme of voluntary retirement or separation must have been drawn to result in overall reduction in the existing strength of the employees.
   d. The vacancy caused by the voluntary retirement or separation must not be filled up.
   e. The retiring employee of a company shall not be employed in another company or concern belonging to the same management.

***Salary =** Basic + D.A. (As part of Terms of Employment) + Commission (**%** of T/O)

Notes:

1. Where any relief has been allowed to any assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under section 10(10C) shall be allowed to him in relation to that assessment year or any other assessment year.
2. Where exemption for voluntary retirement compensation under section 10(10C) has been allowed in any assessment year, then no exemption thereunder shall be allowed to him in any other assessment year.

(Refer illustration 9)

PART 4 – PERQUISITES
[Section 17 (2)]

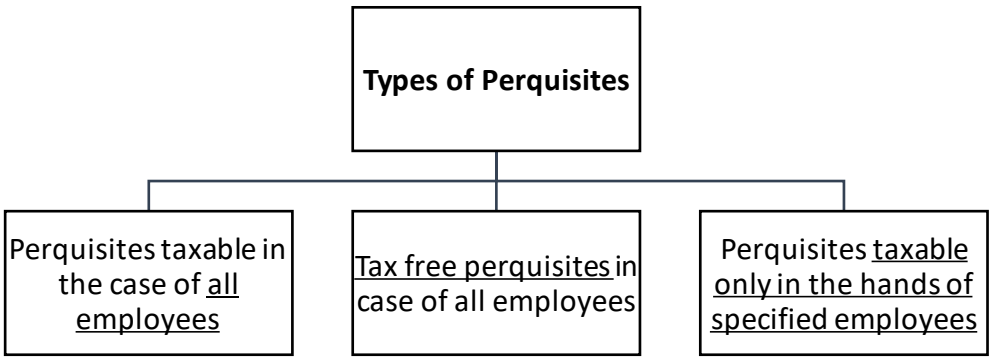
A. INTRODUCTION:

1. Perquisite may arise in the course of employment or in the course of profession. If it arises from a relationship of employer-employee, then the value of the perquisite is taxable as salary. However, if it arises during the course of profession, the value of such perquisite is chargeable as profits and gains of business or profession.
2. Perquisite may be provided in cash or in kind.
3. Reimbursement of expenses incurred in the **official discharge** of duties is not a perquisite.
4. Perquisite will become taxable only if it has a legal origin. An unauthorised advantage taken by an employee without his employer's sanction cannot be considered as a perquisite under the Act.

Example 11: Mr. A, an employee, is given a house by his employer. On 31.3.2023, he is terminated from service, but he continues to occupy the house without the permission of the employer for six more months after which he is evicted by the employer. The question arises whether the value of the benefit enjoyed by him during the six months period can be considered as a perquisite and be charged to salary. It cannot be done since the relationship of employer-employee ceased to exist after 31.3.2023. However, the definition of income is wide enough to bring the value of the benefit enjoyed by Mr. A to tax as "income from other sources".

B. DEFINITION OF "PERQUISITE" u/s 17(2):

The term "perquisite" is defined under section 17(2). The definition of perquisite is an inclusive one. Based on the definition, perquisites can be classified in following 3 ways:



C. PERQUISITES TAXABLE IN THE CASE OF ALL EMPLOYEES:

The following perquisites are chargeable to tax in case of all employees:

Rent Free Accommodation	Value of rent-free accommodation provided to the assessee by his employer [Section 17(2)(i)].
Exception: Rent-free official residence provided to a Judge of a High Court or to a Judge of the Supreme Court is not taxable.	
Concession in rent	Value of concession in rent in respect of accommodation provided to the assessee by his employer [Section 17(2)(ii)].
Payment by the employer in respect of an obligation of employee	Amount paid by an employer in respect of any obligation which otherwise would have been payable by the employee [Section 17(2)(iv)].
Example 12: If a domestic servant is engaged by an employee and the employer reimburses the salary paid to the servant, it becomes an obligation which the employee would have discharged even if the employer did not reimburse the same. This perquisite will be covered by section 17(2)(iv) and will be taxable in the hands of all employees.	
Amount payable by an employer directly or indirectly to effect an assurance on the life of the assessee	Amount payable by an employer directly or indirectly 1. to effect an assurance on the life of the assessee or 2. to effect a contract for an annuity, other than payment made to RPF or approved superannuation fund or deposit-linked insurance fund established under the Coal Mines Provident Fund and Miscellaneous Provisions Fund, 1948 or Employees' Provident Fund and Miscellaneous Provisions Act, 1952 [Section 17(2)(v)]. However, there are schemes like group annuity scheme, employees state insurance scheme and fidelity insurance scheme, under which insurance premium is paid by employer on behalf of the employees. Such payments are not regarded as perquisite in view of the fact that the employees have only an expectancy of the benefit in such schemes.
Specified security or sweat equity shares allotted or transferred, by the employer	The value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer or former employer, free of cost or at concessional rate to the assessee [Section 17(2)(vi)].

Amount or the aggregate of amounts of any contribution made to the account of the assessee by employer **- in a Recognised Provident Fund** **- in NPS** **- in an Approved Superannuation Fund**	The amount or aggregate of amounts of any contribution made - in a recognised provident fund - in NPS referred to in section 80CCD (1) - in an approved superannuation fund by the employer to the account of the assessee, to the extent it exceeds ₹ 7,50,000 [Section 17(2)(vii)].
Annual accretion to the balance at the credit of the recognised provident fund /NPS/approved superannuation fund which relates to the employer's contribution and included in total income (on account of the same having exceeded ₹ 7,50,000)	Refer Note - 1
Any other fringe benefit or amenity	The value of any other fringe benefit or amenity as may be prescribed by the CBDT [Section 17(2)(viii)]. Rule 3(7) prescribed the following other benefits or amenity taxable in case of all the employee: 1. Interest free or concessional loan 2. Travelling, touring and accommodation 3. Free or concessional food and non-alcoholic beverages 4. Gift, voucher or token in lieu of such gift 5. Credit card expense 6. Club expenditure 7. Use of movable assets 8. Transfer of movable assets 9. Other benefit or amenity [For valuation, refer discussion on valuation of perquisite]

Note 1: Annual accretion to the balance at the credit of the recognised provident fund /NPS/approved superannuation fund which relates to the employer's contribution and included in total income (on account of the same having exceeded ₹ 7,50,000):

1. Any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the recognized provident fund or NPS or approved superannuation fund to the extent it relates to the **employer's contribution** which is included in total income in any previous year under section 17(2)(vii) computed in prescribed manner [Section 17(2) (viia)].
2. In other words, interest, dividend or any other amount of similar nature on the amount which is included in total income under section 17(2)(vii) would also be treated as a perquisite.
3. The CBDT has, vide Rule 3B, notified the following manner to compute the annual accretion by way of interest, dividend or any other amount of similar nature during the previous year:

TP = (PC/2)*R + (PC1 + TP1)*R, Where,

TP	Taxable perquisite under section 17(2)(viia) **for the current previous year.**
PC	Amount or aggregate of amounts of employer's contribution in excess of ₹ 7.5 lakh to recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund **during the previous year.**
PC1	Amount or aggregate of amounts of employer's contribution in excess of ₹ 7.5 lakh to recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund for the previous year or years commencing on or after 1st April, 2020 **other than the current previous year.**
TP1	Aggregate of taxable perquisite under section 17(2)(viia) for the previous year or years commencing **on or after 1st April, 2020 other than the current previous year**
R	I/ Favg
I	Amount or aggregate of amounts of income accrued during the current previous year in recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund
Favg	**(**Amount or aggregate of amounts of balance to the credit of recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund **on first day of the current previous year** + Amount or aggregate of amounts of balance to the credit of recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund **on last day of the current previous year)**/2

Where the amount or aggregate of amounts of TP1 and PC1 exceeds the amount or aggregate of **amounts of balance to the credit** of the specified fund or scheme on the first day of the current previous year, **then the amount in excess of the amount or aggregate of amounts** of the said

balance shall be ignored for the purpose of computing the amount or aggregate of amounts of TP1 and PC1.

(Refer Illustration 10)

Note 2: EXEMPTION IN RESPECT OF PAYMENT FROM SUPERANNUATION FUNDS [Section 10(13)]

Any payment received by any employee from an approved superannuation fund shall be entirely excluded from his total income if the payment is made:

1. on the death of a beneficiary.
2. to an employee in lieu or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement. or
3. by way of refund of contribution on the death of a beneficiary or
4. by way of contribution to an employee on his leaving the service in connection with which the fund is established otherwise than by retirement at or after a specified age or his becoming incapacitated prior to such retirement, to the extent the payment made does not exceed the contribution made prior to 1-4-1962 and the interest thereon.
5. by way of transfer to the account of the employee under a pension scheme referred to in section 80CCD, which is notified by the Central Government.

D. TAX FREE PERQUISITES IN ALL CASES:

The following perquisites are exempt from tax in the hands of all employees.

Telephone Facility	Telephone provided by an employer to an employee at his residence. [**Author Note:** Allowance is Fully Taxable]
Transport Facility	Transport facility provided by an employer engaged in the business of carrying of passengers or goods to his employees either free of charge or at concessional rate
Privilege passes and privilege ticket	Privilege passes and privilege ticket orders granted by Indian Railways to its employees.
Perquisites allowed outside India by the Government	Perquisites allowed outside India by the Government to a citizen of India for rendering services outside India.
Employer's contribution to staff group insurance scheme;	Employer's contribution to staff group insurance scheme.

Annual premium by employer on personal accident policy	Payment of annual premium by employer on personal accident policy effected by him on the life of the employee. (Refer Note 3)
Refreshment	Refreshment provided to all employees during working hours in office premises.
Subsidized lunch	Subsidized lunch provided to an employee during working hours at office or business premises provided the value of such meal is up to ₹ 50.
Recreational facilities	Recreational facilities, including club facilities, extended to employees in general i.e., not restricted to a few select employees.
Amount spent on training of employees	Amount spent by the employer on training of employees or amount paid for refresher management course including expenses on boarding and lodging.
Sum payable by employer to a RPF or an approved superannuation fund	Sum payable by an employer to a RPF or an approved superannuation fund or deposit linked insurance fund established under the Coal Mines Provident Fund and Miscellaneous provisions Act, 1948 or the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 up to the limit prescribed.
Leave travel concession	Leave travel concession, subject to the conditions specified under section 10 (Refer Note 1)
Note: Value of Leave travel concession provided to the High Court judge or the Supreme Court Judge and members of his family are completely exempt without any conditions.	
Medical facilities	Medical facilities subject to certain prescribed limits. (Refer Note 2)
Rent-free official residence	Rent-free official residence provided to a Judge of a High Court or the Supreme Court.
Conveyance facility	Conveyance facility provided to High Court Judges under section 22B of the High Court Judges (Conditions of Service) Act, 1954 and Supreme Court Judges under section 23A of the Supreme Court Judges (Conditions of Service) Act, 1958.

Note 1: EXEMPTION IN RESPECT OF LEAVE TRAVEL CONCESSION [Section 10(5)]

1. This clause exempts the leave travel concession (LTC) received by employees from their employers for proceeding to any place in India,
    a. either on leave or
    b. after retirement from service or
    c. after termination of his service.
2. **The benefit is available to individuals:** Citizens as well as non-citizens - in respect of travel concession or assistance for himself or herself and for his/her family- i.e., spouse and children of the individual and parents, brothers and sisters of the individual or any of them wholly or mainly dependent on the individual.
3. **Limit of exemption -** The exemption in all cases will be limited to the amount actually spent subject to such conditions as specified in Rule 2B regarding the ceiling on the number of journeys for the place of destination.
4. Under Rule 2B, exemption will be available in respect of 2 journeys performed in a block of 4 calendar years commencing from the calendar year 1986. Where such travel concession or assistance is not availed by the individual during any block of 4 calendar years, **1 such unavailed LTC will be carried forward to the immediately succeeding block of 4 calendar years** and will be eligible for exemption.

Example 13:
An employee does not avail any LTC for the block 2018-21. He is allowed to carry forward maximum one unavailed LTC to be used in the succeeding block of 2022-25. Accordingly, if he avails LTC in April, 2022, the same will be treated as having availed in respect of the block 2018-2021. Therefore, he will be eligible for exemption in respect of that journey and two more journeys can be further availed in respect of the block of 2022-25.

5. **Monetary limits -** Where the journey is performed on or after the 1.10.1997, the amount exempted under section 10(5) in respect of the value of LTC shall be the amount actually incurred on such travel subject to the following conditions:

S. No.		Journey performed by	Limit
1	Air		Amount not exceeding the air economy free of the National Carrier by the shortest route to the place of destination
2	Any other mode:		
	(i)	Where rail service is available	Amount not exceeding the air-conditioned first-class rail fare by the shortest route to the place of destination
	(ii)	Where rail service is not available	

		(a) a recognised public transport system exists	amount not exceeding the 1st class or deluxe class fare, as the case may be, on such transport by the shortest route to the place of destination
		(b) no recognised public transport system exists	amount equivalent to the airconditioned first class rail fare, for the distance of the journey by the shortest route, as if the journey had been performed by rail

Note: The exemption referred to shall not be available to more than 2 surviving children of an individual after 1.10.1998. This restrictive sub-rule shall not apply in respect of children born before 1.10.1998 and also in case of multiple births after one child.

(Refer illustration 11 & 12)

Note 2: TAXABILITY / EXEMPTION OF MEDICAL FACILITIES [Proviso to section 17(2)]

The following medical facilities **ARE EXEMPT FROM TAX:**

1. **Value of medical treatment in any hospital maintained by the employer:** The value of any medical treatment provided to an employee or any member of his **Family*** in any hospital maintained by the employer.

2. **Reimbursement of expenditure actually incurred on medical treatment:** Any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family
    a. in any hospital maintained by the Government/local authority/any other hospital approved by the Government for the purpose of medical treatment of its employees.
    b. in respect of the prescribed disease or ailments in any hospital approved by the Principal Chief Commissioner or Chief Commissioner having regard to the prescribed guidelines.
    c. in respect of any illness relating to COVID-19 subject to conditions notified by the Central Government. Accordingly, the Central Government has, vide Notification No. 90/2022 dated 5.8.2022, specified that for claiming benefit of such exemption, the employee has to submit the following documents to the employer ***[Amendment]***:
        a. The COVID-19 positive report of the employee or family member, or medical report if clinically determined to be COVID-19 positive through investigations, in a hospital or an in-patient facility by a treating physician of a person so admitted.
        b. All necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within 6 months from the date of being determined as COVID-19 positive and

c. A certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family.

d. However, in order to claim the above benefit in case of prescribed disease, the employee shall attach with his return of income a certificate from the hospital specifying the disease or ailment for which medical treatment was required and the receipt for the amount paid to the hospital.

3. **Premium paid to effect an insurance on the health of employee:** Any premium paid by an employer in relation to an employee to effect an insurance on the health of such employee. However, any such scheme should be approved by the Central Government or the Insurance Regulatory Development Authority (IRDA) for the purposes of section 36(1)(ib).

4. **Reimbursement of premium paid to effect an insurance on the health of employee or for the family of an employee:** Any sum paid by the employer in respect of any premium paid by the employee to effect an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory Development Authority (IRDA) for the purposes of section 80D.
5. **Amount paid towards expenditure incurred outside India on medical treatment:** Any expenditure incurred by the employer or any sum paid by the employer on any expenditure actually incurred by the employee on the following:
    a. Medical treatment of the employee or any member of the family of such employee outside India – to the extent permitted by RBI
    b. Travel and stay abroad of the employee or any member of the family of such employee for medical treatment – to the extent permitted by RBI provided the employee's gross total income as computed before including the said expenditure does not exceed ₹ 2 lakh
    c. Travel and stay abroad of 1 attendant who accompanies the patient in connection with such treatment – to the extent permitted by RBI provided the employee's gross total income as computed before including the said expenditure does not exceed ₹ 2 lakh

*__Family__ means spouse and children of the individual, Dependant parents, Dependant brothers and sisters of the individual.

(Refer illustration 13)

Note 3: PAYMENT OF PREMIUM ON PERSONAL ACCIDENT INSURANCE POLICIES:

1. If an employer takes personal accident insurance policies on the life of employees and pays the insurance premium, no immediate benefit would become payable and benefit will accrue at a future date only if certain events take place.
2. Moreover, the employers would be taking such policy in their business interest only, so as to indemnify themselves from payment of any compensation.
3. Therefore, the premium so paid will not constitute a taxable perquisite in the employees' hands.

E. PERQUISITES TAXABLE ONLY IN THE HANDS OF SPECIFIED EMPLOYEES [Section 17(2)(iii)]:

1. The value of any benefit or amenity granted or provided free of cost or at concessional rate which have not been covered in the earlier perks, will be **taxable in the hands of specified employees**. Followings are the example of such services:
   a. Provision of sweeper, gardener, watchman or personal attendant
   b. Facility of use of gas, electricity or water supplied by employer
   c. Free or concessional tickets
   d. Use of motor car
   e. Free or concessional educational facilities

2. Meaning of Specified employees:
   a. **Director employee:** An employee of a company who is also a director is a specified employee.
      1) It is immaterial whether he is a full-time director or part-time director.
      2) It also does not matter whether he is a nominee of the management, workers, financial institutions or the Government.
      3) It is also not material whether or not he is a director throughout the previous year.
   b. **An employee who has substantial interest in the company:** An employee of a company who has substantial interest in that company is a specified employee. A person has a substantial interest in a company if he is a beneficial owner of equity shares carrying 20% or more of the voting power in the company.

      Beneficial and legal ownership: In order to determine whether a person has a substantial interest in a company, it is the beneficial ownership of equity shares carrying 20% or more of the voting power that is relevant rather than the legal ownership.

Example 14:
A, Karta of a HUF, is a registered shareholder of Bright Ltd. The amount for purchasing the shares is financed by the HUF. The dividend is also received by the HUF. Supposing further that A is an employee in Bright Ltd., the question arises whether he is a specified employee.
In this case, he cannot be called a specified person since he has no beneficial interest in the shares registered in his name. It is only for the purpose of satisfying the statutory requirements that the shares are registered in the name of A. All the benefits arising from the shareholding goes to the

HUF. Conversely, it may be noted that an employee who is not a registered shareholder will be considered as a specified employee if he has beneficial interest in 20% or more of the equity shares in the company.

c. **Employee drawing in excess of ₹ 50,000:** An employee other than an employee described in (a) & (b) above, whose income chargeable under the head 'salaries' exceeds ₹ 50,000 is a specified employee. The above salary is to be considered exclusive of the value of all non-Monetary benefits or amenities and Non-taxable allowances.

In other words, for computing the limit of ₹ 50,000, the following items have to be excluded or deducted:	
(a)	all non-monetary benefits.
(b)	monetary benefits which are exempt under section 10. This is because the exemptions provided under section 10 are excluded completely from salaries. For example, HRA or education allowance or hostel allowance are not to be included in salary to the extent to which they are exempt under section 10.
(c)	Standard deduction up to **₹ 50,000** [under section 16(ia)], Deduction for entertainment allowance [under section 16(ii)] and deduction toward professional tax [under section 16(iii)] are also to be excluded.

If an employee is employed with more than one employer, the aggregate of the salary received from all employers is to be taken into account in determining the above ceiling limit of ₹ 50,000,

i.e., **Salary for this purpose =** Basic Salary + Dearness Allowance + Commission, whether payable monthly or turnover based + Bonus + Fees + Any other taxable payment + Any taxable allowances + Any other monetary benefits – Deductions under section 16

PART 4A – VALUATION OF PERQUISITES

The Income-tax Rules, 1962 contain the provisions for valuation of perquisites. It is important to note that only those perquisites which the employee actually **enjoys** have to be valued and taxed in his hand.

Example 15:
Suppose a company offers a housing accommodation rent-free to an employee but the latter declines to accept it, then the value of such accommodation obviously cannot be evaluated and taxed in the hands of the employees.

The value of perquisites provided by the employer directly or indirectly to the employee or to any member of his household by reason of his employment shall be determined in accordance with Rule 3:

A. VALUATION OF RESIDENTIAL ACCOMMODATION [Sub-rule (1) of Rule 3]:

The value of residential accommodation provided by the employer during the previous year shall be determined in the following manner:

Sl. No.	Circumstances	In case of unfurnished accommodation	In case of furnished accommodation
(1)	(2)	(3)	(4)
1.	**Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State** [I.e., Government Employee]	**License fee** determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government **as REDUCED BY** the rent actually paid by the employee. [I.e., Licence Fee **Minus** Rent Recovered from Employee]	The value of perquisite as determined under column (3) should be **INCREASED by** **(i) If furniture is owned by employer:** 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment). **(ii) If such furniture is hired from a third party:** The actual hire charges payable for the same **as reduced by** any charges paid or payable for the

			same by the employee during the previous year
2.	**Where the accommodation is provided by any other employer** (a) where the **accommodation is owned** by the employer	(i) 15% of **Salary*** in cities having population > 25 lakhs as per 2001 census. (ii) 10% of **Salary*** in cities having population > 10 lakhs ≤ 25 lakhs as per 2001 census. (iii) 7.5% of **Salary*** in other areas, **as REDUCED BY** the rent, if any, actually paid by the employee. **Note:** The above value shall be only for the period during which the said accommodation was occupied by the employee during the previous year	**Same as above**
	(b) where the accommodation is taken on lease or rent by the employer	**LOWER of:** Actual amount of lease rental paid or payable by the employer **or** 15% of salary is **as REDUCED BY** the rent, if any, actually paid by the employee.	**Same as above**
3.	Where the **accommodation is provided** by any employer, whether	Not applicable	**LOWER of** a. 24% of **Salary*** paid or payable for the previous year **or**

	Government or any other employer, **in a hotel.**		b. the actual charges paid or payable to such hotel, For the period during which such accommodation is provided **as REDUCED BY** the rent, if any, actually paid or payable by the employee. **Note:** However, where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on his transfer from one place to another, there would be **NO PERQUISITE.**

Additional Notes:

1. **MULTIPLE RFA's on account of Transfer:** If an employee is provided with accommodation, on account of his transfer from one place to another, at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only ONE such accommodation which has the lower perquisite value, as calculated above, for a period not exceeding 90 days and thereafter, the value of perquisite shall be charged for both such accommodations.

2. **MINING SITE:** Any accommodation provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site would not be treated as a perquisite, provided it satisfies either of the following conditions:
   (i) The accommodation is of temporary nature, has plinth area not exceeding 800 square feet and is located NOT LESS than 8 kilo meters away from the local limits of any municipality or a cantonment board **or**
   (ii) The accommodation is located in a remote area i.e., an area that is located at least 40 kms away from a town having a population not exceeding 20,000 based on latest published all-India census.

3. Where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with anybody or undertaking under the control of such Government:
   (i) the employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation and

(ii) the value of perquisite of such an accommodation shall be the amount calculated in accordance with S No.2(a) of the above table, as if the accommodation is owned by the employer. [Treated as Non-Government Employer]

4. "Accommodation" includes a house, flat, farm house or part thereof, or accommodation in a hotel, motel, service apartment, guest house, caravan, mobile home, ship or other floating structure.

5. "Hotel" includes licensed accommodation in the nature of motel, service apartment or guest house.

B. Value of any concession in the matter of rent respecting any accommodation provided to the assessee by the employer [Section 17(2)(ii)]:

Taxable perk = Value as computed above **Minus** Rent Recovered from the employee

***Salary Means:**

"Salary" includes pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called, from 1 or more employers, as the case may be. However, it **DOES NOT INCLUDE** the following, namely:

a. Dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;
b. Employer's contribution to the provident fund account of the employee;
c. Allowances which are exempted from the payment of tax;
d. Value of the perquisites specified in section 17(2);
e. Any payment or expenditure specifically excluded under the proviso to section 17(2) i.e., payment of medical insurance premium specified therein.

Author Note: Salary = Basic + D.A (For retirement benefits) + Bonus + Any Commission + Taxable Portion of Allowances only. [Non-Monetary Perks will not be considered]

(Refer illustration 14, 15, 16, 17 & 18)

C. MOTOR CAR [Sub-rule (2) of Rule 3]:

1. If motor car is provided by the employer to the employee, it will be perquisite in the hands of specified employees only.
2. However, the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place

to his residence shall not be regarded as a benefit given or provided to him free of cost or at concessional rate. [Explanation below section 17(2)(iii)]

3. But if the motor car is owned by the employee and used by him or members of his family wholly for personal purpose and for which employer reimburses the running and maintenance expenses of the car, it will be perquisite in the hands of all employees.
4. The value of perquisite by way of use of motor car to an employee by an employer shall be determined in the following manner:

VALUE OF PERQUISITE PER CALENDAR MONTH

Sl. No.	Circumstances	The cubic capacity of engine does not exceed 1.6 litres	The cubic capacity of engine exceeds 1.6 litres
(1)	(2)	(3)	(4)
(1)	Where the **motor car is owned or hired by the employer** and (a) is used **wholly and exclusively** in the performance of his **official Duties**	**Not a perquisite**, provided the documents specified are maintained by the employer.	**Not a perquisite**, provided the documents specified are maintained by the employer.
	(b) is used **exclusively for the private or personal purposes** of the employee or any member of his household and the running and **maintenance expenses are met or reimbursed by the employer**.	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as **INCREASED BY** the 10% p.a. of original cost of the motor car and as **REDUCED BY** any amount charged from the employee for such use.	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as **INCREASED BY** the 10% p.a. of original cost of the motor car and as **REDUCED BY** any amount charged from the employee for such use.
	(c) is used **partly in the performance of duties**		

	and **partly for private** or personal purposes of his own or any member of his household and: (i) the **expenses on maintenance** and running <u>are met or reimbursed by the employer</u> (ii) the **expenses on running** and maintenance for private or personal use <u>are fully met by the assessee</u>.	 ₹1,800 (plus ₹ 900, if chauffeur is also provided to run the motor car) ₹ 600 (plus ₹ 900, if chauffeur is also provided by the employer to run the motor car)	 ₹ 2,400 (plus ₹ 900, if chauffeur is also provided to run the motor car) ₹ 900 (plus ₹ 900, if chauffeur is also provided by the employer to run the motor car)
(2)	Where the **employee owns a motor car** <u>but the actual running and maintenance charges</u> (including remuneration of the chauffeur, if any) are met or reimbursed to <u>him by the employer and</u> (a) such reimbursement is for the use of the **vehicle wholly and exclusively for official** purposes (b) such reimbursement is for the use of the vehicle **partly for official purposes and partly for personal** or private purposes of the employee or any member of his household.	 **Not a perquisite**, provided the documents specified are maintained by the employer. The <u>actual amount of expenditure</u> incurred by the employer as **REDUCED BY** the amount specified in S No. (1)(c)(i) above [i.e., Actual Amount **Minus** Rs. 1800 Per Month]	 **Not a perquisite**, provided the documents specified are maintained by the employer. The actual amount of expenditure incurred by the employer as **REDUCED BY** the amount specified in Sl. No. (1)(c)(i) above. [i.e., Actual Amount **Minus** Rs. 2400 Per Month]

(3)	Where the **employee owns ANY OTHER AUTOMOTIVE [Not a Car]** conveyance but the **actual running and maintenance charges** are met or reimbursed to him **by the employer** and (a) such reimbursement is for the use of the vehicle **wholly and exclusively for official purposes** (b) such reimbursement is for the **use of vehicle partly for official purposes and partly** for personal or private purposes of the employee	**Not a perquisite**, provided the documents specified are maintained by the employer. The actual amount of expenditure incurred by the employer as **REDUCED BY** the amount of ₹ 900.	Not applicable.

Additional Notes:

1. **Where more than one motor car is provided:** Where one or more motorcars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor-car or all of any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car as if the employee had been provided one motor-car for use partly in the performance of his duties and partly for his private or personal purposes **AND** the amount calculated in respect of the other car or cars as if he had been provided with such car or cars exclusively for his private or personal purposes.
2. **Documents to be maintained in certain cases:** Where the employer or the employee claims that the motor-car is used wholly and exclusively in the performance of official duty **or** that the actual expenses on the running and maintenance of the motor-car owned by the employee for official purposes is more than the amounts deductible in Sl. No. 2(b) or 3(b) of the above table, he may claim a higher amount attributable to such official use and the value of perquisite in such a case shall be the actual amount of charges met or reimbursed by the employer as **reduced by such higher amount attributable to official use** of the vehicle provided that the following conditions are fulfilled:

(a) the employer has maintained complete details of journey undertaken for official purpose which may include:
   i. date of journey,
   ii. destination,
   iii. mileage, and
   iv. the amount of expenditure incurred thereon.

(b) the employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

D. VALUATION OF BENEFIT OF PROVISION OF DOMESTIC SERVANTS [Sub-rule (3) of Rule 3]:

1. If servants are engaged by the employee and employer paid or reimbursed the employee for the wages of such servants, it will be perquisite in the hands of all employees.
2. If the domestic servants are engaged by the employer and facility of such servants is provided to the employee, it will be perquisite in the hands of specified employees only.
3. The value of benefit to the employee or any member of his household resulting from the provision by the employer of the services of a sweeper, a gardener, a watchman or a personal attendant, shall be the actual cost to the employer.
4. The actual cost in such a case shall be the total amount of salary paid or payable by the employer or any other person on his behalf for such services as **REDUCED BY** any amount paid by the employee for such services.

(Refer illustration 19)

E. VALUATION OF GAS, ELECTRICITY OR WATER SUPPLIED BY EMPLOYER [Sub-rule (4) of Rule 3]

1. **REIMBURSEMENT – TAXABLE FOR ALL:** If gas, electricity or water connections are taken by the employee and employer paid or reimbursed the employee for such expenses, it will be perquisite in the hands of all employees.

2. **FACILITY – ONLY SPECIFIED EMPLOYEES:** But if the gas, electricity or water connections are taken in the name of employer and facility of such supplies are provided to the employee, it will be perquisite in the hands of specified employees only.

3. The value of benefit to the employee resulting from the provision of gas, electricity or water supplied by the employer shall be determined as follow:

Circumstances	Value of benefit
If payment is made to agency supplying of gas, electricity etc.	sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water

If supply is made from resources owned by the employer	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.

F. VALUATION OF FREE OR CONCESSIONAL EDUCATIONAL FACILITIES [Sub-rule (5) of Rule 3]:

1. **REIMBURSEMENT – TAXABLE FOR ALL:** If school fees of children of employee or any member of employee's household is paid or reimbursed by the employer on employee's behalf, it will be perquisite in the hands of all employees.

2. **FACILITY – ONLY SPECIFIED EMPLOYEES:** But if the education facility is provided in the school maintained by the employer or in any school by reason of his being employment at free of cost or at concessional rate, it would be perquisite in the hands of specified employees only.

3. The value of benefit to the employee resulting from the provision of free or concessional educational facility for any member of his household shall be determined as follow:

Circumstances	Value of benefit
If the educational institution is maintained and owned by the employer	Cost of such education in a similar institution in or near the locality.
If free educational facilities are allowed in any other educational institution by reason of his being in employment of that employer	However, there would be no perquisite if the cost of such education or the value of such benefit per child **does not exceed ₹ 1,000 p.m**. [No Limit on No. of Children]
Others	Amount of expenditure incurred by the employer in that behalf

Where any amount is paid or recovered from the employee on that account, the value of benefit shall be **REDUCED BY** the amount so paid or recovered.

Note: The exemption of ₹ 1,000 p.m. is allowed only in case of education facility provided to the children of the employee not in case of education facility provided to other household members.

G. FREE OR CONCESSIONAL TICKETS [Sub-rule (6) of Rule 3]:

The value of any benefit or amenity resulting from the provision by an employer who is engaged in the carriage of passengers or goods, to any employee or to any member of his household for personal or private journey free of cost or at concessional fare, in any conveyance owned, leased

or made available by any other arrangement by such employer for the purpose of transport of passengers or goods shall be taken to be the value at which such benefit or amenity is offered by such employer to the public as **REDUCED BY** the amount, if any, paid by or recovered from the employee for such benefit or amenity.

Note: However, there would be no such perquisite to the employees of an airline or the railways.

VALUATION OF OTHER FRINGE BENEFITS AND AMENITIES [Sub-rule (7) of Rule 3]

Section 17(2)(viii) provides that the value of any other fringe benefit or amenity as may be prescribed would be included in the definition of perquisite and taxable in the hands of all employees. Valuation of those benefits are as below:

H. INTEREST-FREE OR CONCESSIONAL LOAN [Sub-rule 7(i) of Rule 3]:

1. **NATURE OF BENEFIT:** The provision of interest-free or concessional loan for any purpose made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf.

2. **VALUATION OF PERQUISITE:** The sum equal to the interest computed at the rate charged per annum by the **State Bank of India**, as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as **REDUCED BY** the interest, if any, actually paid by him or any such member of his household.

   "Maximum outstanding monthly balance" means the aggregate outstanding balance for each loan as on the last day of each month.

3. **EXEMPTIONS:**
   a. NO value would be charged if such loans are made available for medical treatment in respect of prescribed diseases (like cancer, tuberculosis, etc.) or where the amount of loans are not exceeding in the aggregate ₹ 20,000.
   b. Further, where the benefit relates to the loans made available for medical treatment. However, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.

I. TRAVELLING, TOURING AND ACCOMMODATION [Sub-rule 7(ii) of Rule 3]

1. **If travelling, touring, accommodation etc. expenses are paid or reimbursed by employer:** The value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee or any member of his household, other than leave travel concession or assistance, shall be determined as the sum equal to the amount of the expenditure incurred by such employer in that behalf.

2. **If travelling, touring, accommodation etc. facilities are maintained by employer to particular employees only:** Where such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public.
3. **Expenses on any member of household accompanying such employee on office tour:** Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity.
4. **If official tour is extended as vacation -**However, where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be **REDUCED BY** the amount, if any, paid or recovered from the employee for such benefit or amenity.

J. FREE OR CONCESSIONAL FOOD AND NON-ALCOHOLIC BEVERAGES [Sub-rule 7(iii) of Rule 3]

1. **VALUE OF PERK:** The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity:

2. **EXEMPTION:** However, the following would not be treated as a perquisite:
    a. Free food and non-alcoholic beverages provided by such employer during
        i. Working hours at office or business premises or
        ii. Through paid vouchers which are not transferable and usable only at eating joints (exemption would not be available in case of an employee, being an assessee, who opts for the provisions of section 115BAC), to the extent the value thereof either case does not exceed **50 rupees** per meal or
    b. Tea or snacks provided during working hours or
    c. Free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation.

K. VALUE OF GIFT, VOUCHER OR TOKEN IN LIEU OF SUCH GIFT [Sub-rule 7(iv) of Rule 3]

1. **VALUE OF PERK:** The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be determined as the sum equal to the amount of such gift.
2. **EXEMPTION:** However, if the value of such gift, voucher or token, as the case may be, is below ₹ 5,000 in the aggregate during the previous year, the value of perquisite shall be taken as '**Nil'**.

Author Note: Gift in CASH is fully taxable. The above exemption is only for Gift in Kind.

L. CREDIT CARD EXPENSES [Sub-rule 7(v) of Rule 3]

1. The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card) provided by the employer, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax as reduced by the amount, if any paid or recovered from the employee for such benefit or amenity.
2. However, such expenses incurred wholly and exclusively for official purposes would not be treated as a perquisite if the following conditions are fulfilled.
    a. Complete details in respect of such expenditure are maintained by the employer which may, inter alia, include the date of expenditure and the nature of expenditure;
    b. The employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

M. CLUB EXPENDITURE [Sub-rule 7(vi) of Rule 3]

1. **VALUE OF PERK:** The value of benefit to the employee resulting from the payment or reimbursement by the employer of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by a member of his household shall be determined to be the actual amount of expenditure incurred or reimbursed by such employer on that account. The amount so determined shall be **REDUCED BY** the amount, if any, paid or recovered from the employee for such benefit or amenity.

2. **EXEMPTIONS:**

    a. However, where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.
    b. Further, if such expenditure is incurred wholly and exclusively for business purposes, it would not be treated as a perquisite provided the following conditions are fulfilled:
        i. Complete details in respect of such expenditure are maintained by the employer which may, inter alia, include the date of expenditure, the nature of expenditure and its business expediency;
        ii. The employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.
    c. There would be no perquisite for use of health club, sports and similar facilities provided **uniformly to all employees** by the employer.

N. USE OF MOVEABLE ASSETS [Sub-rule 7(vii) of Rule 3]

Value of perquisite is determined as under:

Type of Asset given	Value of benefit

(a) Use of laptops and computers	Nil
(b) Movable assets, **other than** laptops and computers	10% p.a. of the actual cost of such asset, **or** the amount of rent or charge paid, or payable by the employer, **as the case may be**

Note: Where the employee is paying any amount in respect of such asset, the amount so paid shall be deducted from the value of perquisite determined above.

O. TRANSFER OF MOVEABLE ASSETS [Sub-rule 7(viii) of Rule 3]

Value of perquisite is determined as under:

Assets transferred	Value of benefit
Computers and electronic items	Depreciated value of asset [depreciation is computed @50% on WDV for each completed year of usage]
Motor cars	Depreciated value of asset [depreciation is computed @20% on WDV for each completed year of usage]
Any other asset	Depreciated value of asset [depreciation is computed @10% on SLM for each completed year of usage]

Note: Where the employee is paying any amount in respect of such asset, the amount so paid shall be deducted from the value of perquisite determined above.

P. OTHER BENEFIT OR AMENITY [Sub-rule 7(ix) of Rule 3]

The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer **under an arms' length transaction** as reduced by the employee's contribution, if any.

However, there will be no taxable perquisite in respect of expenses on telephones including mobile phone actually incurred on behalf of the employee by the employer i.e., if an employer pays or reimburses telephone bills or mobile phone charges of employee, there will be no taxable perquisite.

(Refer illustration 20 & 21)

Q. VALUATION OF SPECIFIED SECURITY OR SWEAT EQUITY SHARE FOR THE PURPOSE OF Section 17(2)(vi) [Sub-rule (8)]

The fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option is exercised by the employee, shall be determined in the following manner:

1. **IF SHARES ARE LISTED ON RECOGNIZED STOCK EXCHANGE:** In a case where, on the date of the exercising of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange.

2. **IF SHARES ARE LISTED ON MORE THAN ONE RECOGNIZED STOCK EXCHANGE:** However, where, on the date of exercising of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognised stock exchange which records the **highest volume of trading** in the share.

3. **IF NO TRADING IN SHARE ON RECOGNIZED STOCK EXCHANGE:** Further, where on the date of exercising of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be -
    a. The closing price of the share on any recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or
    b. The closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

Note:

"Closing price" of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange. However, where the stock exchange quotes both "buy" and "sell" prices, the closing price shall be the "sell" price of the last settlement.

"Opening price" of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange. However, where the stock exchange quotes both "buy" and "sell" prices, the opening price shall be the "sell" price of the first settlement.

4. **IF SHARES ARE NOT LISTED ON RECOGNIZED STOCK EXCHANGE:** In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the **specified date**.

Note: For this purpose, **"specified date"** means:

1. The Date of exercising of the option **or**
2. Any Date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

Note: Where any amount has been recovered from the employee, the same shall be deducted to arrive at the value of perquisites.

(Refer Illustration 22)

R. VALUATION OF SPECIFIED SECURITY, NOT BEING AN EQUITY SHARE IN A COMPANY FOR THE PURPOSE OF Section 17(2)(vi) [Sub-rule (9)]:

1. The fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.
2. For this purpose, **"specified date"** means:
    a. The date of exercising of the option or
    b. Any date earlier than the date of the exercising of the option, not being a date, which is more than 180 days earlier than the date of the exercising.

Note 1: TAXABILITY OF THE ABOVE PERQUISITES:

1. Tax on perquisite of specified securities and sweat equity shares is required to be paid in the year of exercising of option.
2. However, where such shares or securities are allotted by the current employer, being an eligible start-up, the **perquisite is taxable in the year**
    a. after the expiry of 48 months from the end of the relevant assessment year
    b. in which sale of such security or share are made by the assessee
    c. in which the assessee ceases to be the employee of the employer,

    whichever is **EARLIER**.

S. GENERAL NOTE:

DEFINITIONS FOR THE PURPOSE OF PERQUISITE RULES:

The following definitions are relevant for applying the perquisite valuation rules:

Term	Meaning
Member of Household	shall **include**: a. Spouse(s), b. Children and their spouses, c. Parents, and d. Servants and dependants.
Salary	Includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called from one or more employers, as the case may be, but does not include the following, namely: 1. Dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned.

	2. Employer's contribution to the provident fund account of the employee. 3. Allowances which are exempted from payment of tax. 4. The value of perquisites specified in clause (2) of section 17 of the income-tax act. 5. Any payment or expenditure specifically excluded under proviso to clause (2) of section 17. 6. Lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments.
Author Note: Salary = Basic + D.A (For retirement benefits) + Bonus + Any Commission + Taxable Portion of Allowances only. [Non-Monetary Perks will not be considered]	

(Refer illustration 23)

PART 5 – DEDUCTIONS [Section 16]

The income chargeable under the head 'Salaries' is computed after making the following deductions:

1. **STANDARD DEDUCTION [Section 16(ia)]:**

   A standard deduction of ₹ 50,000 **or** the amount of salary, whichever is **LOWER**, is to be provided to the employees.

2. **ENTERTAINMENT ALLOWANCE [Section 16(ii)]:**
   1. Entertainment allowance received is fully taxable and is first to be included in the salary and thereafter the following deduction is to be made from gross salary:

   2. **EXEMPTION FOR GOVERNMENT EMPLOYEES:** However, deduction in respect of entertainment allowance is available in case of Government employees only. The amount of deduction will be **LOWER** of:
      a. One-fifth of his basic salary or
      b. ₹ 5,000 or
      c. Entertainment allowance received.

   Note: Amount actually spent by the employee towards entertainment out of the entertainment allowance received by him is not a relevant consideration at all.

3. **PROFESSIONAL TAX ON EMPLOYMENT:**
   a. Professional tax or taxes on employment levied by a State under Article 276 of the Constitution is allowed as deduction only when it is actually paid by the employee during the previous year.
   b. The total amount by way of professional tax payable in respect of any one person shall not exceed ₹ 2,500 per annum. However, the amount paid during the previous year can be more than ₹ 2,500 as the employee may have paid the professional tax of an earlier year during the previous year.
   c. If professional tax is reimbursed or directly paid by the employer on behalf of the employee, the amount so paid is first included as salary income and then allowed as a deduction u/s 16.

(Refer illustration 24)

PART 6 – RELIEF UNDER [Section 89]

1. **ON ACCOUNT OF ARREARS OF SALARY OR ADVANCE SALARY:** Where by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year, salary for more than 12 months or a payment of profit in lieu of salary under section 17(3), his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as prescribed. The procedure for computing the relief is given in Rule 21A.

2. **On account of family pension:** Similar tax relief is extended to assessees who receive arrears of family pension as defined in the Explanation to clause (iia) of section 57.
   "Family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.

3. **NO RELIEF at the time of Voluntary retirement or termination of service:** No 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 a scheme of voluntary separation (in the case of a public sector company), if exemption under section 10(10C) in respect of such compensation received on voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee in respect of the same assessment year or any other assessment year.

(Refer illustration 25)

5. INCOME FROM HOUSE PROPERTY

PART 1	**Intro, Charging Section and Composite Rent [Section 22]**
PART 2	**Determination of Annual Value [Section 23]**
	– **Let Out Property [LOP]**
	– **Self-Occupied or Unoccupied Property [SOP / UOP]**
	– **Deemed Let Out Property [DLOP]**
	– **A Portion SOP & A Portion LOP**
	– **Treatment of Unrealised Rent**
	– **Property Taxes**
PART 3	**Deductions from Annual Value [Section 24]**
PART 4	**Arrears of Rent Received [Section 25A]**
PART 5	**Treatment of Co-Ownership [Section 26]**
PART 6	**Concept of Deemed Owner [Section 27]**

PART 1 – INTRO AND CHARGEABILITY

SNAPSHOT FROM THE ACT:

Income from house property.

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".

A. CHARGING SECTION [Section 22]:

1. The annual value of any property comprising of buildings or lands appurtenant thereto of which the assessee is the owner is chargeable to tax under the head "Income from house property".
2. **Exceptions:** Annual value of the following properties are chargeable under the head Profits and gains of business or profession:
    a. **Portions** of property occupied by the assessee for the purpose of any business or profession carried on by him
    b. Properties of an assessee engaged in the business of letting out of properties.

B. CONDITIONS FOR CHARGEABILITY UNDER Section 22:

1. Property should consist of any building or **land appurtenant** thereto.
    a. Buildings include not only residential buildings, but also factory buildings, offices, shops, godowns and other commercial premises.
    b. Land appurtenant means land connected with the building like garden, garage etc.

Note: Income from letting out of vacant land is, however, taxable under the head Income from other sources or "Profits and gains from business or profession", as the case may be

2. Assessee must be the owner of the property:
    a. Owner is the person who is entitled to receive income from the property in his own right.
    b. The requirement of registration of the sale deed is not warranted.
    c. Ownership includes both free-hold and lease-hold rights.
    d. Ownership includes deemed ownership.
    e. The person who owns the building need not also be the owner of the land upon which it stands.
    f. The assessee must be the owner of the house property during the previous year. It is not relevant whether he is the owner in the assessment year.
    g. 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 income-tax under section 22 will be of the Income-tax Department till the court gives its decision to the suit filed in respect of such property.

However, in case of recovery of unrealized rent and arrears of rent, ownership of that property is not relevant.

3. **PROPERTY USAGE:**
    a. The property may be used for any purpose, but it should not be used by the owner for the purpose of any business or profession **carried on by him**, the profit of which is chargeable to tax.
    b. The income earned by an assessee engaged in the business of letting out of properties on rent would be taxable as business income.
    [Supreme Court ruling in Rayala Corporation (P) Ltd. v. Asstt. CIT (2016) 386 ITR 500]

4. **PROPERTY HELD AS STOCK-IN-TRADE:**
    a. Annual value of house property will be **charged under the head "Income from house property",** where it is held by the assessee as stock-in-trade of a business also.
    b. However, the annual value of property being held as stock in trade would be treated as **NIL** for a period of **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, if such property is not let-out during such period [Section 23(5)].

C. CONCEPT OF COMPOSITE RENT:

1. The owner of a property may sometimes receive rent in respect of building as well as other assets like say, furniture, plant and machinery and also for different services provided in the building, for e.g., Lifts, Security, Power backup etc. The amount so received is known as "composite rent".

2. **TAX TREATMENT**: Where composite rent includes rent of building and charges for different services (lifts, security etc.), the composite rent is has to be split up in the following manner:
    a. The sum attributable to use of property is to be assessed under section 22 as income from house property.
    b. The sum attributable to use of services is to be charged to tax under the head "Profits and gains of business or profession" or under the head "Income from other sources", as the case may be.

3. **MANNER OF SPLITTING UP**:
    a. **If let out building and other assets are INSEPARABLE:**
        i. Where composite rent is received from letting out of building and other assets (like furniture) and the two lettings are not separable i.e., the other party does not accept letting out of building without other assets, then the rent is taxable either as business income or income from other sources, the case may be.
        ii. This is applicable even if sum receivable for the two lettings is fixed separately.

    b. **If let out building and other assets are SEPARABLE:**
        i. Where composite rent is received from letting out of building and other assets and the two lettings are separable i.e., letting out of one is acceptable to the other party without letting out of the other, then
            1. Income from letting out of building is taxable under "Income from house property"
            2. Income from letting out of other assets is taxable under "Profits and gains of business or profession" or "Income from other sources", as the case may be.

D. INCOME FROM HOUSE PROPERTY SITUATED OUTSIDE INDIA:

1. In case of a resident in India (resident and ordinarily resident in case of individuals and HUF), income from house property situated outside India is taxable, whether such income is brought into India or not.
2. In case of a non-resident or resident but not ordinarily resident in India, income from a property situated outside India is taxable only if it is received in India.

PART 2 – DETERMINATION OF ANNUAL VALUE

[Section 23]

A. ANNUAL VALUE OF LETOUT PROPERTY [Section 23(1)(a)/(b)]:

1. **GAV = HIGHER OF ER / AR:** Where the property is let out for the whole year, then the GAV would be the **HIGHER** of Expected Rent **(ER)**[*] or Actual rent received or receivable **(AR)**[#] during the year.

[*]**EXPECTED RENT (ER):** The Expected Rent (ER) is the HIGHER of Fair rent (FR) and Municipal value (MV), but restricted to standard rent (SR).

i. **Municipal value** is the value determined by the municipal authorities for levying municipal taxes on house property.
ii. **Fair rent** means rent which similar property in the same locality would fetch.
iii. The **Standard rent** (SR) is fixed by the Rent Control Act.

[#]**ACTUAL RENT RECEIVED (AR):**

1. The Actual rent received/receivable should not include any amount of rent which is not capable of being realised.
2. However, the conditions prescribed in Rule 4 should be satisfied. They are:
   a. The tenancy is bona fide.
   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 satisfies the Assessing Officer that legal proceedings would be useless.

Thus, Actual Rent (AR) Received shall be:

Actual Rent Receivable	XXXX
Less: Unrealised Rent (Rule 4 Conditions)	(XXX)

Actual Rent Received (AR)	**XXXX**

2. **GAV = AR only:** Where let out property is vacant for part of the year and OWING TO VACANCY, the actual rent is lower than the ER, then the actual rent received or receivable will be the GAV of the property. [Section 23(1)(c)]

3. **NAV:** From the GAV computed above, Municipal Taxes PAID by the owner during the previous year are to be deducted **to arrive at the NAV**.

(Refer illustration 1)

B. SELF-OCCUPIED PROPERTY OR UNOCCUPIED PROPERTY [Section 23(2)]

1. **NAV = ZERO:** Where the property is self-occupied for **own residence or unoccupied throughout the previous year**, its Annual Value will be NIL, provided NO other benefit is derived by the owner from such property.

   The expression **"Unoccupied property"** refers to a property which cannot be occupied by the owner by reason of his employment, business or profession at a different place and he resides at such other place in a building not belonging to him.
2. **ONLY 2 HOUSES:** The benefit of "Nil" Annual Value is available only for up to 2 self-occupied or unoccupied house properties i.e., for either one house property or two-house properties.

3. **ONLY FOR INDIVIDUAL / HUF:** The benefit of "Nil" Annual Value in respect of up to **2** self-occupied house properties is available only to an individual/ HUF.

4. No deduction for municipal taxes is allowed as NAV itself is Zero.

C. LET-OUT FOR PART OF THE YEAR AND SELF-OCCUPIED FOR PART OF THE YEAR [Section 23(3)]:

1. If a single unit of a property is self-occupied for part of the year and let-out for the remaining part of the year, then the ER for the whole year shall be taken into account for determining the GAV.

2. The ER for the whole year shall be compared with the **actual rent for the let-out period** and whichever is higher shall be adopted as the GAV.

3. However, municipal tax for the whole year is allowed as deduction provided it is paid by the owner during the previous year.

Author Note: Simply, In the above case it is treated as if property is LET OUT. However Actual rent is calculated only for the period occupied and paid by tenant.

D. DEEMED TO BE LET OUT PROPERTY [Section 23(4)]

1. Where the assessee owns more than **2** properties for self-occupation, then the income from any **2** properties, at the option of the assessee, shall be computed under the self-occupied property category and their annual value will be **NIL**.
2. The other self-occupied/unoccupied properties shall be treated as "deemed let out properties".
3. This option can be changed year after year in a manner beneficial to the assessee.
4. In case of deemed let-out property, the **ER shall be taken as the GAV**.
5. The question of considering actual rent received/receivable does not arise. Consequently, no adjustment is necessary on account of property remaining vacant or unrealized rent.
6. Municipal taxes actually paid by the owner during the previous year, in respect of the deemed let out properties, can be claimed as deduction.

E. A PORTION LET OUT AND A PORTION SELF-OCCUPIED:

1. Income from any portion or part of a property which is let out shall be computed separately under the "let out property" category and the other portion or part which is self-occupied shall be computed under the "self-occupied property" category.

2. There is no need to treat the whole property as a single unit for computation of income from house property.
3. Municipal valuation/fair rent/standard rent, if not given separately, shall be apportioned between the let-out portion and self-occupied portion either on plinth area or built-up floor space or on such other reasonable basis.
4. Property taxes, if given on a consolidated basis, can be bifurcated as attributable to each portion or floor or on a reasonable basis.

NOTIONAL INCOME IS TAXABLE UNDER INCOME FROM HOUSE PROPERTY?

Under this head of income, there are circumstances where notional income is charged to tax instead of real income. For example:

1. **DLOP:** Where the assessee owns more than 2 house properties for the purpose of self-occupation, the annual value of any 2 of those properties, at the option of the assessee, will be NIL and the other properties are deemed to be let-out and income has to be computed on a notional basis by taking the Expected Rent (ER) as the GAV.

2. **EXPECTED RENT:** In the case of property let-out throughout the previous year, if the Expected Rent (ER) exceeds the actual rent received or receivable, then ER is taken as the GAV.

3. **VACANCY PERIOD RENT IS TAXED:** In the case of let-out property which is vacant for part of the year, if the actual rent received or receivable for let out period is less than the Expected Rent (ER) for whole year not owing to vacancy, then ER for whole year is taken as the GAV.

4. **IDLE INVENTORY IS TAXED:** In case of a house property held as stock-in-trade by assessee (which is not let out), income has to be computed on a notional basis by taking the Expected Rent (ER) as the GAV after 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.

[Important for Direct Theory Question – 4 Marks]

F. PROPERTY TAXES (MUNICIPAL TAXES):

1. Property taxes are allowable as deduction from the GAV subject to 2 conditions:
    a. It should be borne by the assessee (owner) and
    b. It should be actually paid during the previous year.

2. If property taxes levied by a local authority for a particular previous year are not paid during that year, no deduction shall be allowed in the computation of income from house property for that year.

3. However, if in any subsequent year, the arrears are paid, then, the amount so paid is allowed as deduction in computation of income from house property for that year.

   Note: Which means irrespective of the previous year in which the liability to pay such taxes arises according to the method of accounting regularly employed by the owner, the deduction in respect of such taxes will be allowed only in the year of actual payment by the owner.

4. In case of property situated outside India, taxes levied by local authority of the country in which the property is situated is deductible.

(Refer illustration 2)

PART 3 – DEDUCTIONS FROM ANNUAL VALUE
[Section 24]

There are 2 deductions from annual value. They are:

A. 30% of NAV and
B. Interest on borrowed capital

A. 30% OF NAV IS ALLOWED AS DEDUCTION u/s 24(a):

1. This is a flat deduction and is allowed irrespective of the actual expenditure incurred.
2. The assessee will not be entitled to deduction of 30%, in the following cases, as the annual value itself is NIL:
    a. In case of self-occupied properties or
    b. In case of property held as stock-in-trade and the whole or any part of the property is not let out during the whole or any part of the previous year, up to **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.

B. INTEREST ON BORROWED CAPITAL IS ALLOWED AS DEDUCTION u/s 24(b):

1. Interest payable on loans borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction can be claimed as deduction.

   Note: Interest on unpaid interest is not deductible.

2. Interest payable on a fresh loan taken to repay the original loan raised earlier for the aforesaid purposes is also admissible as a deduction.

3. Interest on borrowed loan consists of 2 parts:

    a. **INTEREST FOR PRE-CONSTRUCTION PERIOD:**
        i. **PCP:** Pre-construction period is the period prior to the previous year in which:
            1. Property is acquired or
            2. Construction is completed.
        ii. **PCPI:** Interest payable on borrowed capital during (PCP) as reduced by any part thereof allowed as deduction under any other provision of the Act, can be claimed as deduction over a period of 5 years in equal annual installments commencing from the year of acquisition or completion of construction.

    b. **CURRENT YEAR INTEREST:**
    Interest relating to the year of completion of construction/ acquisition of property can be fully claimed in that year irrespective of the date of completion/ acquisition.

Author Note: (Explained in the Lecture)

4. **DEDUCTION IN RESPECT OF PROPERTY WHERE ANNUAL VALUE IS "NIL" [SOP / UOP]:**

In this case, the assessee will be allowed a deduction on account of interest (Including 1/5th of the accumulated interest of pre-construction period) as under:

S. No.	Conditions	Amount of Deduction
(a)	**Loan borrowed before 1.4.99:** Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital before 1.4.99.	Actual interest payable in aggregate for 1 or 2 self-occupied properties, subject to maximum of **₹ 30,000**.
(b)	**Loan borrowed on or after 1.4.99:** (i) Where the property is acquired or constructed with capital borrowed on or after 1.4.99 **AND** such acquisition or construction is completed within 5 years from the end of the financial year in which the capital was borrowed.	Actual interest payable in aggregate for 1 or 2 self-occupied properties, subject to maximum of **₹ 2,00,000**, if certificate mentioned in (2) below is obtained.
	(ii) Where the property is repaired, renewed or reconstructed with capital borrowed on or after 1.4.99.	Actual interest payable in aggregate for 1 or 2 self-occupied properties, subject to a maximum of **₹ 30,000.**
However, the total interest deduction under (a) and (b) cannot exceed ₹ 2,00,000.		

Author Note: For Let out property / DLOP, the above Limits will NOT Apply. Which means, any Quantum of Interest incurred can be claimed as deduction.

(Refer illustration 3)

5. **CERTIFICATE TO BE FURNISHED:** For the purpose of claiming deduction of ₹ 2,00,000 as per (b)(i) in the table given above, the assessee should furnish 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.

6. **INTEREST ALLOWABLE ON ACCRUAL BASIS:** Deduction under section 24(b) for interest is available on accrual basis. Therefore, interest accrued but not paid during the year can also be claimed as deduction.

7. **UNPAID PURCHASE PRICE WOULD BE CONSIDERED AS CAPITAL BORROWED:**

a. Where a buyer enters into an arrangement with a seller to pay the sale price in installments along with interest due thereon, the seller becomes the lender in relation to the unpaid purchase price and the buyer becomes the borrower.
b. In such a case, unpaid purchase price can be treated as capital borrowed for acquiring property and interest paid thereon can be allowed as deduction under section 24.

8. INADMISSIBLE DEDUCTIONS [Section 25]:

Interest chargeable under this Act which is payable outside India shall not be deducted if:

a. tax has not been paid or deducted from such interest and
b. in respect of which there is no person in India who may be treated as an agent[3].

under section 163

(Refer illustration 4, 5, 6, 7, 8 and 9)

PART 4 – ARREARS OF RENT AND UNREALIZED RENT RECEIVED [Section 25A]

1. **TAXABILITY:** As per section 25A (1), the amount of rent received in arrears from a tenant OR the amount of unrealised rent realised subsequently from a tenant by an assessee shall be deemed to be income from house property in the financial year in which such rent is received or realised, and shall be included in the total income of the assessee under the head "Income from house property", whether the assessee is the owner of the property or not in that financial year.

2. **DEDUCTION:** Section 25A (2) provides a deduction of 30% of arrears of rent or unrealised rent realised subsequently by the assessee.

(Refer Illustration 10)

PART 5 - TREATMENT OF INCOME FROM CO-OWNED PROPERTY [Section 26]

1. Where property is owned by 2 or more persons, whose shares are definite and ascertainable, then the income from such property cannot be taxed as income of an AOP.
2. The share of income of each such co-owner should be determined in accordance with sections 22 to 25 and included in his individual assessment.
3. Where the house property owned by co-owners is self-occupied by each of the co-owners, the annual value of the property of each co-owner will be **NIL** and **EACH** co-owner shall be entitled to a deduction of ₹ 30,000 / ₹ 2,00,000, as the case may be, under section 24(b) on account of interest on borrowed capital.
4. However, the aggregate deduction of interest to each co-owner in respect of interest payable on loan taken for co-owned house property AND interest, if any, payable on loan taken for ANOTHER self-occupied property owned by him cannot exceed ₹ 30,000/ ₹ 2,00,000, as the case may be.
5. Where the house property owned by co-owners is let out, the income from such property shall be computed as if the property is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their specific share.

(Refer illustration 11)

PART 6 - DEEMED OWNERSHIP
[Section 27]

As per section 27, the following persons, though not legal owners of a property, are deemed to be the owners for the purposes of section 22 to 26.

1. **TRANSFER TO A SPOUSE [Section 27(i)]:** In case of transfer of house property by an individual to his or her spouse OTHERWISE than for adequate consideration, the transferor is deemed to be the owner of the transferred property.

   Exception: In case of transfer to spouse in connection with an agreement to live apart, the transferor will not be deemed to be the owner. The transferee will be the owner of the house property.

2. **TRANSFER TO A MINOR CHILD [Section 27(i)]:** In case of transfer of house property by an individual to his or her minor child OTHERWISE than for adequate consideration, the transferor would be deemed to be owner of the house property transferred.

   Exception: In case of transfer to a minor married daughter, the transferor is not deemed to be the owner.

3. **HOLDER OF AN IMPARTIBLE ESTATE [Section 27(ii)]:** The impartible estate is a property which is not legally divisible. The holder of an impartible estate shall be deemed to be the individual owner of all properties comprised in the estate.

   After enactment of the Hindu Succession Act, 1956, all the properties comprised in an impartible estate by custom is to be assessed in the status of a HUF. However, section 27(ii) will continue to be applicable in relation to impartible estates by grant or covenant.

4. **MEMBER OF A CO-OPERATIVE SOCIETY ETC. [Section 27(iii)]:** 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.

5. **PERSON IN POSSESSION OF A PROPERTY [Section 27(iiia)]:** 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 the deemed owner of that house property. This would include 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.

   In all the above cases, the buyer would be deemed to be the owner of the property although it is not registered in his name.

6. **PERSON HAVING RIGHT IN A PROPERTY FOR A PERIOD NOT LESS THAN 12 YEARS [Section 27(iiib)]:** A person who acquires any rights 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.

   EXCEPTION: In case the person acquiring any rights by way of lease from month to month or for a period not exceeding 1 year, such person will not be deemed to be the owner.

6. PROFITS AND GAINS OF BUSINESS OR PROFESSION

PART 1	**Concept of Business**
	– **Meaning of Business or Profession**
	– **Method of Accounting**
	– **Charging Section [Section 28]**
PART 2	**Computation of Income under PGBP [Section 29]**
PART 3	**Admissible Deductions [Section 30 to 37]**
	– **Expenses related to Buildings and Plant & Machinery [Section 30 & 31]**
	– **Depreciation [Section 32]**
	– **Scientific Research Expenditure [Section 35]**
	– **Specified Business Expenditure [Section 35AD]**
	– **Preliminary Expenditure [Section 35D]**
	– **Other Deductions [Section 36]**
	– **Residuary Deductions [Section 37]**
PART 4	**Inadmissible Deductions [Section 40 to 43B]**
	– **Non-Compliance with TDS Provisions [Section 40(a)]**
	– **Assessment of Partnership Firms [Section 40(b)]**
	– **Payment to Specified Persons [Section 40A (2)]**
	– **Payments made in cash [Section 40A (3)]**
	– **Provision for Gratuity / PF Funds [Section 40A (7) / (9)]**
	– **Only Payment Based Deductions [Section 43B]**
PART 5	**Deemed Profits under PGBP, Changes in Exchange Rates, SDV of Property**
PART 6	**Accounts and Audit [Section 44AA onwards]**
	– **Books of Accounts [Section 44AA]**
	– **Tax Audit [Section 44AB]**
	– **Presumptive Taxation [Section 44AD, ADA, AE]**
PART 7	**Taxability of Agriculture Income with Business Income**

PART 1 – CONCEPT OF BUSINESS OR PROFESSION

A. BUSINESS vs PROFESSION:

Business	Profession
The term "business" has been defined in section 2(13) to "include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture".	The term "profession" has not been defined in the Act. It means an occupation requiring some degree of learning. The term 'profession' includes vocation as well [Section 2(36)]

1. a painter, a sculptor, an author, an auditor, a lawyer, a doctor, an architect and even an astrologer are persons who can be said to be carrying on a profession but not business.
2. However, it is not material whether a person is carrying on a 'business' or 'profession' or 'vocation' since for purposes of assessment, profits from all these sources are treated and taxed alike.
3. Business necessarily means a continuous exercise of an activity.
4. Also, profit from a single venture in the nature of trade may also be treated as business. E.g., One time Construction of Flats in an Apartment and selling for a profit.

B. MEANING OF 'PROFITS':

1. **Profits in cash or in kind:**
   a. Profits may be realised in money or in money's worth, i.e., in cash or in kind.
   b. Where profit is realised in any form other than cash, the cash equivalent of the receipt on the date of receipt must be taken as the value of the income received in kind.

2. **Capital receipts:** Capital receipts are not generally to be taken into account while computing profits under this head.

3. **Voluntary Receipts:** Payment voluntarily made by persons who were under no obligation to pay anything at all would be income in the hands of the recipient, if they were received in the course of a business or by the exercise of a profession or vocation.
   E.g., Any amount paid to a lawyer by a person who was not a client, but who has been benefited by the lawyer's professional service to another would be assessable as the lawyer's income.

4. **Duration of trade is Irrelevant:** Gains made even for the benefit of the community by a public body would be liable to tax. To attract the provisions of section 28, it is necessary that the business, profession or vocation should be carried on at least for some time during the accounting year but not necessarily throughout that year and not necessarily by the assessee-owner personally, but it should be under his direction and control.

5. **Legality of income:** The illegality of a business, profession or vocation does not exempt its profits from tax. The revenue is not concerned with the taint of illegality in the income or its source.

6. **Income from distinct businesses:** The profits of each distinct business must be computed separately **but the tax chargeable** under this section is not on the separate income of every distinct business but **on the aggregate profits of all the business** carried on by the assessee.

7. **Computation of profits:** Profits should be computed after deducting the losses and expenses incurred for earning the income in the regular course of the business, profession, or vocation unless the loss or expenses is expressly or by necessary implication, disallowed by the Act. The charge is not on the gross receipts but on the profits and gains.

C. METHOD OF ACCOUNTING [Section 145(1)]:

1. Income chargeable under the heads "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with either the cash or mercantile system of accounting **regularly employed by the assessee**.

2. However, as per section 145B, certain income would be taxable on cash basis in the following manner:
    a. Interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received. [Such income is taxable under the head "Income from other sources"
    b. income referred to in section 2(24)(xviii) i.e., 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 shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

3. Under section 145(2), the Central Government is empowered to notify in the Official Gazette from time to time, income computation and disclosure standards (ICDSs) to be followed by any class of assessees or in respect of any class of income. Accordingly, the Central Government has, vide Notification No. S.O.3079 (E) dated 29.9.2016, notified ten ICDSs to be applicable from A.Y.2017-18.

   The notified **ICDSs have to be followed by all assessees** (other than an individual or a HUF family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources", **from A.Y.2017-18**.

The 10 notified ICDSs are:

ICDS I	Accounting Policies
ICDS II	Valuation of Inventories
ICDS III	Construction Contracts
ICDS IV	Revenue Recognition
ICDS V	Tangible Fixed Assets
ICDS VI	The Effects of Changes in Foreign Exchange Rates
ICDS VII	Government Grants
ICDS VIII	Securities
ICDS IX	Borrowing Costs
ICDS X	Provisions, Contingent Liabilities and Contingent Assets

D. CHARGING SECTION [SECTION 28]:

The various items of income chargeable to tax as income under the head 'profits and gains of business or profession' are as under:

1. **Income from business or profession:** Income arising to any person by way of profits and gains from the business or profession carried on by him at any time during the previous year.

2. **Any compensation or other payment due to or received by:**
   a. Any person, by whatever name called, managing the whole or substantially the whole of:
      (i) the affairs of an Indian company or
      (ii) the affairs in India **of any other company**
      at or in connection with the termination of his management or office **or** the modification of any of the terms and conditions relating thereto.
   b. Any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency **or** the modification of any of the terms and conditions relating thereto;
   c. Any person, for or in connection with the vesting in the Government or in any corporation owned or controlled by the Government under any law for the time being in force, of the management of any property or business.
   d. Any person, by whatever name called, at or in connection with the termination or modification of the terms and conditions, of any contract relating to his business.

3. **Income from specific services performed for its members by a trade, professional or business:** Income derived by any trade, professional or similar associations from specific services rendered by them to their members. It may be noted that this forms an exception to the general principle governing the assessment of income of mutual associations such as chambers of commerce, stock brokers' associations etc.

As a result, a trade, professional or similar association performing specific services for its members is to be deemed as carrying on business in respect of these services and on that assumption the income arising therefrom is to be subjected to tax. For this purpose, it is not necessary that the income received by the association should definitely or directly be related to these services.

4. **Incentives received or receivable by assessee carrying on export business:**
   a. Profits on sale of a licence granted under the Imports (Control) Order, 19551 made under the Imports and Exports (Control) Act, 1947[2].
   b. Cash assistance against exports under any scheme of GoI: Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India.
   c. Any Customs duty or Excise duty drawback repaid or repayable to any person against export under the Customs and Central Excise Duties Drawback Rules, 1971.
   d. Any profit on the transfer of the Duty Entitlement Pass Book Scheme or Duty Free Replenishment Certificate, being Duty Remission Scheme, under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992.

5. **Value of any benefit or perquisite:** The value of any benefit or perquisite whether convertible into money or not, arising from business or the exercise of any profession.

6. **Sum due to, or received by, a partner of a firm:** Any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by a partner of a firm from such firm will be deemed to be income from business.

   However, where any interest, salary, bonus, commission or remuneration by whatever name called, or any part thereof has not been allowed to be deducted under section 40(b), in the computation of the income of the firm, the income to be taxed shall be adjusted to the extent of the amount disallowed.

7. **Any sum whether received or receivable, in cash or kind, under an agreement:**

   a. For not carrying out any activity in relation to any business or profession; or

However, the following sums received or receivable would not be chargeable to tax under the head "profits and gains from business or profession":

(i) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business or profession, which is chargeable under the head "Capital gains".

(ii) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

b. For not sharing any know-how, patent, copyright, trade mark, licence, 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.

Meaning of certain terms:

Term	Meaning
Agreement	Includes any arrangement or understanding or action in concert: 1. whether or not such arrangement, understanding or action is formal or in writing; or 2. whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.
Service	Service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging.

8. **Any sum received under a Keyman insurance policy:** Any sum received by the assessee, as an employer, under a Keyman insurance policy including the sum allocated by way of bonus on such policy will be taxable as income from business.

9. **Fair market value of inventory on its conversion/treatment as capital asset:** Fair market value of inventory on the date of its conversion or treatment as capital asset, determined in the prescribed manner, would be chargeable to tax as business income.

10. **Sum received on account of capital asset referred under section 35AD:** Any sum received or receivable, in cash or kind, on account of any capital asset (in respect of which whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD) being demolished, destroyed, discarded or transferred.

E. SPECULATION BUSINESS [Explanation 2 to section 28]:

1. **Introduction:**
    a. Where an assessee carries on speculative business, that business of the assessee must be deemed as distinct and separate from any other business.
    b. This becomes necessary because section 73 provides that losses in speculation business unlike other business cannot be set-off against the profits of any business other than a speculation business.
    c. Likewise, a loss in speculation business carried forward to a subsequent year can be set-off only against the profit and gains of any speculative business in the subsequent year.
    d. Profits and losses resulting from speculative transaction must, therefore, be treated as separate and distinct from profits and gains of business and profession from any other business.

2. **Meaning of Speculative Transaction:**
    a. **"Speculative transaction"** means a transaction in which a contract for the purchase or sales 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 [Section 43(5)].

    b. **Deeming Provision:** 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. This deeming provision does not apply to the following companies:

        i. A company whose gross total income consists of mainly income chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources";

        ii. A company, the principal business of which is:
            1. the business of trading in shares or
            2. the business of banking or
            3. the granting of loans and advances.

    Accordingly, if these companies carry on the business of purchase and sale of shares of other companies, they would not be deemed to be carrying on speculation business. [Explanation to section 73]

    c. **Transactions not deemed to be speculative transactions:** The following forms of transactions shall not be deemed to be speculative transaction:

i. **Hedging contract in respect of raw materials or merchandise:** A contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchandising business to guard against loss through future price fluctuations in respect of his contracts for the actual delivery of goods manufactured by him or merchandise sold by him or

ii. **Hedging contract in respect of stocks and shares:** 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 fluctuation or

iii. **Forward contract:** A contract entered into by a member of a forward market or stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against any loss which may arise in the ordinary course of his business as a member or

iv. **Trading in derivatives:** An eligible transaction carried out in respect of trading in derivatives in a recognized stock exchange.

Meaning of certain terms:

Term	Meaning
Eligible transaction	Any transaction: 1. carried out electronically on screen-based systems through a stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 and the rules, regulations or bye-laws made or directions issued under those Acts or by banks or mutual funds on a recognised stock exchange; and 2. Which is supported by a time stamped contract note issued by such stock broker or sub-broker or such other intermediary to every client indicating in the contract note, the unique client identity number allotted under any Act referred to in sub-clause (A) and permanent account number.

v. **Trading in commodity derivatives:** An eligible transaction in respect of trading in commodity derivatives carried out in a recognised stock exchange, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013.

However, the requirement of chargeability of commodities transaction tax is not applicable in respect of trading in agricultural commodity derivatives.

Meaning of certain terms:

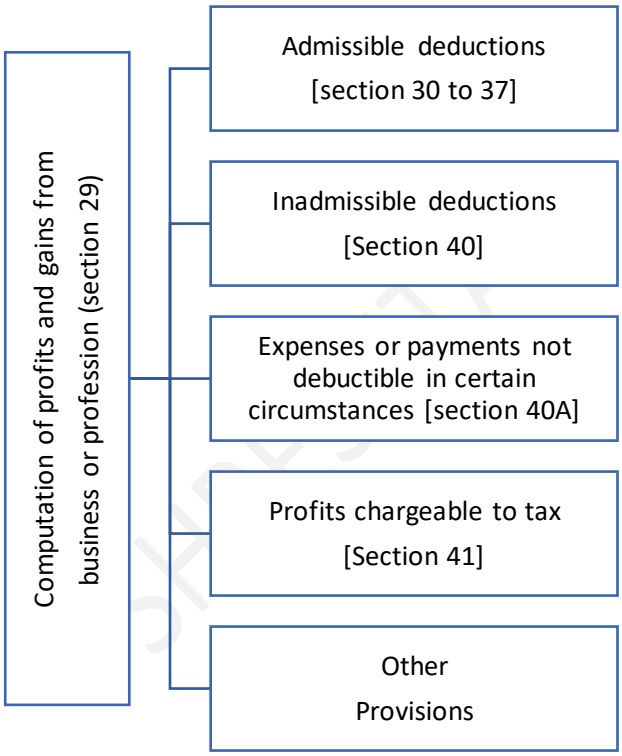
Term	Meaning
Eligible transaction	Any transaction: (A) carried out electronically on screen-based systems through a member or an intermediary registered under the bye-laws, rules and regulations of the

	recognised stock exchange for trading in commodity derivative in accordance with the provisions of the Forward Contracts (Regulation) Act, 1952 and the rules, regulations or bye-laws made or directions issued under that Act on a recognised stock exchange; and (B) which is supported by a time stamped contract note issued by such member or an intermediary to every client indicating in the contract note, the unique client identity number allotted under the Act, rules, regulations or bye-laws referred to in sub-clause (A), unique trade number and permanent account number.

PART 2 – COMPUTATION OF PROFITS AND GAINS FROM BUSINESS OR PROFESSION

[Section 29]

According to section 29, the profits and gains of any business or profession are to be computed in accordance with the provisions contained in sections 30 to 43D.



PART 3 – ADMISSIBLE DEDUCTIONS

SECTION 30: BUILDINGS

Section 30 allows deduction in respect of the rent, rates, taxes, repairs and insurance of buildings used by the assessee for the purposes of his business or profession:

1. **Where the premises are occupied by the assessee as a tenant:**
    a. The rent paid for such premises and
    b. The amount paid on account of cost of repairs, if the assessee has undertaken to bear such repairs to the premises.

2. **Occupation of premises by the assessee being the owner:**
    a. Where the assessee himself is owner of the premises and occupies them for his business purposes, no notional rent would be allowed under this section.
    b. However, where a firm runs its business in the premises owned by one of its partners, the rent payable to the partner will be an allowable deduction to the extent it is reasonable and is not excessive.
    c. **Repairs of the premises:** Deductions in respect of expenses incurred on account of repairs.

3. Even if the assessee occupies the premises otherwise than as a tenant or owner, i.e., as a lessee, licensee or mortgagee with possession, he is entitled to a deduction under the section in respect of current repairs to the premises.

4. **Cost of repairs and current repairs of capital nature not to be allowed as deduction [Explanation to section 30]**: Amount paid on account of the cost of repairs shall not include any capital nature expenditure.

5. **Other expenses:** In addition, deductions are allowed in respect of expenses by way of land revenue, local rates, municipal taxes and insurance in respect of the premises used for the purposes of the business or profession. Cesses, rates and taxes levied by a foreign Government are also allowed.

6. **Premises used partly for business and partly for other purposes:** Where the premises are used partly for business and partly for other purposes, only a proportionate part of the expenses attributable to that part of the premises used for purposes of business will be allowed as a deduction [Section 38(1)].

SECTION 31: PLANT & MACHINARY, FURNITURE

Section 31 allows deduction in respect of the expenses on current repairs and insurance of machinery, plant and furniture in computing the income from business or profession:

1. **Usage of the asset:** In order to claim this deduction, the assets must have been used for purposes of the assessee's own business the profits of which are being taxed.

2. Even if an asset is used for a part of the previous year, the assessee is entitled to the deduction of the full amount of expenses on repair and insurance charges and not merely an amount proportionate to the period of use. The word 'used' has to be read in a wide sense so as to include a passive as well as an active user. Thus, insurance and repair charges of assets which have been discarded (though owned by the assessee) or have not been used for the business during the previous year would not be allowed as a deduction.

3. **Repairs exclude replacement or reconstruction:**
    a. The term 'repairs' will include renewal or renovation of an asset but not its replacement or reconstruction.
    b. **Current repairs of capital nature not to be allowed [Explanation to section 31]:** Amount paid on account of current repairs of machinery, plant or furniture shall not include any capital nature expenditure. In other words, current repairs other than of capital nature expenditure is allowed as deduction in the computation of income under the head "profits and gains of business or profession"

4. The deduction allowable under this section is only of current repairs but not arrears of repairs for earlier years. [However, the arrears of repairs paid in current year will be deductible u/s 37)

5. **Insurance premium:** The deduction allowable in respect of premia paid for insuring the machinery, plant or furniture is subject to the following conditions:
    a. The insurance must be against the risk of damage or destruction of the machinery, plant or furniture.
    b. The assets must be used by the assessee for the purposes of his business or profession during the accounting year.
    c. The premium should have been actually paid (or payable under the mercantile system of accounting).
    d. The premium may even take the form of contribution to a trade association which undertakes to indemnify and insure its members against loss. Such premium or contribution would be deductible as an allowance under this section even if a part of it is returnable to the insured in certain circumstances.
    e. It does not matter if the payment of the claim will ensure to the benefit of someone other than the owner.

DEPRECIATION [SECTION 32]

1. **CHARGE OF DEPRECIATION MANDATORY:**
    a. Section 32 allows a deduction in respect of depreciation resulting from the diminution or exhaustion in the value of certain capital assets [namely Depreciable assets].
    b. The Explanation 5 to this section provides that deduction on account of depreciation shall be made compulsorily, whether or not the assessee has claimed the deduction in computing his total income

2. **CONDITIONS TO BE SATISFIED FOR ALLOWANCE OF DEPRECIATION:** The allowance of depreciation which is regulated by Rule 5 of the Income-tax Rules, 1962, is subject to the following conditions:
    a. The assets in respect of which depreciation is claimed must belong to either of the following categories:
        (i) buildings, machinery, plant or furniture, being tangible assets.
        (ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after 1st April, 1998, not being goodwill of a business or profession.

Notes:

1. 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.

2. **PLANT:**
    a. The term 'plant' as defined in section 43(3) includes ships, books, vehicles, scientific apparatus and surgical equipment's used for the purposes of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings.
    b. The word 'plant' does not include an animal, human body or stock-in-trade. Thus, plant includes all goods and chattels, fixed or movable, which a businessman keeps for employment in his business with some degree of durability.

    The expression 'plant' includes part of a plant (e.g., the engine of a vehicle), Machinery includes part of machinery and Building includes a part of the building.

3. **BUILDINGS:** Similarly, the term 'buildings' includes within its scope roads, bridges, culverts, wells and tube wells.

4. If the assets are not used exclusively for the business or profession of the assessee but for other purposes as well, the depreciation allowable would be a proportionate part of the depreciation allowance to which the assessee would be otherwise entitled **[Section 38]**.

b. **THE ASSETS SHOULD BE ACTUALLY USED BY THE ASSESSEE FOR PURPOSES OF HIS BUSINESS DURING THE PREVIOUS YEAR:**

(i) The asset must be put to use at any time during the previous year.

(ii) The amount of depreciation allowance is not proportionate to the period of use during the previous year.

(iii) **Asset used for less than 180 days:** However, it has been provided that where any asset is acquired by the assessee during the previous year and is put to **use*** for the purposes of business or profession for a period of less than 180 days, depreciation shall be allowed **at 50 %** of the allowable depreciation according to the percentage prescribed in respect of the block of assets comprising such asset.

(iv) Depreciation would be allowable to the owner even in respect of assets which are actually utilized by another person e.g., a lessee or licensee.
The deduction on account of depreciation would be allowed under this section to the owner who has let on hire his building, machinery, plant or furniture provided that letting out of such assets is the business of the assessee.

(v) In other cases where the letting out of such assets does not constitute the business of the assessee, the deduction on account of depreciation would still be allowable under section 57(ii).

***Use includes PASSIVE USE in certain circumstances:** One of the conditions for claim of depreciation is that the asset must be "used for the purpose of business or profession". Courts have held that, in certain circumstances, an asset can be said to be in use even when it is "kept ready for use".

For example, stand by equipment and fire extinguishers can be capitalized if they are 'ready for use''.

Likewise, machinery spares which can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, **has to be capitalised**.

Hence, in such cases, the term "use" embraces both active use and passive use. However, such passive use should also be for business purposes.

c. **THE ASSESSEE MUST OWN THE ASSETS, WHOLLY OR PARTLY:**

(i) In the case of buildings, the assessee must own the superstructure and not necessarily the land on which the building is constructed. In such cases, the assessee should be a lessee of the land on which the building stands and the lease deed must provide that the building will belong to the lessor of the land upon the expiry of the period of lease. **[Explanation 1 to Section 32]**

(ii) Thus, no depreciation will be allowed to an assessee in respect of an asset which he does not own but only uses or hires for purposes of his business.

3. **COMPUTATION OF NORMAL DEPRECIATION ALLOWANCE:** Depreciation allowance will be calculated on the following basis:
   a. **FOR POWER GENERATION UNDERTAKINGS:** In the case of assets of an undertaking engaged in generation or generation and distribution of power, **such percentage on the actual cost** to the assessee as prescribed by Rule 5(1A).
      i. **SLM METHOD: Rule 5(1A):** As per this rule, the depreciation on the above-mentioned assets shall be calculated at the percentage of the actual cost at rates specified in Appendix IA of these rules. However, the aggregate depreciation allowed in respect of any asset for different assessment years shall not exceed the actual cost of the asset.

      OR

      ii. **BLOCK OF ASSETS | WDV METHOD:** It is further provided that such an undertaking as mentioned above has the option of being allowed depreciation on the written down value of such block of assets as are used for its business at rates specified in Appendix I to these rules. However, such option must be exercised before the due date for furnishing return under section 139(1) for the assessment year relevant to the previous year in which it begins to generate power. It is further provided that any such option once exercised shall be final and shall apply to all subsequent assessment years.

   b. **FOR OTHER ASSESSEES | BLOCK OF ASSETS | WDV METHOD:** In the case of any block of assets, at such percentage of the written down value of the block, as may be prescribed by Rule 5(1).

Block of Assets: A "block of assets" is defined in section 2(11), as a group of assets falling within **a class of assets** comprising:

(a) Tangible assets, being buildings, *machinery, plant* or furniture.

(b) Intangible assets, being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, not being goodwill of a business or profession,

in respect of which the same percentage of depreciation is prescribed.

Know-how: In this context, 'know-how' means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other

sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto).

4. ADDITIONAL DEPRECIATION ON PLANT OR MACHINERY:

i. **20% of Actual Cost:** Additional depreciation is allowed on any new machinery or plant (other than ships and aircraft) acquired and installed after 31.3.2005 by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power at the rate of **20%** of the actual cost of such machinery or plant.

ii. **Asset put to use for less than 180 days:**

1. Additional depreciation **@10%** (i.e., 50% of additional depreciation of 20%) to be allowed, where the plant or machinery is put to use for less than 180 days during the previous year in which such asset is acquired.
2. Further, the balance additional depreciation@10% (i.e., remaining 50% of the additional depreciation of 20%) on new plant or machinery acquired and used for less than 180 days, which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.

iii. **PLANT AND MACHINERY NOT QUALIFYING FOR ADDITIONAL DEPRECIATION:** Such additional depreciation will not be available in respect of:

1. **2ND HAND P & M:** Any machinery or plant which, before its installation by the assessee, was used within or outside India by any other person or
2. **OFFICE P & M:** Any machinery or plant installed in office premises, residential accommodation, or in any guest house or
3. **VEHICLES:** Office appliances or road transport vehicles or
4. **100% DEDUCTION CLAIMED:** Any machinery or plant, the whole or part of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and Gains of Business or Profession" of any one previous year.

Eligibility for grant of additional depreciation under section 32(1)(iia) in the case of an assessee engaged in printing or printing and publishing [Circular No. 15/2016, dated 19-5-2016]:

An assessee, engaged in the business of manufacture or production of an article or thing, is eligible to claim additional depreciation under section 32(1) (iia) in addition to the normal depreciation under section 32(1).
The CBDT has, vide this Circular, clarified that the business of printing or printing and publishing amounts to manufacture or production of an article or thing and is, therefore, eligible for additional depreciation under section 32(1)(iia).

5. **TERMINAL DEPRECIATION:** In case of a power concern, if any asset is sold, discarded, demolished or otherwise destroyed in the previous year (other than the previous year in which it is first brought into use) the depreciation amount will be the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, falls short of the written down value thereof. The depreciation will be available only if the deficiency is actually written off in the books of the assessee.

Meaning of certain terms:

Term	Meaning
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.
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 or a transfer of any asset by a banking company to a banking institution in a scheme of amalgamation of such banking company with the banking institution, sanctioned and brought into force by the Central Government.

6. **RATES OF DEPRECIATION:** All assets have been divided into 4 main categories and rates of depreciation as prescribed by Rule 5(1) are given below:

PART A TANGIBLE ASSETS		
I	**Buildings**	
Block 1.	Buildings which are used mainly for residential purposes except hotels and boarding houses	5%
Block 2.	Buildings which are not used mainly for residential purposes and not covered by Block (1) above and (3) below	10%
Block 3.	Buildings acquired on or after 1st September, 2002 for installing machinery and plant forming part of water supply project or water treatment system and which is put to use for the purpose of business of providing infrastructure facilities	40%
Block 4.	Purely temporary erections such as wooden structures	40%
II	**Furniture and Fittings**	
Block 1.	Furniture and fittings including electrical fittings ["Electrical fittings" include electrical wiring, switches, sockets, other fittings and fans, etc.]	10%
III	**Plant & Machinery**	

Block 1.	(i) Motor cars other than those used in a business of running them on hire, acquired during the period from 23.8.2019 to 31.03.2020 and put to use on or before 31.03.2020	30%
	(ii) Motor cars other than those used in a business of running them on hire, acquired or put to use on or after 1-4-1990 [Other than motor cars mentioned in (i) above]	15%
Block 2.	(i) Motors buses, motor lorries, motor taxis used in a business of running them on hire, acquired during the period from 23.8.2019 to 31.03.2020 and put to use on or before 31.03.2020	45%
	(ii) Motors buses, motor lorries, motor taxis used in the business of running them on hire [Other than mentioned in (i) above]	30%
Block 3.	Moulds used in rubber and plastic goods factories	30%
Block 4.	Aeroplanes, Aeroengines	40%
Block 5.	Specified air pollution control equipments, water pollution control equipments, solid waste control equipment and solid waste recycling and resource recovery systems	40%
Block 6.	Plant & Machinery used in semi-conductor industry covering all Integrated Circuits (Ics)	30%
Block 7.	Life saving medical equipment	40%
Block 8.	Machinery and plant, acquired and installed on or after the 1st day of September, 2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility	40%
Block 9.	Oil wells	15%
Block 10.	Renewable Energy Saving Devices (as specified)	40%
	(i) Windmills and any specially designed devices which run on windmills installed on or after 1.4.2014	40%
	(ii) Any special devices including electric generators and pumps running on wind energy installed on or after 1.4.2014 would be eligible for depreciation	40%
	(iii) Windmills and any specially designed devices running on windmills installed on or before 31.3.2014 and any special devices including electric generators and pumps running on wind energy installed on or before 31.3.2014	15%
Block 11.	Computers including computer software	40%
Block 12.	Books (annual publications or other than annual publications) owned by assessees carrying on a profession	40%
Block 13.	Books owned by assessees carrying on business in running lending libraries	40%
Block 14.	Plant & machinery (General rate)	15%
IV	**Ships**	
Block 1.	Ocean-going ships	20%

Block 2.	Vessels ordinarily operating on inland waters not covered by Block (3) below	20%
Block 3.	Speed boats operating on inland water	20%
PART B INTANGIBLE ASSETS		
Know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, not being goodwill of a business or profession		25%

(REFER ILLUSTRATION 1)

7. ACTUAL COST [Section 43(1)]:

a. The expression "actual cost" means the 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.

b. However, where an assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic mode, exceeds **Rs. 10,000,** such expenditure shall NOT FORM PART OF ACTUAL COST of such asset [Second proviso to section 43(1)].

c. 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].

d. **ACTUAL COST IN CERTAIN SPECIAL SITUATIONS [Explanations to section 43(1)]**

a) **Asset used for business being used for scientific research [Explanation 1]:** Where an asset is used for the purposes of business after it ceases to be used for scientific research related to that business, the actual cost to the assessee for depreciation purposes shall be the actual cost to the assessee as reduced by any deduction allowed under section 35(1) (iv).

b) **Inventory converted into capital asset [Explanation 1A]:** Where inventory is converted or treated as a capital asset and is used for the purpose of business or profession, the fair market value of such inventory as on the date of its conversion into capital asset determined in the prescribed manner, shall be the actual cost of such capital asset to the assessee.

c) **Asset is acquired by way of gift or inheritance [Explanation 2]:** Where an asset is acquired by way of gift or inheritance, its actual cost shall be the actual cost to the

previous owner minus depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets.

Further, any expenditure incurred by the assessee such as expenditure on freight, installation etc. of such asset would also be includible in the actual cost.

d) **Second hand asset [Explanation 3]:** Where, before the date of its acquisition by the assessee, the asset was at any time used by any other person for the purposes of his business or profession, and the Assessing Officer is satisfied that the main purpose of the transfer of the asset directly or indirectly to the assessee was the reduction of liability of income-tax directly or indirectly to the assessee (by claiming depreciation with reference to an enhanced cost) the actual cost to the assessee shall be taken to be such an amount which the Assessing Officer may, with the previous approval of the Joint Commissioner, determine, having regard to all the circumstances of the case.

e) **Re-acquisition of asset [Explanation 4]:** Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him, the actual cost to the assessee shall be **LOWER** of:
   i. the actual cost when he first acquired the asset minus depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets or
   ii. The actual price for which the asset is re-acquired by him.

f) **Acquisition of asset previously owned by any person to whom such asset is given on lease, hire or otherwise [Explanation 4A]:** Where before the date of acquisition by the assessee say, Mr. A, the assets were at any time used by any other person, say Mr. B, for the purposes of his business or profession and depreciation allowance has been claimed in respect of such assets in the case of Mr. B and such person acquires on lease, hire or otherwise, assets from Mr. A, then, the actual cost of the transferred assets, in the case of Mr. A, shall be the same as the written down value of the said assets at the time of transfer thereof by Mr. B.

Example: We can explain the above as follows:

A person (say "A") owns an asset and uses it for the purposes of his business or profession. A has claimed depreciation in respect of such asset. The said asset is transferred by A to another person (say "B"). A then acquires the same asset back from B on lease, hire or otherwise. B being the new owner will be entitled to depreciation. In the above situation, the cost of acquisition of the transferred assets in the hands of B shall be the same as the written down value of the said assets at the time of transfer.

Explanation 4A overrides Explanation 3:
Explanation 3 to section 43(1) deals with a situation where a transfer of any asset is made with the main purpose of reduction of tax liability (by claiming depreciation on enhanced cost), and the Assessing Officer, having satisfied himself about such purpose of transfer with the prior approval of the joint commissioner, may determine the actual cost having regard to all the circumstances of the case.
In the Explanation 4A, **a non-obstante clause has been included** to the effect that Explanation 4A will have an overriding effect over Explanation 3. The result of this is that there is no necessity of finding out whether the main purpose of the transaction is reduction of tax liability. Explanation 4A is activated in every situation described above without inquiring about the main purpose.

g) **Building previously the property of the assessee [Explanation 5]:** Where a building which was previously the property of the assessee is brought into use for the purposes of the business or profession, its actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rates in force on that date that would have been allowable had the building been used for the purposes of the business or profession since the date of its acquisition by the assessee.

(REFER ILLUSTRATION 2)

h) **Capitalization of interest paid or payable in connection with acquisition of an asset [Explanation 8]:** Any amount paid or payable as interest in connection with the acquisition of an asset and relatable to period after asset is first put to use SHALL NOT BE INCLUDED and shall be deemed to have never been included in the actual cost of the asset.

i) **Amount of duty of excise or additional duty leviable shall be reduced if credit is claimed [Explanation 9]:** Where an asset is or has been acquired by an assessee, the actual cost of asset shall be reduced by the amount of duty of excise or the additional duty leviable under section 3 of the Customs Tariff Act, 1975 in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1945.

[**Author Note:** Now the above wordings shall be interpreted as GST]

j) **Subsidy or grant or reimbursement [Explanation 10]:** 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.

However, where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee.

k) **Asset is acquired outside India by an assessee, being a non-resident and such asset is brought by him to India [Explanation 11]:** Where an asset is acquired outside India by an assessee, being a non-resident and such asset is brought by him to India and used for the purposes of his business or profession, the actual cost of asset to the assessee shall be the actual cost the asset 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.

l) **Capital asset on which deduction is allowable under section 35AD [Explanation 13]:** The actual cost of any capital asset, on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be **NIL**. This would be applicable in the case of transfer of asset by the assessee where:

- **i.** The assessee himself has claimed deduction under section 35AD or
- **ii.** The previous owner has claimed deduction under section 35AD. This would be applicable where the capital asset is acquired by the assessee by way of:
  1. Gift, will or an irrevocable trust.
  2. Any distribution on liquidation of the company.
  3. Any distribution of capital assets on total or partial partition of a HUF.
  4. Any transfer of a capital asset by a holding company to its 100% subsidiary company, being an Indian company.
  5. Any transfer of a capital asset by a subsidiary company to its 100% holding company, being an Indian company.
  6. Any transfer of a capital asset by the amalgamating company to an amalgamated company in a scheme of amalgamation, if the amalgamated company is an Indian company.
  7. Any transfer of a capital asset by the demerged company to the resulting company in a scheme of demerger, if the resulting company is an Indian company.
  8. Any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm.
  9. Any transfer of a capital asset to a company in the course of demutualization or corporatisation of a recognized stock exchange in India as a result of which an association of persons or body of

individuals is succeeded by such company (fulfilling the conditions specified).

10. Any transfer of a capital asset or intangible asset by a sole proprietary concern to a company, where the sole proprietary concern is succeeded by a company (fulfilling the conditions specified).
11. Any transfer of a capital asset or intangible asset by a private company or unlisted public company to an LLP as a result of conversion of the such company into LLP (fulfilling the conditions prescribed).

Note: However, where an asset, in respect of which deduction is claimed and allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of section 35AD(7B) (on account of asset, being used for a purpose other than specified business under section 35AD), the actual cost of the asset to the assessee shall be actual cost to assessee **as reduced** by the amount of depreciation allowable had the asset been used for the purpose of business, calculated at the rate in force, since the date of its acquisition [Proviso to Explanation 13 to section 43(1)].

8. WRITTEN DOWN VALUE [Section 43(6)]:

a. **Assets acquired by the assessee during the previous year:** In the case of assets acquired by the assessee during the previous year, the written down value means the actual cost to the assessee.

b. **Assets acquired before the previous year:** In the case of assets acquired before the previous year, the written down value would be the actual cost to the assessee less the aggregate of all deductions actually allowed in respect of depreciation.
For this purpose, any depreciation carried forward is deemed to be depreciation actually allowed [Section 43(6) (c) (i) read with Explanation 3].

c. **In case of any block of assets:** The written down value of any block of assets shall be worked out as under in accordance with section 43(6)(c):

A. Opening WDV of the Block as on 1st April of the current P.Y.	**XXX**
B. Add: Actual cost of assets acquired during the previous year, not being on account of acquisition of goodwill of a business or profession.	xxx
C. Total (A + B)	**XXX**
Less:	
D. Money receivable in respect of any asset falling within the block which is sold, discarded, demolished or destroyed during that previous year together with scrap value. However, such amount cannot exceed the amount in **(C)**.	(xxx)
E. ***In case of slump sale,*** actual cost of the asset (-) amount of depreciation that would have been allowable to the assessee for any assessment year as if the asset was the only asset in the block. However, such amount of reduction cannot exceed the WDV.	(xxx)
F. W.D.V at the end of the year (**on which depreciation is ALLOWABLE**) [(C) – (D) – (E)]	**XXX**
G. Less: Depreciation (Rate of Depreciation × WDV arrived at in (F) above)	**(XXX)**
H. Closing WDV of the Block (F – G)	**XXX**

d. **Depreciation provided in the books of account deemed to be depreciation actually allowed:** Section 32(1)(ii) provides that depreciation shall be allowed at the prescribed percentage on the written down value (WDV) of any block of assets. Section 43(6)(b) provides that written down value in the case of assets acquired before the previous year means the actual cost to the assessee less all depreciation actually allowed to him under the Income-tax Act, 1961.

Persons who were exempt from tax were not required to compute their income under the head "Profits and gains of business or profession". However, when the exemption is withdrawn subsequently, such persons became liable to income-tax and hence, were required to compute their income for income-tax purposes. In this regard, a question arises as to the basis on which depreciation is to be allowed under the Income-tax Act, 1961 in respect of assets acquired during the years when the person was exempt from tax.

Explanation 6 to section 43(6) provides that:

1. The actual cost of an asset has to be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account.

2. The total amount of depreciation on such asset provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under the Income-tax Act, 1961 for the purposes of section 43(6);
3. the depreciation actually allowed as above has to be adjusted by the amount of depreciation attributable to such revaluation.

e. **Composite Income:** Explanation 7 provides that in cases of 'composite income', for the purpose of computing written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire composite income of the assessee is chargeable under the head "Profits and Gains of business or profession". The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.

Rule 8 prescribes the taxability of income from the manufacture of tea. Under the said rule, income derived from the sale of tea grown and manufactured by seller shall be computed as if it were income derived from business and 40% of such income shall be deemed to be income liable to tax.

Example: If the turnover is, say, Rs. 20 Lakh, the depreciation Rs. 1 Lakh and other expenses Rs. 4 Lakh, then the income would be Rs. 15 Lakh. Business income would be Rs. 6 Lakh (being 40% of Rs. 15 Lakh). In this case, Rs. 1 lakh, being the amount of depreciation would be deemed to have been actually allowed.

Accordingly, the WDV is required to be computed by deducting the full depreciation attributable to composite income i.e., Rs. 1 lakh.

f. **Cases where the Written Down Value reduced to NIL:** The written down value of any block of assets, may be reduced to NIL for any of the following reasons:
   (a) The moneys receivable by the assessee in regard to the assets sold or otherwise transferred during the previous year together with the amount of scrap value may exceed the written down value at the beginning of the year as increased by the actual cost of any new asset acquired, or
   (b) All the assets in the relevant block may be transferred during the year.

   [In this case Section 50 will attract]

9. UNABSORBED DEPRECIATION [Section 32(2)]:

a. **UD Treatment:** Where, in any previous year the profits or gains chargeable are not sufficient to give full effect to the depreciation allowance, the unabsorbed depreciation shall be added to the depreciation allowance for the following previous year and shall be

deemed to be part of that allowance. If no depreciation allowance is available for that previous year, the unabsorbed depreciation of the earlier previous year shall become the depreciation allowance of that year. The effect of this provision is that the unabsorbed depreciation shall be carried forward indefinitely till it is fully set off.

b. **Setoff and carry forward:** However, in the order of set-off of losses under different heads of income, effect shall first be given to business losses and then to unabsorbed depreciation. The provisions in effect are as follows:
    i. Since the unabsorbed depreciation forms part of the current year's depreciation, it can be set off against any other head of income except "Salaries".
    ii. The unabsorbed depreciation can be carried forward for indefinite number of previous years.
    iii. Set off will be allowed even if the same business to which it relates is no longer in existence in the year in which the set off takes place.

    [**Author Note:** Unabsorbed Depreciation will be given same importance as of Current Year Depreciation and allowed to be set off with other heads of income except salaries.]

c. **Current depreciation to be deducted first:** The Supreme Court, in CIT v. Mother India Refrigeration (P.) Ltd. [1985] 23 Taxman 8, has categorically held that current depreciation must be deducted first before deducting the unabsorbed carried forward business losses of the earlier years in giving set off while computing the total income of any particular year.

(REFER ILLUSTRATION 3 & 4)

10. ASSETS NOT EXCLUSIVELY USED FOR BUSINESS PURPOSE [Section 38(2)]:

Where any building, plant and machinery, furniture is not exclusively used for the purposes of business or profession, the deduction on account of expenses on account of current repairs to the premises, insurance premium of the premises, current repairs and insurance premium of machinery, plant and furniture and depreciation in respect of these assets shall be restricted to a fair proportionate part thereof, which the Assessing Officer may determine having regard to the user of such asset for the purposes of the business or profession.

11. BALANCING CHARGE [ONLY FOR POWER SECTOR FOLLOWING SLM METHOD]:

a. Section 41(2) provides for the manner of calculation of the amount which shall be chargeable to income-tax as income of the business of the previous year in which the monies payable for the building, machinery, plant or furniture on which depreciation has been claimed under section 32(1) (i), i.e., **in the case of power undertakings**, is sold, discarded, demolished or destroyed. The balancing charge will be the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, exceeds the written down value.

b. However, the amount of balancing charge should not exceed the difference between the actual cost and the WDV. The tax shall be levied in the year in which the moneys payable become due.
c. The Explanation below section 41(2) makes it clear that where the moneys payable in respect of the building, machinery, plant or furniture referred to in section 41(2) become due in a previous year in which the business, for the purpose of which the building, machinery, plant or furniture was being used, is no longer in existence, these provisions will apply as if the business is in existence in that previous year.

EXPENDITURE ON SCIENTIFIC RESEARCH [SECTION 35]

This section allows a deduction in respect of any expenditure on scientific research related to the business of assessee.

Meaning of certain terms:

Term	Meaning
Scientific research	Activities for the extension of knowledge in the fields of natural or applied science **including agriculture, animal husbandry** or fisheries [Section 43(4)(i)].
Scientific research expenditure	Expenditure incurred on scientific research would include all expenditure incurred for the prosecution or the provision of facilities for the prosecution of scientific research but does not include any expenditure incurred in the acquisition of rights in or arising out of scientific research.
Scientific research related to a business or a class of business	Scientific research related to a business or a class of business would include: 1. Any scientific research which may lead to or facilitate an extension of that business or all the business of that class, as the case may be. 2. Any scientific research of a medical nature which has a special relation to the welfare of the workers employed in that business or all the business of that class, as the case may be.

The deduction allowable under this section consists of:

A. INCURRED BY ASSESSEE [SPENT DIRECTLY] [Section 35(1)(i)]:

1. **REVENUE EXPENDITURE:**
   a. **Current Year Expenditure:** Any revenue expenditure incurred by the assessee on scientific research related to his business would be allowed as deduction in the year in which it was incurred.
   b. **Prior 3 Years Expenditure:** Expenditure incurred within 3 years immediately preceding the commencement of the business on payment of salary to research personnel engaged in scientific research related to his business carried on by the taxpayer or on purchase of material inputs for such scientific research will be allowed as deduction in the year in which the business is commenced.
   c. **Only Amount Certified:** The deduction will be limited to the amount certified by the prescribed authority.

2. **CAPITAL EXPENDITURE [Section 35(1)(iv)]:**

a. **Current Year Expenditure:** Any expenditure of a capital nature on scientific research related to the business carried on by the assessee would be deductible in full in the previous year in which it is incurred.

b. **Capital expenditure prior to commencement of business [Explanation 1 to section 35(2)(ia)]:** Where any capital expenditure has been incurred prior to the commencement of the business, the aggregate of the expenditure so incurred within the 3 years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced and will rank for deduction as expenditure for scientific research incurred during the previous year.

c. No deduction will be allowed in respect of capital expenditure incurred on the acquisition of any land whether the land is acquired as such or as part of any property.

d. **Carry forward of deficiency** Capital expenditure incurred on scientific research which cannot be absorbed by the business profits of the relevant previous year can be carried forward to the immediately succeeding previous year and shall be treated as the allowance for that year. In effect, this means that there is no time bar on the period of carry forward. It shall be accordingly allowable for that previous year.

e. **No depreciation:** Section 35(2)(iv) clarifies that no depreciation will be admissible on any capital asset represented by expenditure which has been allowed as a deduction under section 35 whether in the year in which deduction under section 35 was allowed or in any other previous year.

f. **Sale of asset representing expenditure of capital nature on scientific research [Section 41(3):**

    1. **Where the asset representing expenditure of a capital nature on scientific research is sold WITHOUT HAVING BEEN USED FOR OTHER PURPOSES:** This case would come under section 41(3) and if the proceeds of sale together with the total amount of the deductions made under section 35(1) (iv) exceed the amount of capital expenditure, the excess or the amount of deduction so made, whichever is **LESS**, will be charged to tax as income of the business of the previous year in which the sale took place.

       In other words, since amount of deduction under section 35(1)(iv) is equal to the amount of expenditure, **LEAST OF** amount of sale proceeds or deduction allowed under section 35(1)(iv) will be the charged to tax as income of the business in the previous year in which the asset is sold.

2. **Where the asset is sold, etc., AFTER having been used for the purposes of the business:** The actual cost of the concerned asset under section 43(1) read with Explanation 1 thereto would be NIL and no depreciation would be allowed by virtue of section 35(2)(iv).

B. AMOUNT CONTRIBUTED OR PAID OR DONATED TO:

1. **NOTIFIED APPROVED RESEARCH ASSOCIATION, UNIVERSITY, COLLEGE OR OTHER INSTITUTION [Section 35(1)(ii)]:** A sum equal to any amount paid to:
   a. A research association which has as its object the undertaking of scientific research or
   b. To a university, college or other institution to be used for scientific research provided that such university, college, institution or association is approved for this purpose and notified by the Central Government. [Section 35(1)(ii)]
   c. The payments so made to such institutions would be allowable irrespective of whether the field of scientific research is related to the assessee's business or not, and the payment is of a revenue nature or of a capital nature.

2. **APPROVED INDIAN COMPANY FOR SCIENTIFIC RESEARCH [Section 35(1)(iia)]:** A sum equal to any amount paid to a company to be used by it for scientific research. However, such deduction would be available only if:
   a. The company is registered in India and
   b. Has as its main object the scientific research and development.
   Further, it should be approved by the prescribed authority and should fulfill the other prescribed conditions.

3. **APPROVED NOTIFIED RESEARCH ASSOCIATION, UNIVERSITY, COLLEGE OR OTHER INSTITUTION [Section 35(1)(iii)]:** A sum equal to any amount paid to:
   a. A research association which has as its object the undertaking of research in social science or statistical research or
   b. To a university, college or other institution to be used for research in a social science or statistical research
   Provided that they are approved for this purpose and notified by the Central Government.

4. **SUM PAID TO NATIONAL LABORATORY, etc. [Section 35(2AA)]:** Any sum paid by an assessee to a National Laboratory or University or Indian Institute of Technology or a specified person for carrying out approved programmes of scientific research approved by the prescribed authority will be eligible for deduction of the amount so paid.

NOTE: Contribution which qualifies for deduction under this clause WILL NOT be entitled to deduction under any other provision of the Act.

NOTE: Approval Withdrawn after contribution: The Deduction allowed as above under Section 35, shall not be denied merely on the ground that subsequent to payment of such sum by the assessee, the approval granted to any of the aforesaid entities is withdrawn.

5. **COMPANY ENGAGED IN BUSINESS OF BIO-TECHNOLOGY OR MANUFACTURING OF ARTICLE OR THING etc. [Section 35(2AB)]:**
   a. Where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing**,** not being an article or thing specified in the list of the Eleventh Schedule [The exclusion list comprises of beer, wine and other alcoholic spirits, tobacco and tobacco preparations, cosmetic and toilet preparations, tooth paste, dental cream, tooth powder and soap, confectionery and chocolates, office machines and apparatus, steel furniture etc] incurs any expenditure on scientific research on in-house research and development facility as approved by the prescribed authority.
   b. **Deduction:** a deduction of a sum equal to the expenditure will be allowed.
   c. Such expenditure should not be in the nature of cost of any land or building**.**

"Expenditure on scientific research" in relation to drugs and pharmaceuticals shall include expenditure incurred on clinical drug trial, obtaining approval from any state regulatory authority, and filing an application for a patent under the Patents Act, 1970.

   d. No deduction will be allowed in respect of the above expenditure under any other provision of the Income-tax Act, 1961.

   e. No company will be entitled to this deduction unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and fulfills the prescribed conditions with regard to maintenance and audit of accounts and also furnishes prescribed reports in the prescribed manner.

(REFER ILLUSTRATION 5)

Summary:

Section	Purpose	Deduction Allowed
A.	**DEDUCTION FOR EXPENDITRE DIRECTLY SPENT:**	
35(1)(i)	**Revenue Expenditure** on Scientific Research	100%
	Revenue Expenditure on Scientific Research on Personnel or Materials – **Prior 3 years** before commencement of business	100%
35(1)(iv)	**Capital Expenditure** on Scientific Research	100%
	Capital Expenditure on Scientific Research Except Land – **Prior 3 years** before commencement of business	100%
35(2AB)	A Company engaged in Bio Technology, manufacturing **Incurs any expenditure on scientific research** [Except Land and Buildings]	100%
B.	**DEDUCTION IN RESPECT OF CONTRIBUTIONS / PAYMENTS:**	
35(1)(ii)	Contribution to Notified Research Association, College or University which has **object of undertaking scientific research**	100%

35(1)(iia)	Contribution to Approved Indian Company which has **Main object of undertaking scientific research**	100%
35(1)(iii)	Contribution to Notified Research Association, College or University which has **object of undertaking Social or Statistical research**	100%
35(2AA)	Sum Paid **to National Laboratory, IITs or Specified Persons** under this section for carrying approved programmes.	100%

INVESTMENT-LINKED TAX INCENTIVES FOR SPECIFIED BUSINESSES [Section 35AD]

A. LIST OF SPECIFIED BUSINESSES:

1. Setting-up and operating 'Cold Chain' Facilities for specified products.
2. Setting-up and operating warehousing facilities for storing agricultural produce.
3. Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.
4. Building and operating a hotel of two-star or above category, anywhere in India.
5. Building and operating a hospital, anywhere in India, with at least 100 beds for patients.
6. Developing and building a housing project under a notified scheme for slum redevelopment or rehabilitation framed by the central government or a state government.
7. Developing and building a housing project under a notified scheme for affordable housing framed by the central government or state government;
8. Production of fertilizer in India.
9. Setting up and operating an inland container depot or a container freight station notified or approved under the customs act, 1962.
10. Bee-keeping and production of honey and beeswax.
11. Setting up and operating a warehousing facility for storage of sugar.
12. Laying and operating a slurry pipeline for the transportation of iron ore.
13. Setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the board in accordance with the prescribed guidelines.
14. Developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility.

B. DEDUCTION FOR CAPITAL EXPENDITURE:

1. 100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income to the assessee opting for deduction under section 35AD. However, expenditure incurred on acquisition of any land, goodwill or financial instrument would **NOT** be eligible for deduction.

2. Further, any expenditure in respect of which payment or aggregate of payment made to a person of an amount exceeding **Rs. 10,000 in a day** 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 such other prescribed electronic mode would not be eligible for deduction.

3. **Expenditure prior to commencement of operation:** Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business.

4. The amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

C. CONDITIONS TO BE FULFILLED: For claiming deduction under section 35AD, the specified business should fulfil the following conditions:

1. It should not be set up by splitting up, or the reconstruction, of a business already in existence.

2. It should not be set up by the transfer to the specified business of machinery or plant previously used for any purpose. In order to satisfy this condition, the total value of the plant or machinery so transferred should not exceed 20% of the value of the total plant or machinery used in such specified business. For the purpose of this condition, machinery or plant would not be regarded as previously used if it had been used outside India by any person other than the assessee provided the following conditions are satisfied:
    a. Such plant or machinery was not, at any time prior to the date of its installation by the assessee, used in India.
    b. The plant or machinery was imported into India from a foreign Country and
    c. No deduction on account of depreciation in respect of such plant or machinery has been allowed to any person at any time prior to the date of installation by the assessee.

3. **No deduction under section 10AA or Chapter VI-A:** Where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, NO deduction under the provisions of Chapter VI-A under the heading "C - Deductions in respect of certain incomes" or section 10AA is permissible in relation to such specified business for the same or any other assessment year. Correspondingly, section 80A has been amended to provide that where a deduction under any provision of this Chapter under the heading "C – Deductions in respect of certain incomes" is claimed and allowed in respect of the profits of such specified business for any assessment year, no deduction under section 35AD is permissible in relation to such specified business for the same or any other assessment year.

4. **No other deduction allowable under the Act:** The assessee cannot claim deduction in respect of such expenditure incurred for specified business under any other provision of the

Income-tax Act, 1961 in the current year or under this section for any other year, if the deduction has been claimed or opted by him and allowed to him under section 35AD.

5. **Set-off or carry forward and set-off of loss from specified business:** The loss of an assessee claiming deduction u/s 35AD in respect of a specified business can be set-off against the profit of another specified business u/s 73A, irrespective of whether the latter is eligible for deduction u/s 35AD.

Example: A assessee can therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction section 35AD, against the profits of the existing business of operating a hospital (with at least 100 beds for patients) or a hotel (of two star or above category), even if the latter is not eligible for deduction under section 35AD.

6. **Audit of Accounts:** The deduction shall be allowed to the assessee only if the accounts of the assessee for the relevant previous year have been audited by a chartered accountant and the assessee furnishes the audit report in the prescribed form, duly signed and verified by such accountant.

7. **Asset to be used for specified business for 8 years:** Section 35AD(7A) provides that 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 8 years beginning with the previous year in which such asset is acquired or constructed.

(REFER ILLUSTRATION 6 & 7)

D. RE-TAXABILITY:

1. **Asset demolished, destroyed, discarded or transferred for which a deduction has been allowed:** If any asset on which a deduction u/s 35AD has been claimed and allowed, is demolished, destroyed, discarded or transferred, the sum received or receivable for the same is chargeable to tax under clause (vii) of section 28.

2. **Asset used for any other business other than specified business during 8 years:**

    a. As per section 35AD(7B), if asset is used for any purpose other than the specified business during 8 years beginning with the previous year in which such asset is acquired, the total amount of deduction so claimed and allowed in any previous year(s) 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 u/s 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.

b. In such a case, as per the proviso to Explanation 13 to Section 43(1), the actual cost of such asset for the assesse shall be the actual cost AS REDUCED BY amount of depreciation would have been allowable had the asset been used for the purpose of business since the date of its acquisition.

Note: However, the deeming provision u/s 35AD(7B) shall not be applicable to a company which has become a sick industrial company u/s 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, during the intervening period of eight years specified in section 35AD(7A).

(REFER ILLUSTRATION 8)

AMORTISATION OF PRELIMINARY EXPENSES [Section 35D]

A. APPLICABILITY: This section applies, Only to Indian companies and resident non-corporate assessees. Further

a. **Pre-Incorporation Expenses:** In the case of new companies to expenses incurred before the commencement of the business.
b. **Expansion Expenses:** In the case of extension of an existing undertaking to expenses incurred till the extension is completed, i.e., in the case of the setting up of a new unit - expenses incurred till the new unit commences production or operation.

B. AMOUNT ELIGIBLE FOR DEDUCTION: Such preliminary expenditure incurred shall be amortised over a period of 5 years. In other words, 1/5th of such expenditure is allowable as a deduction for each of the five successive previous years beginning with the previous year in which the business commences or, the previous year in which the extension of the undertaking is completed or the new unit commences production or operation, as the case may be.

C. ELIGIBLE EXPENSES: The following expenditure are eligible for amortisation:

1. **Expenditure in connection** with:
   a. The preparation of feasibility report.
   b. The preparation of project report.
   c. Conducting market survey or any other survey necessary for the business of the assessee.
   d. Engineering services relating to the assessee's business.
   e. Legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up to conduct the business of assessee.

Note: The work in connection with the preparation of the feasibility report or the project report or the conducting of market survey or any other survey or the engineering services referred to must be carried out by the assessee himself or by a concern which is for the time being approved in this behalf by the Board.

2. **Where the assessee is a company,** in addition to the above, expenditure incurred:
    a. By way of legal charges for drafting the Memorandum and Articles of Association of the company;
    b. On printing the Memorandum and Articles of Association;
    c. By way of fees for registering the company under the Companies Act 1956,
    d. In connection with the issue, for public subscription, of the shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, printing and advertisement of the prospectus and

3. **Such other items of expenditure** (not being expenditure qualifying for any allowance or deduction under any other provision of the Act) as may be prescribed by the Board for the purpose of amortisation. However, the Board, so far, has not prescribed any specific item of expense as qualifying for amortisation under this clause.

D. OVERALL LIMITS:

The maximum aggregate amount of the qualifying expenses that can be amortised has been fixed:

a. **For Non-Corporates:** 5% of the cost of the project or
b. **Indian Company:** 5% of the capital employed or 5% of Cost of Project, whichever is **HIGHER**.

The excess, if any, of the qualifying expenses shall be ignored.

E. ADDITIONAL CONDITIONS FOR CLAIMING DEDUCTION:

1. **Audit of accounts:** In cases where the assessee is a person other than a company or a co-operative society, the deduction would be allowable only if the accounts of the assessee for the year or years in which the expenditure is incurred have been audited by a Chartered Accountant before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1); and the assessee has, by that date, furnished for the first year in which the deduction is claimed, the report of such audit in the prescribed form duly signed and verified by the auditor and setting forth such other particulars as may be prescribed.

Particulars	Due date of filing of return	Specified Date
Assessees (other than a company) subject to tax audit	31st October of the relevant A.Y. For	30th September of the relevant A.Y.
	A.Y.2023-24, on or before 31st October, 2023	For A.Y.2023-24, on or before 30th September, 2023

2. **No other deduction under any provision of the Act:** It has been clarified that in case where a deduction under this section is claimed and allowed for any assessment year in respect of any item of expenditure, the expenditure in respect of which deduction is so allowed shall

not qualify for deduction under any other provision of the Act for the same or any other assessment year.

Meaning of certain terms:

Terms	Meaning
Cost of the project	1. **Expenses incurred before the commencement of business:** The actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings, railway sidings (including expenditure on the development of land, buildings) which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences. 2. **Expenses incurred for extension of the business or setting up of a new unit:** The cost of the fixed assets being land, buildings, leaseholds, plant, machinery, furniture, fittings, and railway sidings (including expenditure on the development of land and buildings) which are shown in the books of the assessee as on the last day of the previous year in which the extension of the undertaking is completed or, as the case may be, the new unit commences production or operation, in so far as such assets have been acquired or developed in connection with the extension of the undertaking or the setting up of the new unit.
Capital employed in the business of the company	1. **In the case of new company:** The aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the business of the company commences. 2. **In the case of extension of the business or the setting up of a new unit:** The aggregate of the issued share capital, debentures, and long-term borrowings as on the last day of the previous year in which the extension of the undertaking is completed or, as the case may be, the unit commences production or operation in so far as such capital, debentures and long term borrowings have been issued or obtained in connection with the extension of the undertaking or the setting up of the new undertaking or the setting up of the new unit of the company.
Long-term borrowing	Any moneys borrowed in India by the company from the Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution eligible for deduction under section 36(1)(iii) or any banking institution, or any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of plant and machinery where the terms under which such moneys are

	borrowed or the debt is incurred provide for the repayment thereof during a period of not less than 7 years.

AMORTISATION OF EXPENDITURE INCURRED UNDER VOLUNTARY RETIREMENT SCHEME [Section 35DDA]

1. **Nature of expenditure:** This section applies to an assessee who has incurred expenditure in any previous year in the form of payment to any employee in connection with his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement.

2. **Amount of deduction:** The amount of deduction allowable is one-fifth of the amount paid for that previous year, and the balance in four equal installments in the 4 immediately succeeding previous years.

3. **No deduction under any provisions of the Act:** No deduction shall be allowed in respect of the above expenditure under any other provision of the Act.

OTHER DEDUCTIONS [Section 36]

This section authorises deduction of certain specific expenses. The items of expenditure and the conditions under which such expenditures are deductible are:

A. STOCK INSURANCE [Section 36(1)(i)]: If insurance policy has been taken out against risk, damage or destruction of the stock or stores of the business or profession, the premia paid is deductible. But the premium in respect of any insurance undertaken for any other purpose is not allowable under the clause.

B. HEALTH INSURANCE OF EMPLOYEES [Section 36(1)(ib)]: This clause seeks to allow a deduction to an employer in respect of premia paid by him by any mode of payment other than cash to effect or to keep in force an insurance on the health of his employees in accordance with a scheme framed by

a. The General Insurance Corporation of India and approved by the Central Government or
b. Any other insurer and approved by the IRDA.

C. BONUS AND COMMISSION [Section 36(1)(ii)]: These are deductible in full provided the sum paid to the employees as bonus or commission shall not be payable to them as profits or dividends if it had not been paid as bonus or commission.

D. INTEREST ON BORROWED CAPITAL [Section 36(1)(iii)]:

1. Deduction of interest is allowed in respect of capital borrowed for the purposes of business or profession in the computation of income under the head "Profits and gains of business or profession".
2. Capital may be borrowed for several purposes like for acquiring a capital asset, or to pay off a trading debt or loss etc.
3. Capital may be borrowed in the course of the existing business as well as for acquiring assets for extension of existing business.
4. As per proviso to section 36(1)(iii), deduction in respect of any amount of interest paid, in respect of capital borrowed for acquisition of new asset (whether capitalised in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use shall not be allowed as deduction and the same will be added to actual cost of the asset. Explanation 8 to section 43(1) clarifies that interest relatable to a period after the asset is first put to use cannot be capitalised.

Note: In the case of genuine business borrowings, the department cannot disallow any part of the interest on the ground that the rate of interest is unreasonably high except in cases falling under section 40A.

E. DISCOUNT ON ZERO COUPON BONDS (ZCBs) [Section 36(1)(iiia)]: Section 36(1)(iiia) provides deduction for the discount on ZCB on pro rata basis having regard to the period of life of the bond to be calculated in the manner prescribed:

Term	Meaning
Discount	Difference of the amount received or receivable by an infrastructure capital company/ infrastructure capital fund/ public sector company/ scheduled bank on issue of the bond AND the amount payable by such company or fund or bank on maturity or redemption of the bond.
Period of life of the bond	The period commencing from the date of issue of the bond and ending on the date of the maturity or redemption.

F. CONTRIBUTIONS TO PROVIDENT AND OTHER FUNDS [Section 36(1) (iv) and (v)]:

Contribution to the employees' recognised provident fund/ approved superannuation fund/ approved gratuity fund are allowable subject to the following conditions:

1. The gratuity fund should be settled upon a trust.
2. The amount contributed should be periodic payment and not an adhoc payment to start the fund.
3. The gratuity fund should be for exclusive benefit of the employees.

G. Employer's contribution to the account of the employee under a Pension Scheme referred to in Section 80CCD [Section 36(1)(iva)]

1. The employer's contribution to the account of an employee under a Pension Scheme as referred to in section 80CCD would be allowed as deduction while computing business income.
2. However, deduction would be restricted to 10% of salary of the employee in the previous year.
3. Salary, for this purpose, includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

(REFER ILLUSTRATION 9)

H. AMOUNT RECEIVED BY AN ASSESSEE-EMPLOYER AS CONTRIBUTION FROM HIS EMPLOYEES TOWARDS THEIR WELFARE FUND TO BE ALLOWED ONLY IF SUCH AMOUNT IS CREDITED ON OR BEFORE DUE DATE UNDER THE RELEVANT ACT, RULE ETC.: Section 36(1)(va) and section 57(ia) provide that deduction in respect of any sum received by the taxpayer as contribution from his employees towards any welfare fund of such employees will be allowed only if such sum is credited by the taxpayer to the employee's account in the relevant fund on or before the due date.

Due date	The date by which the assessee is required as an employer to credit such contribution to the employee's account in the relevant fund under the provisions of any law on term of contract of service or otherwise. As per the Employees Provident Funds Scheme, 1952, the amounts under consideration in respect of wages of the employees for any particular month shall be paid within 15 days of the close of every month. Further It is clarified that the provisions of section 43B regarding allowability of certain expenditure in a previous year only on actual payment basis on or before due date of filing of return of income for relevant assessment year, does not apply and would deem never to be applied on employee's contribution received by employer towards any welfare fund of such employee. In effect, the extended time up to due date of filing of return for is not available for credit of employees contribution towards any welfare fund received by the employer

I. BAD DEBTS [Section 36(1)(vii) and section 36(2)] – These can be deducted subject to the following conditions:

1. The debts or loans should be in respect of a business which was carried on by the assessee during the relevant previous year.
2. The debt should have been taken into account in computing the income of the assessee of the previous year in which such debt is written off or of an earlier previous year or should represent money lent by the assessee in the ordinary course of his business of banking or money lending.

3. **Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs7 to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable [Section 36(1)(vii)]:**
    a. Under section 36(1)(vii), deduction is allowed in respect of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year. Therefore, write off in the books of account is an essential condition for claim of bad debts under section 36(1) (vii).
    b. Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable.

Note: If a debt, which has not been recognized in the books of account as per the requirement of the accounting standards but has been taken into account in the computation of income as per the notified ICDSs, has become irrecoverable, it can still be claimed as bad debts under section 36(1)(vii) since it shall be deemed that the debt has been written off as irrecoverable in the books of account by virtue of the second proviso to section 36(1)(vii). This is because some ICDSs require recognition of income at an earlier point of time (prior to the point of time such income is recognised in the books of account). Consequently, if the whole or part of such income recognised at an earlier point of time for tax purposes becomes irrecoverable, it can be claimed as bad debts on account of the second proviso to section 36(1)(vii).

    c. **DEDUCTION OF DIFFERENTIAL AMOUNT OF DEBTS DUE AS BAD DEBTS IN THE YEAR OF RECOVERY, TO THE EXTENT OF DEFICIENCY IN RECOVERY:** If on the final settlement the amount recovered in respect of any debt, where deduction had already been allowed, falls short of the difference between the debt due and the amount of debt allowed, the deficiency can be claimed as a deduction from the income of the previous year in which the ultimate recovery out of the debt is made. It is permissible for the Assessing Officer to allow deduction in respect of a bad debt or any part thereof in the assessment of a particular year and subsequently to allow the balance of the amount, if any, in the year in which the ultimate recovery is made, that is to say, when the final result of the process of recovery comes to be known.

    d. **Recovery of a bad debt subsequently [Section 41(4)]:** If a deduction has been allowed in respect of a bad debt under section 36, and subsequently the amount recovered in respect of such debt is more than the amount due after the allowance had been made, the excess shall be deemed to be the profits and gains of business or profession and will be chargeable as income of the previous year in which it is recovered, whether or not the business or profession in respect of which the deduction has been allowed is in existence at the time.

J. EXPENSES ON FAMILY PLANNING BY A COMPANY [Section 36(1)(ix)]:

1. **REVENUE EXPENDITURE:** Any expenditure of revenue nature bona fide incurred by a **COMPANY** for the purpose of promoting family planning amongst its employees will be allowed as a deduction in computing the company's business income;
2. Where the expenditure is of a capital nature, **one-fifth of such expenditure** will be deducted in the previous year in which it was incurred and in each of the four immediately succeeding previous years.
3. This deduction is allowable only to companies and not to other assessees.
4. The assessee would be entitled to carry forward and set off the unabsorbed part of the allowance in the same way as unabsorbed depreciation.
5. The capital expenditure on promoting family planning will be treated in the same way as capital expenditure for scientific research for purposes of dealing with the profit or loss on the sale or transfer of the asset including a transfer on amalgamation.

K. DEDUCTION OF SECURITIES TRANSACTION TAX PAID [Section 36(1)(xv)]:

The amount of securities transaction tax paid by the assessee during the year in respect of taxable securities transactions entered into in the course of business shall be allowed as deduction under section 36 subject to the condition that such income from taxable securities transactions is included under the head 'Profits and gains of business or profession'. Thus, securities transaction tax paid would be allowed as a deduction like any other business expenditure.

L. DEDUCTION FOR COMMODITIES TRANSACTION TAX: [Section 36(1)(xvi)]

1. 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.
2. **A "commodity derivative"** means:
    a. A contract for delivery of goods which is not a ready delivery contract
    b. A contract for differences which derives its value from prices or indices of prices:
        i. of such underlying goods or
        ii. of related services and rights, such as warehousing and freight or
        iii. With reference to weather and similar events and activities having a bearing on the commodity sector.
3. Consequently, an amount equal to the CTT paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".

RESIDUARY EXPENSES [Section 37]

This is a residuary section under which only business expenditure is allowable but not the business losses, e.g., those arising out of embezzlement, theft, destruction of assets, misappropriation by employees etc. The deduction is limited only to the amount actually expended and does not extend to a reserve created against a contingent liability.

A. CONDITIONS FOR DEDUCTIONS: The following conditions should be fulfilled in order that a particular item of expenditure may be deductible under this section:

1. The expenditure should not be of the nature described in sections 30 to 36**.**
2. It should have been incurred by the assessee in the accounting year.
3. It should be in respect of a business carried on by the assessee the profits of which are being computed and assessed.
4. It must have been incurred after the business was set up.
5. It should not be in the nature of any personal expenses of the assessee.
6. It should have been laid out or expended wholly and exclusively for the purposes of such business.
7. It should not be in the nature of capital expenditure**.**
8. The expenditure should not have been incurred by the assessee for any purpose which is an offence or is prohibited by law. Such an expenditure includes and shall be deemed to have always included the expenditure incurred by an assessee:
    a. **OFFENCE:** 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
    b. **BRIBES:** 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
    c. **PENALTY / FINES:** to compound an offence under any law for the time being in force, in India or outside India.

    For e.g., 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 (Professional Conduct, Etiquette and Ethics) 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.

B. EXPENDITURE INCURRED ON KEYMAN INSURANCE POLICY: CBDT Circular no. 762/1998 dated 18.02.1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure.

The **Punjab and Haryana High Court** held that, "the Keyman Insurance Policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure".

The CBDT accepted the view of the High Court, accordingly, vide Circular no. 38/2016 has clarified that, in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37.

C. DISALLOWANCE OF CSR EXPENDITURE [Explanation 2 to Section 37(1)]

1. Section 135 of the Companies Act, 2013 read with Schedule VII thereto and Companies (Corporate Social Responsibility) Rules, 2014 are the special provisions under the company law regime imposing mandatory CSR obligations.
2. As per Rule 4 of the Companies (CSR) Rules, 2014, the following expenditure are not considered as CSR activity for the purpose of section 135:
    a. Expenditure on CSR activities undertaken outside India.
    b. Expenditure which is exclusively for the benefit of the employees of the company or their families and
    c. Contributions to political parties.
3. It has been clarified that for the purposes of section 37(1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37.
4. The rationale behind the disallowance is that CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business.
5. However, the Explanatory Memorandum to the Finance (No.2) Bill, 2014 clarifies that CSR expenditure, which is of the nature described in sections 30 to 36, shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.

D. ADVERTISEMENTS IN SOUVENIRS OF POLITICAL PARTIES [Section 37(2B)]:

A taxpayer would not be entitled to any deduction in respect of expenses incurred by him on advertisement in any souvenir, brochure, tract or the like published by any political party, whether it is registered with the Election Commission of India or not.

PART 4 – INADMISSIBLE DEDUCTIONS

NON-COMPLIANCE WITH TDS PROVISIONS [Section 40(a)]

A. 100% DISALLOWANCE FOR NON COMPLAINCE WITH TDS PROVISIONS ON PAYMENTS MADE TO NON-RESIDENTS [Section 40(a)(i)]:

1. Any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable:
    a. outside India
    b. in India to a non-resident non-corporate or to a foreign company,

    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 of filing of return specified under section 139(1).

2. 100% of the above expenditure is disallowed.

3. It is also provided that where in respect of any such sum, where tax has been deducted in any subsequent year, or has been deducted in the previous year but paid after the due date of filing of return under section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

4. **EXEMPTION:** In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee:
    a. has furnished his return of income under section 139;
    b. has taken into account such sum for computing income in such return of income and
    c. has paid the tax due on the income declared by him in such return of income, and
    d. the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

    It would be deemed that the assessee has deducted and paid the tax on such sum on the date on which return of income has been furnished by the payee. 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.

B. 100% DISALLOWANCE FOR NON COMPLAINCE WITH TDS PROVISIONS ON PAYMENTS MADE TO NON-RESIDENTS [Section 40(a)(ia)]:

1. 30% of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B, shall be disallowed if:
    a. such tax has not been deducted or
    b. such tax, after deduction, has not been paid on or before the due date specified in section 139(1).

2. If in respect of 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 section 139(1), 30% of such sum shall be allowed as deduction in computing the income of the previous year in which such tax has been paid.

3. **EXEMPTION:** In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee:
    a. has furnished his return of income under section 139;
    b. has taken into account such sum for computing income in such return of income; and
    c. has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

    It would be deemed that the assessee has deducted and paid the tax on such sum. The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the payee.

    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.

Example: Tax on royalty paid to Mr. A, a resident, has been deducted during the previous year 2022-23, the same has to be paid by 31st July/ 31st October, 2023, as the case may be. Otherwise, 30% of royalty paid would be disallowed in computing the income for A.Y. 2023-24. If in respect of such royalty, tax deducted during the P.Y.2022-23 has been paid after 31st July/31st October, 2023, 30% of such royalty would be allowed as deduction in the year of payment.

(REFER ILLUSTRATION 10 & 11)

C. INCOME TAX PAID IS DISALLOWED [Section 40(a)(ii)]:

Any sum paid on account of any rate or tax levied on profits on the basis of or in proportion to the profits and gains of any business or profession.

It is clarified that the term "tax" shall include and shall be deemed to have always included any surcharge or cess on such tax. Hence, tax including surcharge and cess would be disallowed while computing business income [Explanation 3 to section 40(a)(ii)].

D. DISALLOWANCE TO STATE PSU [Section 40(a)(iib)]:

Any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge, etc., which is levied exclusively on, or any amount appropriated, directly or indirectly, from a State Government undertaking by the State Government (SG) will be disallowed to such state PSU.

E. SALARY TO A NON-RESIDENT WITHOUT TDS [Section 40(a)(iii)]:

Any sum 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 nor deducted therefrom under Chapter XVII-B then the sum paid is disallowed.

F. WITHDRAWAL FROM PROVIDENT FUND WITHOUT TDS [Section 40(a)(iv)]:

Any contribution to a provident fund or the fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to make sure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head 'Salaries'.

G. TAX PAID ON NON-MONETARY PERQUISITES BY EMPLOYER [Section 40(a)(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 non-monetary 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.

ASSESSMENT OF PARTNERSHIP FIRMS [INCLUDING LLP's] [Section 40(b)]

The following amounts SHALL NOT be deducted in computing the business income:

1. **REMUNERATION TO NON-WORKING PARTNER:** Any salary, bonus, commission, remuneration by whatever name called, to any partner who is not a working partner. (In the following discussion, the term 'remuneration' is applied to denote payments in the nature of salary, bonus, commission);

2. **Remuneration to a working partner NOT AUTHORIZED BY DEED:** Any remuneration paid to the working partner or interest to any partner which is not authorised by or which is inconsistent with the terms of the partnership deed.
3. **Remuneration to a working partner or interest to a partner AUTHORIZED BY DEED BUT RELATES TO AN EARLIER PERIOD:** It is possible that the current partnership deed may authorise payments of remuneration to any working partner or interest to any partner for a period which is prior to the date of the current partnership deed. The approval by the current partnership deed might have been necessitated due to the fact that such payment was not authorised by or was inconsistent with the earlier partnership deed. Such payments of remuneration or interest will also be disallowed.

   However, it should be noted that the current partnership deed cannot authorise any payment which relates to a period prior to the date of earlier partnership deed.

   Next, by virtue of a further restriction contained in section 40(b)(iii), such remuneration paid to the working partners will be allowed as deduction to the firm from the date of such partnership deed and not for any period prior thereto.

   Example: If a firm incorporates the clause relating to payment of remuneration to the working partners, by executing an appropriate deed, say, on July 1, 2022 but effective from April 1, 2022 the firm would get deduction for the remuneration paid to its working partners from July 1, 2022 onwards, but not for the period from April 1 to June 30. In other words, it will not be possible to give retrospective effect to oral agreements entered into vis a vis such remuneration prior to putting the same in a written partnership deed.

4. **INTEREST TO ANY PARTNER IN EXCESS OF 12% p.a.:** Any interest payment authorised by the partnership deed falling after the date of such deed to the extent such interest exceeds 12% simple interest p.a.

5. **REMUNERATION TO A WORKING PARTNER IN EXCESS OF PRESCRIBED LIMITS:** Any remuneration paid to a working partner, authorised by a partnership deed and falling after the date of the deed in excess of the following limits:

Book Profit	Quantum of deduction
On the first Rs. 3 lakh of book profit or in case of loss	Rs. 1,50,000 or 90% of book profit, whichever is **HIGHER**
on the balance of book profit	60% of book profit

Meaning of certain terms:

Term	Meaning
Book Profit	The net profit as shown in the profit and loss account for the relevant previous year computed in accordance with the provisions for computing income from profits and gains [Explanation 3 to section 40(b)]. The above amount should be increased by the remuneration paid or payable to all the partners of the firm if the same has been deducted while computing the net profit.
Working partner	An individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner [Explanation 4 to section 40(b)]

(REFER ILLUSTRATION 12)

PAYMENTS TO PARTNERS IN REPRESENTATIVE CAPACITY [Explanations to section 40(b)]:

1. Where an individual is a partner in a firm in a representative capacity:
    a. Interest paid by the firm to such individual otherwise than as partner in a representative capacity shall not be taken into account for the purposes of this clause.
    b. Interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause [Explanation 1 to section 40(b)]

2. Where an individual is a partner in a firm otherwise than in a representative capacity, interest paid to him by the firm shall not be taken into account if he receives the same on behalf of or for the benefit of any other person [Explanation 2 to section 40(b)].

(REFER ILLUSTRATION 13)

EXPENSES NOT DEDUCTABLE U/S 40A

A. PAYMENTS TO RELATIVES AND ASSOCIATES [Section 40A(2)]:

Where the assessee incurs any expenditure in respect of which a payment has been or is to be made to a specified person, so much of the expenditure as is considered to be excessive or unreasonable shall be disallowed by the Assessing Officer. While doing so he shall have due regard to:

a. The fair market value of the goods, service of facilities for which the payment is made or
b. The legitimate needs of the business or profession carried on by the assessee or
c. The benefit derived by or accruing to the assessee from such a payment.

<table>
<tr><th>ASSESSEE</th><th>SPECIFIED PERSON</th></tr>
<tr><td>Individual</td><td>1. Any relative of the individual assessee
2. Any person who carries on a business or profession, if
a. the individual assessee has a substantial interest in the business of that person or
b. any relative of the individual assessee has a substantial interest in the business of that person</td></tr>
<tr><td>Company, Firm, HUF or AOP</td><td>1. Any director of the company, partner of the firm or member of the family or association or any relative of such director, partner or member or
2. 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 or
3. 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</td></tr>
<tr><td>All other assessees</td><td>The following are specified persons:
<table>
<tr><th>Person who has substantial interest in the assessee's business</th><th>Other related persons of such person, who has a substantial interest in the assessee's business</th></tr>
<tr><td>Company/ AOP/ Firm/ HUF</td><td>1. Any director of such company, partner of such firm or the member of such family or association or
2. any relative of such director, partner or member or
3. Any other company carrying on business or profession in which the first mentioned company has a substantial interest</td></tr>
<tr><td>a director, partner or member</td><td>1. Company/ Firm/ AOP/ HUF of which he is a director, partner or member or</td></tr>
</table></td></tr>
</table>

		2. Any other director/ partner/ member of the such Company/Firm/ AOP/ HUF or 3. Any relative of such director, partner or member

Relative, in relation to an "individual", means the spouse, brother or sister or any lineal ascendant or descendant of that individual [Section 2(41)].

Substantial interest in a business or profession:

A person shall be deemed to have a substantial interest in a business or profession if:

1. in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of equity shares carrying not less than 20% of the voting power AND
2. in any other case, such person is, at any time during the previous year, beneficially entitled to not less than 20% of the profits of such business or profession.

B. PAYMENTS IN EXCESS OF RS. 10,000 MADE IN CASH [Section 40A(3)]:

1. According to section 40A (3), where the assessee incurs any expenditure, in respect of which payment or aggregate of payments made to a person in a day otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft or use of electronic system through bank account or through such other prescribed electronic modes exceeds Rs. 10,000, such expenditure shall not be allowed as a deduction.

2. The prescribed electronic modes are 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].

3. The provision applies to all categories of expenditure involving payments for goods or services which are deductible in computing the taxable income.

Example: If, in respect of an expenditure of Rs. 32,000 incurred by X Ltd., 4 cash payments of Rs. 8,000 are made on a particular day to one Mr. Y – one in the morning at 10 a.m., one at 12 noon, one at 3 p.m. and one at 6 p.m., the entire expenditure of Rs. 32,000 would be disallowed under section 40A (3), since the aggregate of cash payments made during a day to Mr. Y exceeds Rs. 10,000.

4. In case of an assessee following mercantile system of accounting, if an expenditure has been allowed as deduction in any previous year on due basis, and payment has been made in a subsequent year otherwise than by account payee cheque or account payee bank draft or use of electronic clearing system through a bank account 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, then the payment so made shall be deemed to be the income of the subsequent year if such payment or aggregate of payments made to a person in a day exceeds Rs. 10,000 [Section 40A(3A)].

5. **Increase limit of Rs. 35,000 applicable, where payment made to transport operator:** The limit would be Rs. 35,000 in case of payment made to transport operators for plying, hiring or leasing goods carriages, otherwise than through prescribed modes. Therefore, payment or aggregate of payments up to Rs. 35,000 in a day can be made to a transport operator otherwise than by way of account payee cheque or account payee bank draft or use of electronic clearing system through a bank account 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.

6. **EXCEPTION TO THE ABOVE RULE:**
   a. **Loan transactions:** It does not apply to loan transactions because advancing of loans or repayments of the principal amount of loan 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 the modes referred as above.

   b. **Payment made by commission agents:** This requirement does not apply to payment made by commission agents for goods received by them for sale on commission or consignment basis because such a payment is not an expenditure deductible in computing the taxable income of the commission agent.

      However, where commission agent purchases goods on his own account but not on commission basis, the requirement will apply.

   c. **Cases and circumstances in which a payment or aggregate of payments exceeding Rs.10,000 may be made to a person in a day IN CASH [Rule 6DD]:**

      1. **TO LIC / BANKS / RBI:** Where the payment is made to
         a. The Reserve Bank of India or any banking company.
         b. The State Bank of India or any subsidiary bank.
         c. Any co-operative bank or land mortgage bank.
         d. Any primary agricultural credit society or any primary credit society.
         e. The Life Insurance Corporation of India.

      2. **TO GOVERNMENT:** Where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender.

      3. **THROUGH INSTRUMENTS:** Where the payment is made by

a. Any letter of credit arrangements through a bank.
b. A mail or telegraphic transfer through a bank.
c. A book adjustment from any account in a bank to any other account in that or any other bank.
d. A bill of exchange made payable only to a bank.

4. **BOOK ADJUSTMENTS:** Where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee.

5. **TO FARMERS:** Where the payment is made for the purchase of:
   a. Agricultural or forest produce or
   b. The produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming or
   c. Fish or fish products or
   d. The products of horticulture or apiculture,

   To the cultivator, grower or producer of such articles, produce or products;

Notes:

(i) The expression 'fish or fish products' (iii) above would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.'.

(ii) The 'producers' of fish or fish products for the purpose of Rule 6DD(e) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

However, the above exception will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called.

6. **PRUCHSES FROM COTTAGE INDUSTRY:** Where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products.

7. **ON A BANK HOLIDAY:** Where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town.

8. **EMPLOYEE COMPENSATIONS:** Where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed Rs. 50,000.

9. **EMPLOYEE WORK VISITS:** Where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee:
    a. Is temporarily posted for a continuous period of 15 days or more in a place other than his normal place of duty or on a ship and
    b. Does not maintain any account in any bank at such place or ship.

10. **PAYMENTS TO AGENT:** Where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person.

11. **CURRENCY DEALERS:** Where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travelers cheques in the normal course of his business.

C. DISALLOWANCE OF PROVISION FOR GRATUITY [Section 40A (7)]:

1. No deduction would be allowable to any taxpayer carrying on any business or profession in respect of any provision (whether called as provision or by any other names) made by him towards the payment of gratuity to his employees on their retirement or on the termination of their employment for any reason.
2. The reason for this disallowance is that, under section 36(1)(v), deduction is allowable in computing the profits and gains of the business or profession in respect of any sum paid by a taxpayer in his capacity as an employer in the form of contributions made by him to an approved gratuity fund created for the exclusive benefit of his employees under an irrevocable trust.
3. Further, section 37(1) provides that any expenditure other than the expenditure of the nature described in sections 30 to 36 laid out or expended, wholly and exclusively for the purpose of the business or profession must be allowed as a deduction in computing the taxable income from business.
4. A reading of these 2 provisions clearly indicates that the intention of the legislature has always been that the deduction in respect of gratuity be allowable to the employer either in the year in which the gratuity is actually paid OR in the year in which contributions to an approved gratuity fund are actually made by employer.
5. This provision, therefore, makes it clear that any amount claimed by the assessee towards provision for gratuity, by whatever name called would be disallowable in the assessment of employer even if the assessee follows the mercantile system of accounting.
6. However, no disallowance would be made as per section 40A (7) in the case where any provision is made by the employer for the purpose of payment of sum by way of contribution to an approved gratuity fund during the previous year OR for the purpose of making payment of any gratuity that has become payable during the previous year by virtue of the employee's retirement, death, termination of service etc.

7. Further, where any provision for gratuity for any reason has been allowed as a deduction to 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 to gratuity to employee shall not be allowed as deduction to the assessee in the year in which it is paid.

D. CONTRIBUTIONS BY EMPLOYERS TO FUNDS, TRUST etc. [Section 40A (9)]

1. No deduction will be allowed where the assessee pays in his capacity as an employer, any sum towards setting up or formation of or as contribution to any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 or other institution for any purpose.
2. However, where such sum is paid in respect of funds covered by sections 36(1)(iv), 36(1)(iva) and 36(1)(v) or any other law, then the deduction will not be denied.

E. CERTAIN DEDUCTIONS TO BE MADE ONLY ON ACTUAL PAYMENT [Section 43B]:

The following sums are allowed as deduction only on the basis of actual payment within the time limits specified in section 43B:

a. **TAXES / DUTIES OTHER THAN DIRECT TAX:** Any sum payable by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

b. **EMPLOYERS CONTRIBUTION:** Any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

c. **BONUS or COMMISSION:** Bonus or Commission for services rendered payable to employees, or

d. **INTEREST TO PFI's:** Any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State Financial Corporation or a State Industrial Investment Corporation, or

e. **INTEREST TO NBFC [SI / DT]:** Any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

Note: SI ND – NBFC: A non-banking financial company which is not accepting or holding public deposits and having total assets of not less than Rs. 500 crore as per the last audited

balance sheet and is registered with the RBI under the provisions of the Reserve Bank of India Act, 1934.

f. **INTEREST TO BANKS:** Interest on any loan or advance from a scheduled bank or co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

g. **LEAVE ENCASHMENT:** Any sum paid by the assessee as an employer in lieu of earned leave of his employee, or

h. **PAYMENT FOR RAILWAY ASSETS:** Any sum payable by the assessee to the Indian Railways for use of Railway assets.

Note 1: For the purpose of claiming deduction in the relevant previous year in which the expenditure is incurred, the above sums have to be paid by the assessee on or before the due date for furnishing the return of income under section 139(1) in respect of the previous year in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with such return.

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.

Example: An assessee may collect GST from customers during the month of March, 2023. However, in respect of such collections he may have to discharge the liability only within say 20th April, 2023 under the GST law. The Explanation covers this type of liability also. Consequently, if an assessee following accrual method of accounting has created a provision in respect of such a liability the same is not deductible unless remitted within the due date specified in this section.

Note 2: Conversion of interest into a loan or borrowing or debenture or any other instrument

Explanation 3C, 3CA & 3D clarifies that if any sum payable by the assessee as interest on any such loan or borrowing or advance referred to in (d), (e) and (f) above, is converted into a loan or borrowing or advance or debenture or any other instrument by which the liability to pay is deferred to a future date, the interest so converted and not "actually paid" shall not be deemed as actual payment, and hence would not be allowed as deduction.

The unpaid interest, whenever actually paid to the bank or financial institution, will be in the nature of revenue expenditure deserving deduction in the computation of income. Therefore, irrespective of the nomenclature, the deduction will be allowed in the previous year in which the converted interest is actually paid.

(REFER ILLUSTRATION 14)

PART 5 – OTHER ISSUES

DEEMED PROFITS [Section 41]

This section enumerates certain receipts which are deemed to be income under the head "business or profession." Such receipts would attract charge even if the business from which they arise had ceased to exist prior to the year in which the liability under this section arises. The particulars of such receipts are given below:

A. REMISSION OR CESSATION OF TRADING LIABILITY [Section 41(1)]:

1. Suppose an allowance or deduction has been made in any assessment year in respect of loss, expenditure or trading liability incurred by A. Subsequently, if A has obtained, whether in cash or in any manner whatsoever, any amount in respect of such loss or expenditure of some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by A, or the value of benefit accruing to him shall be taxed as income of that previous year.
2. It does not matter whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.
3. It is possible that after the above allowance in respect of loss, expenditure, or trading liability has been given to A, he could have been succeeded in his business by another person. In such a case, the successor will be liable to be taxed in respect of any such benefit received by him during a subsequent previous year. Successor in business refers to:
    a. Where there has been an amalgamation of a company with another company, the successor will be the amalgamated company.
    b. Where a firm carrying on a business or profession is succeeded by another firm the successor will be the other firm.
    c. In any other case, where one person is succeeded by any other person in that business or profession the other person will be the successor.
    d. In case of a demerger, the successor will be the resulting company.
4. Remission or cessation of a trading liability includes remission or cessation of liability by a unilateral act of the assessee by way of writing off such liability in his accounts.

B. Balancing charge [Section 41(2)]: Discussed as part of Section 32.

C. Sale of capital asset used for scientific research [Section 41(3)]: Discussed as part of Section 35.

D. RECOVERY OF A BAD DEBT SUBSEQUENTLY etc. [Section 41(4)]: Discussed under Section 36.

E. BROUGHT FORWARD LOSSES OF DEFUNCT BUSINESS [Section 41(5)]:

In cases where a receipt is deemed to be profit of a business under section 41 relating to a business that had ceased to exist and there is an unabsorbed loss, not being a speculation loss, which arose in that business during the previous year in which it had ceased to exist and which

has not been set off, it would be set off against income that is chargeable under this section even after the expiry of 8 years.

CHANGES IN THE RATE OF EXCHANGE OF CURRENCY [Section 43A]

Where an assessee has acquired any asset from a foreign country for the purpose of his business or profession, and due to a change thereafter in the exchange rate of the two currencies involved, there is an increase or decrease in the liability (expressed in Indian rupees) of the assessee at the time of making the payment, towards the whole or part of the cost of the asset or towards repayment of the whole or a part of the money borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with the interest, if any, the following values may be changed accordingly with respect to the increase or decrease in such liability:

1. The actual cost of the asset under section 43(1).
2. The amount of capital expenditure incurred on scientific research under section 35(1)(iv).
3. The amount of capital expenditure incurred by a company for promoting family planning amongst its employees under section 36(1)(ix).
4. The cost of acquisition of a non-depreciable capital asset falling under section 48.

The amount arrived at after making the above adjustment shall be taken as the amount of capital expenditure or the cost of acquisition of the capital asset, as the case may be.

FORWARD CONTRACTS: Where the assessee has entered into a contract with authorised dealer as defined in section 2 of the Foreign Exchange Management Act, 1999 for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, for adjustment under this section shall be computed with reference to the rate of exchange specified therein.

STAMP DUTY VALUE OF LAND AND BUILDING HELD AS STOCK IN TRADE [Section 43CA]

1. 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 (i.e., the stamp duty value) shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and gains of business of profession".
   However, if the stamp duty value does not exceed **110%** 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.

2. Further, 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 instead of on the date of registration for such transfer, provided at least a part of the consideration has been received by way of an account payee cheque/account payee bank draft or use of ECS through a bank account or through such other prescribed electronic modes on or before the date of the agreement.

3. The Assessing Officer may refer the valuation of the asset to a valuation officer as defined in section 2(r) of the Wealth-tax Act, 1957 in the following cases:
   a. Where the assessee claims before any Assessing Officer that the value 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
   b. 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.
   c. Where the value ascertained by the Valuation Officer exceeds the value adopted or assessed or assessable by the Stamp Valuation 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.

The term **'assessable'** has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

Date of transfer of land/ building held as stock-in-trade	**Actual consideration**	**Stamp duty value on the date of agreement**	**Stamp duty value (SDV) on the date of registration**	**Full value of consideration**	**Remark**
	Rs. in lakhs				
Example 1:					
1/9/2022	100 (Rs. 10 lakhs received by **A/c payee cheque** on 1/7/2022)	120 (1/7/2022)	130 (1/9/2022)	120	As part of the consideration is received by A/c payee cheque on the date of agreement, Stamp duty value (SDV) on the date of agreement to be adopted as full value of consideration, since the

					SDV exceeds 110% of consideration i.e., Rs. 110 lakhs.
Example 2:					
1/9/2022	100 (Rs. 10 lakhs received by cash on 1/7/2022)	109 (1/7/2022)	130 (1/9/2022)	130	SDV on the date of registration to be adopted as full value of consideration and such SDV exceeds 110% of consideration i.e., Rs. 110 lakhs. Since part of consideration is received by cash on the date of agreement, the SDV on the date of agreement cannot be considered vis-à-vis actual consideration.
Example 3:					
31/1/2023	100 (Rs. 10 lakhs received by **A/c payee cheque** on 1/7/2022)	109 (1/7/2022)	130 (31/1/2023)	100	Actual sales consideration would be the full value of consideration, since SDV on the date of agreement does not exceed 110% of actual consideration. SDV on the date of agreement can be considered vis-à-vis actual consideration, since part of the consideration has been received by account payee cheque on the date of agreement.
Example 4:					
31/3/2023	100 (Full amount received in cash on the date of registration)	120 (1/5/2022)	130 (31/3/2023)	130	SDV of the date of registration would be the full value of consideration since the SDV exceeds 110% of consideration i.e., Rs. 110 lakhs.

PART 6 – ACCOUNTS AND AUDIT

COMPULSORY MAINTENANCE OF ACCOUNTS [Section 44AA]

A. MAINTENANCE OF BOOKS OF ACCOUNT BY NOTIFIED PROFESSIONS [section 44AA (1)]:

1. Rule 6F of the Income-tax Rules contains the details relating to the books of account and other documents to be maintained by certain professionals under section 44AA (1).
2. **Prescribed class of persons:** As per Rule 6F, every person carrying on legal, medical, engineering, or architectural profession or the profession of accountancy or technical consultancy or interior decoration or or any other **notified*** professionals shall keep and maintain the books of account and other documents specified in Rule 6F (2) in the following cases:
    a. If his gross receipts exceed Rs. 1,50,000 in ALL the 3 years immediately preceding the previous year; or
    b. 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.

Note 1:

***Notified professions:** The professions notified so far are as:

a. The profession of authorised representative,
b. The profession of film artist (actor, camera man, director, music director, art director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer),
c. The profession of company secretary, and information technology professionals.

Note 2:

The above professionals whose gross receipts are less than the specified limits given above are also required to maintain books of account but these have not been specified in the Rule.

In other words, they are required to maintain such books of account and other documents as may enable the Assessing Officer to compute the total income in accordance with the provisions of this Act.

3. **Prescribed books of accounts and other documents [Sub-rule (2) of Rule 6F]:** The following books of account and other documents are required to be maintained.
    a. a cash book.
    b. a journal, if accounts are maintained on mercantile basis.
    c. a ledger.
    d. Carbon copies of bills and receipts issued by the person whether machine numbered or otherwise serially numbered, in relation to sums exceeding Rs. 25.

e. Original bills and receipts issued to the person in respect of expenditure incurred by the person, or where such bills and receipts are not issued, payment vouchers prepared and signed by the person, provided the amount does not exceed Rs. 50.

Note: Where the cash book contains adequate particulars, the preparation and signing of payment vouchers is not required.

4. **In case of a person carrying on medical profession,** he will be required to maintain the following in addition to the list given above:
   a. a daily case register in Form 3C.
   b. an inventory under broad heads of the stock of drugs, medicines and other consumable accessories as on the first and last day of the previous year used for his profession.

5. **Place at which books to be kept and maintained:** The books and documents shall be kept and maintained at the place where the person is carrying on the profession, or where there is more than one place, at the principal place of his profession. However, if he maintains separate set of books for each place of his profession, such books and documents may be kept and maintained at the respective places.

6. **Period for which the books of account are required to be kept and maintained by notified professions:**
   The above books of account and documents shall be kept and maintained for a minimum of 6 years from the end of the relevant assessment year.

(REFER ILLUSTRATION 15)

B. MAINTENANCE OF BOOKS OF ACCOUNT BY PERSONS CARRYING ON BUSINESS OR PROFESSION [OTHER THAN NOTIFIED PROFESSIONS] [SECTION 44AA (2)]:

1. **In case of Individual or HUF:** An Individual or HUF carrying on any business or profession (other than notified professions specified in section 44AA(1)) must maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance the provisions of the Income-tax Act, 1961 in the following circumstances:
   a. **Existing business or profession:** In cases where the income from the existing business or profession exceeds Rs. 2,50,000 **OR** the total sales, turnover or gross receipts, as the case may be, in the business or profession exceed Rs. 25,00,000 in **ANY** 1 of 3 years immediately preceding the accounting year or

   b. **Newly set up business or profession:** In cases where the business or profession is newly set up in any previous year, if his income from business or profession 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.

2. **Person (other than individual or HUF):** Every person (other than individual or HUF) carrying on any business or profession (other than the notified professions referred to in section 44AA(1)) must maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance the provisions of the Income-tax Act, 1961 in the following circumstances:
    a. **Existing business or profession:** In cases where the income from the business or profession exceeds Rs. 1,20,000 **OR** the total sales, turnover or gross receipts, as the case may be, in the business or profession exceed Rs. 10,00,000 in **ANY** 1 of 3 years immediately preceding the accounting year. or

    b. **Newly set up business or profession:** In cases where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed Rs. 1,20,000 **OR** his total sales, turnover or gross receipts, as the case may be, in the business or profession are likely to exceed Rs. 10,00,000 during the previous year;

C. Showing lower income as compared presumptive basis (under section 44AE or section 44BB or section 44BBB): Where profits and gains from the business are calculated on a presumptive basis (under section 44AE or section 44BB or section 44BBB) and the assessee has claimed that his income is lower than the profits or gains so deemed to be the profits and gains of his business.

D. Where the provisions of section 44AD (4) are applicable in his case and his income exceeds the basic exemption limit in any previous year: In cases, where an assessee not eligible to claim the benefit of the provisions of section 44AD (1) for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of 44AD (1) and his income exceeds the basic exemption limit during the previous year.

AUDIT OF ACCOUNTS OF CERTAIN PERSONS CARRYING ON BUSINESS OR PROFESSION
[Section 44AB]

1. **APPLICABILITY:** It is obligatory for the persons for persons carrying on business or profession, to get his accounts audited before the "specified date" by a Chartered Accountant, if the conditions mentioned below are satisfied:

	Persons	**When tax audit is required?**
In case of a person carrying on BUSINESS:		
(a)	In case of a person carrying on business	If his total sales, turnover or gross receipts in business EXCEEDS Rs. 1 crore in the relevant PY **Note** – The requirement of audit u/s 44AB does not apply to a person who declares profits and gains on presumptive basis u/s 44AD and his total sales, turnover, or gross receipts does not exceed Rs. 2 crores.
	Further if such person carrying on business: (i) Aggregate cash receipts in the relevant PY ≤ 5% of total receipts (incl. receipts for sales, turnover, gross receipts) **AND** (ii) Aggregate cash payments in the relevant PY ≤ 5% of total payments (incl. amount incurred for expenditure)	If his total sales, turnover or gross receipts in business EXCEEDS Rs. 10 crores in the relevant PY
	Note: For this purpose, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, would be deemed to be the payment or receipt, as the case may be, in cash.	
(b)	In case of an assessee covered u/s 44AE i.e., an assessee engaged in the business of plying, hiring or leasing goods carriages who owns not more than	If such assessee claims that the profits and gains from business in the relevant P.Y. are lower than the profits and gains computed on a presumptive basis u/s 44AE

	10 goods carriages at any time during the P.Y.	**FOR HEAVY GOODS VEHICLE:** Rs. 1000 per ton per month of gross vehicle weight or unladen weight in case of each heavy goods vehicle OWNED by the assessee. **OTHER THAN HEAVY GOODS VEHICLE:** Rs. 7,500 for each vehicle for every month or part of the month for which the vehicle is OWNED by the assessee.
(c)	In case of an eligible assessee carrying on business, whose total turnover, sales, gross receipts ≤ Rs. 200 lakhs, AND who has opted for section 44AD in any earlier PY (say, P. Y. 2021- 22)	If he declares profit for any of the five successive PYs (say, P.Y.2022-23) not in accordance with section 44AD (i.e., he declares profits lower than 8% or 6% of total turnover, sales or gross receipts, as the case may be, in that year), then, he cannot opt for section 44AD for five successive PYs after the year of such default (i.e., from P. Y. 2023-24 to P.Y.2027-28). For the year of default (i.e., P.Y.2022-23) and five successive previous years (i.e., P. Y. 2023-24 to P. Y. 2027-28), he has to maintain books of account u/s 44AA and get them audited u/s 44AB, IF his income exceeds the basic exemption limit.
In case of persons carrying on PROFESSION:		
(a)	In case of a person carrying on profession	If his gross receipts in profession EXCEEDS Rs. 50 Lakh in the relevant PY
(b)	In case of an assessee carrying on a notified profession under section 44AA(1) i.e., legal medical, engineering, accountancy, architecture, interior decoration, technical consultancy, whose gross receipts ≤ Rs. 50 lakhs	If such resident assessee claims that the profits and gains from such profession in the relevant PY are lower than the profits and gains computed on a presumptive basis u/s 44ADA (50% of gross receipts) and his income exceeds the basic exemption limit in that PY.

2. **FORM OF AUDIT REPORT:**
   - **a.** The persons mentioned above would have to furnish by the specified date a report of the audit in the prescribed forms. For this purpose, the Board has prescribed under Rule 6G, Forms 3CA/ 3CB/ 3CD containing forms of audit report and particulars to be furnished therewith.
   - **b. Accounts audited under other statutes are considered:** In cases where the accounts of a person are required to be audited by or under any other law before the specified date, it will be sufficient if the person gets his accounts audited under such other law before the specified date and also furnish by the said date the report of audit in the prescribed form in addition to the report of audit required under such other law.

3. **SPECIFIED DATE:** The expression **"specified date"** in relation to the accounts of the previous year or years relevant to any assessment year means the date one month prior to the due date for furnishing the return of income under section 139(1).

   The due date for filing return of income in case of assessees (other than companies) who are required to get their accounts audited is 31st October of the relevant assessment year.

   Hence, the specified date for tax audit would be 30th September of the relevant assessment year.

4. **PENAL PROVISION:** It may be noted that under section 271B, penal action can be taken for not getting the accounts audited and for not filing the audit report by the specified date.

PRESUMPTIVE TAXATION [Section 44AD, AE and ADA]

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(1)	**Eligible Assessee**	Resident Individual, HUF or Partnership firm (but not LLP) engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under "C – Deductions in respect of certain incomes" **Non-applicability of section 44AD in respect of the following persons:** - A person carrying on profession specified u/s 44AA (1). - A person earning income in the nature of commission or brokerage.	Resident individual or Partnership firm (but not LLP) engaged in any profession specified u/s 4AA (1), namely, legal, medical, engineering, architectural profession or profession of accountancy or technical consultancy or interior decoration or notified profession (authorized representative, film artist, company secretary, profession of information technology)	An assessee owning not more than 10 goods carriages at any time during the P.Y.

		- A person carrying on any agency business.		
(2)	**Eligible business/ profession**	Any business other than business referred to in section 44AE, whose total turnover/ gross receipts in the P.Y. ≤ Rs. 200 lakhs	Any profession specified u/s 44AA (1), whose gross receipts ≤ Rs. 50 lakhs in the relevant P.Y.	Business of plying, hiring or leasing goods carriages
(3)	**Presumptive income**	8% of total turnover / sales / gross receipts OR a sum higher than the aforesaid sum claimed to have been earned by the assessee. 6% of total turnover / gross receipts in respect of the amount of total turnover/ sales/gross receipts received by A/c payee cheque/ bank draft / ECS through a bank account or through such other prescribed electronic modes (credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay) during the P.Y. or before due date of filing of return u/s 139(1) in respect of that P.Y.	50% of gross receipts of such Profession OR a sum higher than the aforesaid sum claimed to have been earned by the assessee.	**For each heavy goods vehicle:** 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. **For each vehicle other than heavy goods vehicle:** Rs. 7,500 per month or part of a month during which such vehicle is owned by the assessee or an amount claimed to have been actually earned from Such vehicle, whichever is higher.

		OR such higher sum claimed to have been earned by the assessee.		
(4)	**Non-allowability of deductions while computing presumptive income**	Deductions allowable under sections 30 to 38 shall be deemed to have been given full effect to and no further deduction shall be allowed		
		Even in case of a firm, salary and interest paid to partners is NOT DEDUCTIBLE.	Even in case of a firm, salary and interest paid to partners is NOT DEDUCTIBLE.	In case of a firm, salary and interest paid to partners is DEDUCTIBLE subject to the conditions And limits specified in section 40(b)
(5)	**Written down value of asset**	WDV of any asset of an eligible business/profession shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed depreciation for each of the relevant assessment years		
(6)	**Requirement of maintenance of books of account u/s 44AA and audit u/s 44AB**	If eligible assessee declares profits and gains in accordance with the provisions of section 44AD, he is not required to maintain books of account u/s 44AA or get them audited u/s 44AB. However, if after declaring profits on presumptive basis u/s 44AD, say, for A.Y.2023-24, non-declaration of profits on presumptive basis for any of the 5 successive A.Y.s thereafter (i.e., from A.Y.2024-25 to A.Y.2028-29), say, for A.Y. 2025-26, would disentitle the assessee from claiming profits on presumptive basis for 5 successive AYs	If eligible assessee declares profits and gains in accordance with the provisions of section 44ADA, he is not required to maintain books of account u/s 44AA or get them audited u/s 44AB. However, if the assessee Claims his profits to be lower than the profits computed by applying the presumptive rate, he has to maintain books of account and other documents u/s 44AA (1) and get his accounts audited u/s 44AB, if his total income > basic exemption limit for that year.	If eligible assessee declares profits and gains in accordance with the provisions of section 44AE, he is not required to maintain books of account u/s 44AA or get them audited u/s 44AB. However, if the assessee claims his profits to be lower than the profits computed by applying the presumptive rate, he has to maintain books of account u/s 44AA (2) and get his accounts audited u/s 44AB.

		subsequent to the AY relevant to the PY of such non-declaration (i.e., from A.Y.2026-27 to A.Y.2030-31). In such a case, the assessee would have to maintain books of account and other documents u/s 44AA (2) and get his accounts audited u/s 44AB, if his total income exceeds the basic exemption limit in those years.		
(7)	**Advance tax obligation**	The eligible assessee opting for section 44AD is required to pay advance tax by 15th March of the financial year (F.Y.).	The eligible assessee opting for section 44ADA is required to pay advance tax by 15th March of the F.Y.	The eligible assessee has to pay advance tax in 4 instalments**.** **No relaxation for these assessees.**

Meaning of certain terms for the purpose of section 44AE:

S. No	Term	Meaning
(1)	Heavy goods vehicle	Any goods carriage, the GROSS VEHICLE WEIGHT of which exceeds 12,000 kilograms.
(2)	Gross vehicle weight	Total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.
(3)	Unladen weight	The weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working but excluding the weight of driver or attendant and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative body or part

Example:

Let us consider the following particulars relating to a resident individual, Mr. A, being an eligible assessee carrying on retail trade business whose total turnover do not exceed Rs. 2 crore in any of the previous year relevant to A.Y.2023-24 to A.Y.2025-26.

Particulars	**A.Y.2023-24**	**A.Y.2024-25**	**A.Y.2025-26**
Total turnover (Rs.)	1,80,00,000	1,90,00,000	2,00,00,000
Amount received through prescribed electronic modes on or before 31st October of the A.Y.	1,60,00,000	1,45,00,000	1,80,00,000
Income offered for taxation (Rs.)	11,20,000	12,30,000	10,00,000
% of gross receipts	6% on Rs. 1.60 crore and 8% on Rs. 20 lakhs	6% on Rs. 1.45 crore and 8% on Rs. 45 lakhs	5% on Rs. 2 crore
Offered income as per presumptive taxation scheme u/s 44AD	Yes	Yes	No

In the above case, Mr. A, an eligible assessee, opts for presumptive taxation under section 44AD for A.Y.2023-24 and A.Y.2024-25 and offers income of Rs. 11.20 lakh and Rs. 12.30 lakh on gross receipts of Rs. 1.80 crore and Rs. 1.90 crore, respectively.

However, for A.Y.2025-26, he offers income of only Rs. 10 lakh on turnover of Rs. 2 crore, which amounts to 5% of his gross receipts. He maintains books of account under section 44AA and gets the same audited under section 44AB. Since he has not offered income in accordance with the provisions of section 44AD(1) for five consecutive assessment years, after A.Y. 2023-24, he will not be eligible to claim the benefit of section 44AD for next five assessment years succeeding A.Y.2025-26 i.e., from A.Y.2026-27 to 2030-31.

(REFER ILLUSTRATION 16 & 17)

PART 7 – TAXATION OF AGRICULTURE INCOME WITH BUSINESS INCOME

A. INCOME FROM THE MANUFACTURE OF RUBBER [Rule 7A]

1. Income derived from the sale of centrifuged latex or cenex or latex based crepes or brown crepes or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants grown by the seller in India shall be computed as if it were income derived from business, and 35% of such income shall be deemed to be income liable to tax.

2. In computing such income, an allowance shall be made in respect of the cost of planting rubber plants in replacement of plants that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (31) of section 10, is not includible in the total income.

B. INCOME FROM THE MANUFACTURE OF COFFEE [Rule 7B]

1. Income derived from the sale of coffee grown and cured by the seller in India shall be computed as if it were income derived from business, and 25% of such income shall be deemed to be income liable to tax.

2. Income derived from the sale of coffee grown cured, roasted and grounded by the seller in India, with or without mixing of chicory or other flavouring ingredients, shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax.

3. In computing such income, an allowance shall be made in respect of the cost of planting coffee plants in such replacement of plants that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of section 10(31), is not includible in the total income.

C. INCOME FROM THE MANUFACTURE OF TEA [Rule 8]

1. Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax.

2. In computing such income, an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provision of section 10(30), is not includible in the total income.

SUMMARY OF THE ABOVE PROVISION

Rule	Nature of composite income	Business income (Taxable)	Agricultural Income (Exempt)
7A	Income from sale of rubber products derived from rubber plants grown by the seller in India	35%	65%
7B	Income from sale of coffee - grown and cured by the seller in India - grown, cured, roasted and grounded by the seller in India	25% 40%	75% 60%
8	Income from sale of tea grown and manufactured by the seller in India	40%	60%

(REFER ILLUSTRATION 18)

7. CAPITAL GAINS

PART 1	**Proforma and Rates of Capital Gains Tax**
PART 2	**Charging Section, Nature of Capital Assets and Transfer [Section 45(1), 2(14), 2(47)]**
PART 3	**Year of Chargeability [Section 45 Series]**
PART 4	**Distribution of Assets by the Company and Buy Back of shares [Section 46 and 46A]**
PART 5	**Transactions NOT Regarded as Transfer [Section 47]**
PART 6	**Computation of Capital Gains**
	– **For Non-Depreciable Assets [Section 48, 49, 55]**
	– **For Depreciable Assets [Section 50 & 50A]**
	– **Slump Sale [Section 50B]**
	– **Full Value of Consideration in certain cases [Section 50C, 50CA, 50D]**
PART 7	**Exemptions under Capital Gains [Section 10(37) and 54]**
PART 8	**Miscellaneous Provisions [Section 55A, 112, 112A & 111A]**

PART 1 – PROFORMA AND RATES OF CG TAX

A. PROFORMA FOR COMPUTATION OF INCOME UNDER THE HEAD "CAPITAL GAINS"

	Particulars	Amt (₹)	Amt (₹)
In case of a Short-term capital asset	Full value of consideration received or accruing as a result of transfer	xxx	
	Less: Expenditure incurred wholly and exclusively in connection with such transfer (for e.g., brokerage on sale)	(xxx)	
	(**Note:** Deduction on account of STT paid will **NOT** be allowed)		
	Net Sale Consideration		**xxx**
	Less: Cost of acquisition (COA)	(xxx)	
	Cost of improvement (COI)	(xxx)	xxx
	Short-term capital gain (STCG)		**xxx**
	Less: Exemption under sections 54B/54D		(xxx)
	Short-term capital gain chargeable to tax		**xxx**
In case of a Long-term	Full value of consideration received or accruing as a result of transfer	xxx	
	Less: Expenditure incurred wholly and exclusively in connection with such transfer (for e.g., brokerage on sale)	(xxx)	
	(**Note:** Deduction on account of STT paid will **NOT** be allowed)		
	Net Sale Consideration		**xxx**
	Less: Indexed cost of acquisition (ICOA)	(xxx)	
	$\text{Cost of acquisition} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the asset was first held by the assessee or P.Y.2001–02, whichever is later}}$		
	Less: Indexed cost of improvement (ICOI)	(xxx)	
	$\text{Cost of improvement} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the improvement took place}}$		
			(XXX)
	Long-term capital gains (LTCG)		**XXX**
	Less: Exemption under sections 54/54B/54D/54EC/54F		(xxx)

	Long-term capital gains chargeable to tax		**XXX**

B. RATE OF TAX ON SHORT TERM CAPITAL GAINS:

Section	Rate of tax
111A	1. Short-term capital gains arising on transfer of listed equity shares, units of equity-oriented fund and unit of business trust - 15%, if STT has been paid on such sale. 2. Short-term capital gains arising from transaction 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 PAID in respect of such transaction.
Note: Short-term capital gains arising on transfer of **OTHER SHORT-TERM CAPITAL ASSETS** would be chargeable AT NORMAL RATES OF TAX.	

C. RATE OF TAX ON LONG TERM CAPITAL GAINS:

Section	Rate of tax	
112A	1. Tax @10% on long-term capital gains exceeding ₹ 1,00,000 on the transfer of following long-term capital assets: a. listed equity shares, if STT has been paid on acquisition and transfer of such shares b. units of equity-oriented fund and unit of business trust, if STT has been paid on transfer of such units 2. If such transaction undertaken on a recognized stock exchange located in an International Financial Services Centre (IFSC), LTCG would be taxable at a concessional rate of 10% where the consideration for transfer is received or receivable in foreign currency, even though STT is not paid in respect of such transaction. Benefit of indexation [Proviso 2] and currency fluctuation [Proviso 1] would not be available in the above 2 cases. [Proviso 3 to Section 48]	
112	**Long-term capital asset**	**Rate of tax**
	Unlisted securities, or shares of a closely held company	**Non-corporate non-resident/foreign company:** 10%, without the benefit of indexation and currency fluctuation **Other Assessees:** 20%, with indexation benefit
	Listed securities (other than a unit) or	10%, without the benefit of indexation **OR**

	a zero-coupon bond **[Optional rates]**	20%, availing the benefit of indexation whichever is more beneficial to the assessee
	Other Assets	20%

Notes:

1. In case of a resident individual or a Hindu Undivided Family (HUF), the long-term capital gain taxable u/s 112 or 112A or short-term capital gain taxable u/s 111A shall be reduced by the unexhausted basic exemption limit and the balance shall be subject to tax.
2. No deduction under Chapter VI-A can be claimed in respect of such Long Term capital gain chargeable to tax u/s 112 or u/s 112A or short-term capital gain chargeable to tax u/s 111A.
3. Rebate u/s 87A is not available in respect of tax payable @10% on Long Term Capital Gains u/s 112A.
4. Enhanced surcharge of 25% and 37% would not be levied on dividend income, short-term capital gains chargeable to tax under section 111A and long-term capital gains chargeable to tax under section 112 and under section 112A.

PART 2 – CHARGING SECTION AND CAPITAL ASSETS

A. CHARGING SECTION [Section 45(1)]:

Any profits or gains arising from the transfer of a capital asset effected in the previous year will be chargeable to income-tax under the head 'Capital Gains'.

B. CAPITAL ASSET [Section 2(14)]:

1. A capital asset means:
    a. Property of any kind held by an assessee, whether or not connected with his business or profession.

    Note: '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.

    b. Any securities held by a foreign institutional investor which has invested in such securities in accordance with the SEBI regulations.

    c. Any unit linked insurance policy (ULIP) issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of premium payable exceeding ₹ 2,50,000 for any of the previous years during the term of such policy.

2. However, it does not include:
    a. **Stock-in trade:** Any stock-in-trade [other than securities referred to in (b) above], consumable stores or raw materials held for the purpose of the business or profession

b. **Personal effects:** Personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him. However, the following are not treated as personal effects:
   i. Jewellery.
   ii. Archaeological collections.
   iii. Drawings.
   iv. Paintings.
   v. Sculptures or
   vi. Any work of art.

   Note: 'Jewellery' includes the following:

   1. Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones and whether or not worked or sewn into any wearing apparel.
   2. Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

c. **Rural agricultural land** in India i.e., agricultural land in India which is not situated in any specified area.

Note: As per the definition, only rural agricultural lands in India are excluded from the purview of the term 'capital asset'. Hence urban agricultural lands constitute capital assets. Accordingly, the agricultural land described in (a) and (b) below, being land situated within the specified urban limits, would fall within the definition of "capital asset", and transfer of such land would attract capital gains tax:

1. **WITHIN LIMITS:** Agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than 10,000, or
2. **OUTSIDE LIMITS:** Agricultural land situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder:

	Shortest aerial distance from the local limits of a municipality or cantonment board.	**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 kms	> 10,000
(ii)	> 2 kms but ≤ 6 kms	> 1,00,000
(iii)	> 6 kms but ≤ 8 kms	> 10,00,000

For Example:

	Area	**Shortest aerial distance from the local limits of a**	**Population according to the last preceding census of which the**	**Is the land situated in this**

		municipality or cantonment board referred to in item (a)	relevant figures have been published before the first day of the previous year.	area a capital asset?
(i)	A	1 km	9,000	No
(ii)	B	1.5 kms	12,000	Yes
(iii)	C	2 kms	11,00,000	Yes
(iv)	D	3 kms	80,000	No
(v)	E	4 kms	3,00,000	Yes
(vi)	F	5 kms	12,00,000	Yes
(vii)	G	6 kms	8,000	No
(viii)	H	7 kms	4,00,000	No
(ix)	I	8 kms	10,50,000	Yes
(x)	J	9 kms	15,00,000	No

Explanation regarding gains arising on the transfer of urban agricultural land: Explanation 1 to section 2(1A) clarifies that capital gains arising from transfer of any agricultural land situated in any non-rural area (as explained above) will not constitute agricultural revenue within the meaning of section 2(1A).

In other words, the capital gains arising from the transfer of such urban agricultural lands would not be treated as agricultural income for the purpose of exemption under section 10(1). Hence, such gains would be subject to tax under section 45.

d. **Specified Gold Bonds:** 6½% Gold Bonds, 1977, or 7% Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government.

e. **Special Bearer Bonds, 1991** issued by the Central Government.

f. Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 and Gold Monetisation Scheme, 2018 notified by the Central Government.

C. SHORT TERM AND LONG-TERM CAPITAL ASSETS [Section 2(42A) & 2(29AA)]:

1. **36 MONTHS CRITERIA:**
   a. As per section 2(42A), short-term capital asset means a capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer.
   b. Thus, a capital asset held by an assessee for more than 36 months immediately preceding the date of its transfer is a long-term capital asset.

Note: As per section 2(29A), long-term capital asset means a capital asset which is not a short-term capital asset.

2. **12 MONTHS CRITERIA:** A security (other than a unit) listed in a recognized stock exchange, or a unit of an equity-oriented fund or a unit of the Unit Trust of India or a Zero-Coupon Bond will, however, be considered as a long-term capital asset if the same is held for more than 12 months immediately preceding the date of its transfer.

3. **24 MONTHS CRITERIA:** Further, a share of a company (not being a share listed in a recognized stock exchange in India) or an immovable property, being land or building or both would be treated as a short-term capital asset if it was held by an assessee for not more than 24 months immediately preceding the date of its transfer.

Meaning of certain terms:

Term	Meaning
Equity oriented fund	1. A fund set up under a scheme of a mutual fund **AND** 2. In a case where the fund invested in the units of another fund which is traded on a recognised stock exchange: a. a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund AND b. such other fund also invests a minimum of 90% of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange. 3. In any other case, a minimum of 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange. However, the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.
Zero Coupon Bond [Section 2(48)]	A bond 1. Issued by any infrastructure capital company or infrastructure capital fund or infrastructure debt fund or a public sector company or a scheduled bank on or after 1st June, 2005, 2. In respect of which no payment and benefit is received or receivable before maturity or redemption from such issuing entity and 3. Which the Central Government may notify in this behalf.

Note: The income from transfer of a Zero coupon bond (not being held as stock-in-trade) is to be treated as capital gains. Section 2(47)(iva) provides that maturity or redemption of a Zero coupon bond shall be treated as a transfer for the purposes of capital gains tax.

Summary of Period of Holding for determination of LTCA or STCA:

STCA, if held for ≤ **12 months** LTCA, if held for > **12 months**	• Security (other than unit) listed in a recognized stock exchange • Unit of equity oriented fund/unit of UTI • Zero Coupon bond
STCA, if held for ≤ **24 months** LTCA, if held for > **24 months**	• Unlisted shares • Land or building or both
STCA, if held for ≤ **36 months** LTCA, if held for > **36 months**	• Unit of debt oriented fund • Unlisted securities other than shares • Other capital assets

D. DETERMINATION OF PERIOD OF HOLDING IN SPECIAL CASES [Clause (i) of Explanation 1 to section 2(42A)]: In determining period of holding of any capital asset by the assessee in the following circumstances:

DETERMINATION OF PERIOD OF HOLDING IN SPECIAL CASES

S. NO.	CIRCUMSTANCES	PERIOD OF HOLDING
1	Where shares held in a company in liquidation	The period subsequent to the date of liquidation of company shall be excluded.
2	Where asset becomes the property of an assessee by virtue of section 49(1)	The period for which the capital asset was held by the previous owner shall be included.
3	Where inventory of business is converted into or treated as a capital asset by the assessee	Period from the date of conversion or treatment as a capital asset shall be considered.
4	Where share/s in the Indian company (amalgamated company), becomes the property of an assessee in lieu of share/s held by him in the amalgamating company at the time of transfer referred under section 47(vii).	The period for which the share(s) was held by the assessee in the amalgamating company shall be included.
5	Where the share or any other security is subscribed by the assessee on the basis of right to subscribe to any share or security or by the person in whose favour such right is renounced by the assessee	Period from the date of allotment of such share or security shall be reckoned.
6	Where the right to subscribe to any share or security is renounced in favour of any other person	Period from the date of offer of such right by the company or institution shall be reckoned.
7	Where any financial asset is allotted without any payment and on the basis of holding of any other financial asset. [E.g., Bonus]	Period from the date of allotment of such financial asset shall be reckoned

8	Where share/s in the Indian company being a resulting company becomes the property of an assessee in consideration of demerger	The period for which the share/s were held by the assessee in demerged company shall be included
9	Where equity share in a company becomes the property of the assessee by way of conversion of preference shares into equity shares referred under section 47(xb)	The period for which the preference shares were held by the assesse shall be included
10	Where any specified security or sweat equity shares is allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employees)	Period from the date of allotment or transfer of such specified security or sweat equity shares shall be reckoned
	"Sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.	

Period of holding in respect of other capital assets:

1. The period for which any capital asset is held by the assessee shall be determined in accordance with any rules made by the CBDT in this behalf.
2. Accordingly, the CBDT has inserted Rule 8AA in the Income-tax Rules, 1962 to provide for method of determination of period of holding of capital assets, other than the capital assets mentioned in clause (i) of Explanation 1 to section 2(42A).
3. Specifically, in the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in section 47(x), there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion.
4. Section 47(x) provides that any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company shall not be regarded as transfer for the purposes of levy of capital gains tax.

E. TRANSFER [Section 2(47)]: Transfer in relation to a capital asset includes the following types of transactions:

1. The sale, exchange or relinquishment of the asset or
2. The extinguishment of any rights therein or
3. The compulsory acquisition thereof under any law or

4. The owner of a capital asset may convert the same into the stock-in-trade of a business carried on by him.

5. The maturity or redemption of a zero-coupon bond or

6. **Part-performance of the contract:** Sometimes, possession of an immovable property is given in consideration of part-performance of a contract.
   Example: A enters into an agreement for the sale of his house. The purchaser gives the entire sale consideration to A. A hands over complete rights of possession to the purchaser since he has realised the entire sale consideration. Under Income-tax Act, the above transaction is considered as transfer.

1. Lastly, there are certain types of transactions which have the effect of transferring or enabling the enjoyment of an immovable property.

   Example: A person may become a member of a co-operative society, company or other association of persons which may be building houses/flats. When he pays an agreed amount, the society etc. hands over possession of the house to the person concerned. No conveyance is registered. For the purpose of income-tax, the above transaction is a transfer.

(REFER ILLUSTRATION 1)

PART 3 – SCOPE AND YEAR OF CHARGEABILITY
[Section 45]

A. GENERAL PROVISION [Section 45(1)]:

Any profits or gains arising from the transfer of a capital asset effected in the previous year (other than exemptions covered under this chapter) shall be chargeable to Income-tax under this head in the previous year in which the transfer took place**.**

B. INSURANCE RECEIPTS [Section 45(1A)]:

1. Where any person receives any money or other assets under any 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,
   - Riot or civil disturbance,
   - Accidental fire or explosion or
   - Because of 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 the such person for the previous year in which such money or other asset was received.
2. **FULL VALUE OF CONSIDERATION [FVC]:** In order to compute capital gains, the value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital assets.

C. CONVERSION OR TREATMENT OF A CAPITAL ASSET AS STOCK-IN-TRADE [Section 45(2)]:

1. 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 AND such a conversion is treated as a transfer.

2. 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.

3. **FVC:** In order to compute the capital gains, 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.

4. **Business Income / Loss:** Further the difference between Sale Price and FMV on the date of conversion will be treated as business profit / loss.

(REFER ILLUSTRATION 2 & 3)

D. COMPENSATION ON COMPULSORY ACQUISITION OF CAPITAL ASSET [Section 45(5)]:

1. **ORIGINAL COMPENSATION:** 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 by the Central Government or RBI. When the Central Government pays the above compensation, capital gains may arise. Such capital gains are chargeable as income of the previous year in which such compensation is received.

2. **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 in case of enhanced compensation: For this purpose, the cost of acquisition and cost of improvement shall be taken to be nil.

3. **INTERIM ORDER AND 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, it is provided 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.

4. **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 u/s 155 of the act.

5. **DEATH OF THE TRANSFEROR:** It is possible that the transferor may die before he receives the enhanced compensation. In that case, the enhanced compensation will be chargeable to tax in the hands of the person who receives the same.

E. CAPITAL GAINS IN CASE OF SPECIFIED AGREEMENT [Section 45(5A)]:

1. **YEAR OF TRANSFER = YEAR OF COMPLETION CERTIFICATE:** With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, section 45(5A) provides that
   a. in case of an assessee being individual or Hindu undivided family**,**
   b. who enters into a specified agreement for development of a project,
   c. 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.

2. **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.
3. **FVC:** 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.

4. **NON-APPLICABILITY OF THE BENEFICIAL PROVISION:** It may, however, be noted 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 gain 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:

Term	Meaning
Competent authority	The authority empowered to approve the building plan by or under any law for the time being in force
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.

PART 4 – DISTRIBUTIONS BY COMPANY

A. CAPITAL GAINS ON DISTRIBUTION OF ASSETS BY COMPANIES IN LIQUIDATION [SECTION 46]:

1. **IN THE HANDS OF LIQUIDATED COMPANY:** Where the assets of a company are distributed in specie to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45 [Section 46(1)].

   If, however, the liquidator sells the assets of the company resulting in a capital gain and distributes the funds so collected, the company will be liable to pay tax on such gains.

2. **IN THE HANDS OF SHAREHOLDERS:**
   a. Shareholders receive money or other assets from the company on its liquidation. They will be chargeable to income-tax under the head 'capital gains' in respect of the market value of the assets received on the date of distribution, or the moneys so received by them.
   b. The portion of the distribution which is attributable to the accumulated profits of the company is to be treated as dividend income under section 2(22)(c), which would be taxable in the hands of shareholders.
   The same will be deducted from the amount received/fair market value for the purpose of determining the consideration for computation of capital gains.

B. CAPITAL GAINS ON BUYBACK OF SHARES OR SPECIFIED SECURITIES [SECTION 46A]

1. **IN CASE OF SPECIFIED SECURITIES OTHER THAN SHARES:**
   a. Any consideration received by a holder of specified securities (other than shares) from any company on purchase of its specified securities is chargeable to tax in the hands of the holder of specified securities.
   b. The difference between the cost of acquisition and the value of consideration received by the holder of securities is chargeable to tax as capital gains in his hands. The computation of capital gains shall be made in accordance with the provisions of section 48.
   c. Such capital gains shall be chargeable in the year in which such securities were purchased by the company.

   As per Section 68 of the Companies Act, 2013,"specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time

   Note: As far as shares are concerned, this provision would be attracted in the hands of the shareholder only if the shares are bought back by a company, other than a domestic company.

2. **IN CASE OF SHARES (WHETHER LISTED OR UNLISTED):**

a. 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 [Section 115QA].
b. 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.

SUMMARY OF THE ABOVE PROVISION [Section 46]

Taxability in the hands of	**Buyback of shares 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% [Section 115QA]	Not subject to tax in the hands of the company.	Not subject to 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.

PART 5 – TRANSACTIONS NOT REGARDED AS TRANSFER [Section 47]

Section 47 specifies certain transactions which will not be regarded as transfer for the purpose of capital gains tax:

1. **Total or partial partition of a HUF [Section 47(i)]:** Any distribution of capital assets on the total or partial partition of a HUF.

2. **A gift or will or an irrevocable trust [Section 47(iii)]:** Any transfer of a capital asset under a gift or will or an irrevocable trust.

   However, this clause shall not include transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme offered to its employees in accordance with the guidelines issued in this behalf by the Central Government.

3. **Transfer of capital asset by holding company to its 100% owned Indian subsidiary company [Section 47(iv)]:** Any transfer of capital asset by a company to its subsidiary company subject to:
   a. The parent company or its nominee must hold the 100% of the shares of the subsidiary company.
   b. The subsidiary company must be an Indian company.

4. **Transfer of capital asset by a subsidiary company to its 100% holding company, being an Indian company [Section 47(v)]:** Any transfer of capital asset by a subsidiary company to the holding company subject to:
   a. The 100% of shares of the subsidiary company must be held by the holding company;
   b. The holding company must be an Indian company.

   Exception - The exemption mentioned in 3 or 4 above will not apply if a capital asset is transferred as stock-in-trade.

5. **Transfer of capital asset by amalgamating company to amalgamated Indian company, in a scheme of amalgamation [Section 47(vi)]:** Any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company

6. **Transfer of capital asset by the demerged company to the resulting Indian company, in a scheme of demerger [Section 47(vib)]:** Any transfer in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company.

7. **Transfer or issue of shares by a resulting company, in a scheme of demerger [Section 47(vid)]:** Any transfer or issue of shares by the resulting company, in a scheme of demerger to the

shareholders of the demerged company, if the transfer is made in consideration of the demerger of the undertaking.

8. **Transfer of shares by a shareholder in a scheme of amalgamation [Section 47(vii)]:** Any transfer by a shareholder, in a scheme of amalgamation, of shares held by him in the amalgamating company subject to:
    a. The transfer is made in consideration of the allotment to him of any share/s in the amalgamated company, except where the shareholder itself is the amalgamated company.
    b. The amalgamated company is an Indian company.

Example:
Let us take a case where A Ltd., an Indian company, holds 60% of shares in B Ltd. B Ltd. amalgamates with A Ltd. Since A Ltd. itself is the shareholder of B Ltd., A Ltd., being the amalgamated company, cannot issue shares to itself. However, A Ltd. has to issue shares to the other shareholders of B Ltd.

(REFER ILLUSTRATION 4)

9. **Transfer of Rupee denominated bond outside India by a non-resident to another non-resident [Section 47(viiaa)]:** Any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident.

10. **Transfer of Government Security outside India by a non-resident to another non-resident [Section 47(viib)]:** Any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.

11. **Redemption of sovereign gold bonds by an Individual [Section 47(viic)]:** Redemption by an individual of sovereign gold bonds issued by RBI under the Sovereign Gold Bond Scheme, 2015.

12. **Transfer of specified capital asset to the Government or university etc. [Section 47(ix)]:** Any transfer of any of the following capital asset to the Government or to the University or the National Museum, National Art Gallery, National Archives or any other public museum or institution notified by the Central Government to be of national importance or to be of renown throughout any State
    a. work of art
    b. archaeological, scientific or art collection
    c. book
    d. manuscript
    e. drawing
    f. painting
    g. photograph or
    h. print

13. **Transfer on conversion of bonds or debentures etc. into shares or debentures [Section 47(x)]:** Any transfer by way of conversion of bonds or debentures, debenture stock or deposit certificates in any form, of a company into shares or debentures of that company.

14. **Conversion of preference shares into equity shares [Section 47(xb)]:** Any transfer by way of conversion of preference shares of a company into equity shares of that company.

15. **Transfer of capital asset under Reverse Mortgage [RM] [Section 47(xvi)]:**
    a. Any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.

    b. **WHAT IS RM:**
        i. The Reverse Mortgage scheme is for the benefit of senior citizens, who own a residential house property. In order to supplement their existing income, they can mortgage their house property with a scheduled bank or housing finance company, in return for a lump-sum amount or for a regular monthly/quarterly/annual income.
        ii. The senior citizens can continue to live in the house and receive regular income, without the botheration of having to pay back the loan.
        iii. The loan will be given up to, say, 60% of the value of residential house property mortgaged.
        iv. Also, the bank/housing finance company would undertake a revaluation of the property once every 5 years.
        v. The borrower can use the loan amount for renovation and extension of residential property, family's medical and emergency expenditure etc., amongst others However, he cannot use the amount for speculative or trading purposes.

    c. The Reverse Mortgage Scheme, 2008, now includes within its scope, disbursement of loan by an approved lending institution, in part or in full, to the annuity sourcing institution, for the purposes of periodic payments by way of annuity to the reverse mortgagor. This would be an additional mode of disbursement i.e., in addition to direct disbursements by the approved lending institution to the Reverse Mortgagor by way of periodic payments or lump sum payment in one or more tranches.

    An annuity sourcing institution has been defined to mean Life Insurance Corporation of India or any other insurer registered with the Insurance Regulatory and Development Authority.

    d. Maximum Period of Reverse Mortgage Loan:

	Mode of disbursement	Maximum period of loan

(a)	Where the loan is disbursed directly to the Reverse Mortgagor	20 years from the date of signing the agreement by the reverse mortgagor and the approved lending institution.
(b)	Where the loan is disbursed, in part or in full, to the annuity sourcing institution for the purposes of periodic payments by way of annuity to the Reverse mortgagor	The residual life time of the borrower.

e. The bank will recover the loan along with the accumulated interest by selling the house after the death of the borrower. The excess amount will be given to the legal heirs However, before resorting to sale of the house, preference will be given to the legal heirs to repay the loan and interest and get the mortgaged property released.

f. Therefore, section 47(xvi) clarifies that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government would not amount to transfer for the purpose of capital gains.

g. **Exemption of income received in a transaction of reverse mortgage [Section 10(43)]:** Section 10(43), further, provides that the amount received by the senior citizen as a loan, either in lump sum or in installments, in a transaction of reverse mortgage would be exempt from income-tax.

(REFER ILLUSTRATION 5,6 & 7)

MEANING OF CERTAIN TERMS USED Under Section 47:

1. **AMALGAMATION [Section 2(1B)]:** "Amalgamation", in relation to companies, means:
   a. The merger of one or more companies with another company or
   b. The merger of two or more companies to form one company

   in such a manner that:

   a. All the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation.
   b. All the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation.
   c. Shareholders holding not less than $3/4^{th}$ in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) 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.

2. **DEMERGER [Section 2(19AA)]:** "Demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013, by a demerged company of its one or more undertaking to any resulting company in such a manner that:
    a. All the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger.
    b. All the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger.
    c. The property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger.

    However, this provision does not apply where, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger.

    d. The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

    Note: If the resulting company is a shareholder of the demerged company, it cannot issue shares to itself. However, the resulting company has to issue shares to the other shareholders of the demerged company.

    e. The shareholders holding not less than $3/4^{th}$ in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;
    f. The transfer of the undertaking is on a going concern basis.
    g. The demerger is in accordance with the conditions, if any, notified[8] by the Central Government in this behalf.

Note: Reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and the resulting company:

a. Is a public sector company on the appointed day indicated in such scheme as may be approved by the Central Government or any other body authorized under the Companies Act, 1956 or any other law for the time being in force governing such public sector companies and
b. Fulfils such other conditions as may be notified by the Central Government [Explanation 6].

Explanation in respect of Certain Terms:

Explanation	Term	Particulars
1	**Undertaking**	Includes - any part of an undertaking, or - a unit or division of an undertaking or - a business activity taken as a whole, However, it does not include individual assets or liabilities or any combination thereof not constituting a business activity.
2	**Liabilities**	Includes (a) the liabilities which arise out of the activities or operations of the undertaking; (b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and (c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.
3	**Property**	For the purpose of determining the value of the property, any change in the value of assets consequent to their revaluation shall be ignored
4 & 5	**Splitting up or reconstruction**	(i) Splitting up or the reconstruction of - any authority or - a body constituted or established under a Central, State or Provincial Act, or - a local authority or - a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils such conditions as may be notified by the Central Government in the Official Gazette (ii) The reconstruction or splitting up of a company, which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be

		deemed to be a demerger, if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified by the Central Government.

3. **DEMERGED COMPANY:** Demerged company means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.

4. **RESULTING COMPANY:** Resulting company means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

PART 6 – MODE OF COMPUTATION OF CAPITAL GAINS

NON-DEPRECIABLE CAPITAL ASSETS [Section 48]

1. **COMPUTATION OF CAPITAL GAINS:** The income chargeable under the head 'capital gains' shall be computed by deducting the following items from the full value of the consideration received or accruing as a result of the transfer of the capital asset:
    a. Expenditure incurred wholly and exclusively in connection with such transfer.
    b. Cost of Acquisition [COA] and
    c. Cost of any Improvement thereto [COI].

    Note: No deduction shall, however, be allowed in computing the income chargeable under the head "Capital Gains" in respect of any amount paid on account of securities transaction tax (STT).

2. **COST INFLATION INDEX [CII]:** For computation of long-term capital gains, the cost of acquisition and cost of improvement will be increased by applying the cost inflation index (CII). Once the cost inflation index is applied to the cost of acquisition and cost of improvement, it becomes indexed cost of acquisition and indexed cost of improvement.
    a. **INDEXED COA:** This means an amount which bears to the cost of acquisition, the same proportion as CII for the year in which the asset is transferred bears to the CII for the first year in which the asset was held by the assessee or for the year beginning on 1st April, 2001, whichever is LATER.
    b. **INDEXED COI:** Indexed cost of any improvement means an amount which bears to the cost of improvement, the same proportion as CII for the year in which the asset is transferred bears to the CII for the year in which the improvement to the asset took place.
    c. The benefit of indexation WILL NOT apply to the long-term capital gains arising from the transfer of bonds or debentures **OTHER THAN:**
        i. Capital indexed bonds issued by the Government; or
        ii. Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015.
    d. Further In case of depreciable assets there will be no indexation and the capital gains will ALWAYS be short-term capital gains.

"Cost Inflation Index" in relation to a previous year means such index as may be notified by the Central Government having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

The cost inflation indices for the financial years so far have been notified as under: [No need to remember from Exam view point]

Financial Year	Cost Inflation Index
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
2023-24	348

3. **FVC of shares, debentures or warrants issued under ESOP in case of transfer under a gift etc.:** In case where shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme in accordance with the guidelines issued in this behalf by the Central Government are transferred under a gift or irrecoverable trust, then the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer of such asset.

4. **SPECIAL PROVISION FOR NON-RESIDENTS [Proviso 1 to Section 48]:** In case of non-residents who invest foreign exchange to acquire capital assets, capital gains arising from the transfer of shares or debentures of an Indian company is to be computed in the following manner:
    a. The cost of acquisition, the expenditure incurred wholly and exclusively in connection with the transfer and the full value of the consideration are to be converted into the same foreign currency with which such shares were acquired. The conversion has to be done at the average of Telegraphic Transfer Buying Rate (TTBR) and Telegraphic Transfer Selling Rate (TTSR) on the respective dates.
    b. The resulting capital gains shall be reconverted into Indian currency by applying the TTBR on the date of transfer.
    c. The aforesaid manner of computation of capital gains shall be applied for every purchase and sale of shares or debentures in an Indian company. This will provide relief from risk of foreign currency fluctuation to non-residents.

d. Benefit of indexation will not be available in this case.

5. **RUPEE DENOMINATED BONDS (RDBS)**: In case of non-resident assessees, any gains arising on account of appreciation of rupee against a foreign currency between the date of purchase and the date of redemption of rupee denominated bond of an Indian company held by him shall not be included for the purpose of computation of full value of consideration. This would provide relief to the non-resident investor from the risk of currency fluctuation.

Note: Non-residents and foreign companies are subject to tax at a concessional rate of 10% (without indexation benefit or currency conversion) on long term capital gains arising from transfer of unlisted securities or shares of a company in which public are not substantially interested [Section 112]

Note: The benefit of indexation and currency conversion WOULD NOT be applicable to the long-term capital gains arising from the transfer of the following assets referred to in section 112A:

a. Equity share in a company on which STT is paid both at the time of acquisition and transfer
b. Unit of equity-oriented fund or unit of business trust on which STT is paid at the time of transfer.

COST OF ACQUISITION

1. **COST OF ACQUISITION IN CERTAIN MODES OF ACQUISITION [Section 49]:** Section 49 gives guidelines as to how to compute the cost under different circumstances:
   a. **COST TO PREVIOUS OWNER DEEMED AS COST OF ACQUISITION OF ASSET [Section 49(1)]:** 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. The cases are 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 section 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).

Note: In all the above cases, 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.

Note: 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.

b. **COST OF ACQUISITION OF SHARES RECEIVED UNDER AMALGAMATION [Section 49(2)]:** 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.

c. **COST OF ACQUISITION OF SHARES RECEIVED UNDER CONVERSION OF BONDS OR DEBENTURES, DEBENTURE STOCK OR DEPOSIT CERTIFICATES [Section 49(2A)]:** 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.

d. **COST OF ACQUISITION OF SPECIFIED SECURITY OR SWEAT EQUITY SHARES [Section 49(2AA)]:** 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 FMV which has been taken into account for perquisite valuation.

e. **COST OF ACQUISITION OF EQUITY SHARES RECEIVED AT THE TIME OF CONVERSION OF PREFERENCE SHARES [Section 49(2AE)]:** 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.

f. **COST OF ACQUISITION OF SHARES RECEIVED IN THE RESULTING COMPANY, IN THE SCHEME OF DEMERGER [Section 49(2C)]:** 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.

Cost of acquisition of shares in the resulting company = $A \times \frac{B}{C}$

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.

g. **COST OF ACQUISITION OF THE SHARES HELD IN THE DEMERGED COMPANY [Section 49(2D)]:** 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).

h. **COST OF ACQUISITION OF PROPERTY SUBJECT TO TAX UNDER section 56(2)(x) [Section 49(4)]:** 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).

i. **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)]**.

j. **COST OF ACQUISITION OF A CAPITAL ASSET WHICH WAS USED BY THE ASSESSEE AS AN INVENTORY [Section 49(9)]:** 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.

2. **COST OF ACQUISITION OF SPECIAL ASSETS [SECTION 55(2)(a)]**

a. SPECIAL ASSETS: Goodwill of a business or profession or a trademark or brand name associated with a business or profession or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, tenancy rights, stage carriage permits and loom hours.

b. **In case of ACQUISITION FROM PREVIOUS OWNER:** In the case of the above capital assets, if the assessee has purchased them from a previous owner, the cost of acquisition means the amount of the purchase price.

However, in case of a capital asset, being goodwill of a business or profession, in respect of which depreciation under section 32(1) has been obtained by the assessee in any previous year (up to P.Y.2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price as reduced by the total amount of depreciation (up to P.Y.2019-20) obtained by the assessee under section 32(1).

c. **IN CASE OF CIRCUMSTANCES MENTIONED UNDER section 49(1):** In cases where the above special capital asset became the property of the assessee by any of the modes [Section 49(1)] from the previous owner, and such capital assets were acquired by the previous owner by purchase, cost of acquisition to the assessee will be the amount of the purchase price for such previous owner.

However, in case of a capital asset, being goodwill of a business or profession, in respect of which depreciation under section 32(1) has been obtained by **the assessee** in any previous year (up to P.Y.2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price for such previous owner as reduced by the total amount of depreciation (up to P.Y.2019-20) obtained by the assessee under section 32(1).

d. **IN ANY OTHER CASE [i.e., in case of self-generated assets]:** In case of self-generated assets namely, goodwill of a business or profession or a trademark or brand name

associated with a business or profession or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, tenancy rights, stage carriage permits, or loom hours, the cost of acquisition will be taken to be NIL.

3. **COA FOR FINANCIAL ASSETS [Section 55(2) (aa)]:**
   a. **ORIGINAL SHARES:** In relation to the original financial asset cost of acquisition means the amount actually paid for acquiring the original financial assets.

   b. **RIGHTS RENOUNCED (which is renounced by the assessee in favour of a person):** In relation to any right to renounce the said entitlement to subscribe to the financial asset, when such a right is renounced by the assessee in favour of any person, cost of acquisition shall be taken to be NIL in the case of such assessee.

   c. **RIGHTS SHARES ACQUIRED BY THE ASSESSEE:** In relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, cost of acquisition means the amount actually paid by him for acquiring such asset.

   d. **RIGHTS SHARES WHICH ARE PURCHASED BY THE PERSON IN WHOSE FAVOUR THE ASSESSEE HAS RENOUNCED THE RIGHTS ENTITLEMENT:** In the case of any financial asset purchased by the person in whose favour the right to subscribe to such assets has been renounced, cost of acquisition means the aggregate of the amount of the purchase price paid by him to the person renouncing such right AND the amount paid by him to the company or institution for acquiring such financial asset.

   e. **BONUS SHARES:** In relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial assets, cost of acquisition shall be taken to be NIL in the case of such assessee. Further

      a) **Bonus shares allotted before 01.04.2001:** However, in respect of bonus shares allotted before 1.4.2001, although the cost of acquisition of the shares is NIL, the assessee may opt for the fair market value as on 1.4.2001 as the cost of acquisition of such bonus shares.
      b) **Bonus shares allotted before 1.2.2018, on which STT has been paid at the time of transfer:** In case of transfer of bonus shares allotted before 1.2.2018 on which STT has been paid at the time of transfer, the cost would be the HIGHER of **a) or b)**:
         a) **Actual cost of acquisition:**
            1. NIL, in case of bonus shares allotted on or after 1.4.2001
            2. FMV on 1.4.2001, in case of business shares allotted before 1.4.2001)
         b) **Lower of:**
            1. FMV as on 31.1.2018 or
            2. Actual sale consideration

4. **LONG-TERM CAPITAL ASSETS REFERRED TO IN Section 112A [Section 55(2)(ac)]:** The cost of acquisition in relation to the long-term capital assets being,
    a. equity shares in a company on which STT is paid both at the time of purchase and transfer or
    b. unit of equity-oriented fund or unit of business trust on which STT is paid at the time of transfer.

    Acquired before 1st February, 2018 shall be the HIGHER of **a) or b)**:

        a) Cost of acquisition of such asset and
        b) Lower of
            1. The FMV of such asset and
            2. The FVC received or accruing as a result of the transfer of the capital asset.

Meaning of Fair Market value:

S. No.	Circumstance	Fair Market Value
(i)	**LISTED CAPITAL ASSET:** In a case where the capital asset is listed on any recognized stock exchange as on 31.01.2018	**If there is trading in such asset on such exchange on 31.01.2018** The highest price of the capital asset quoted on such exchange on the said date **If there is no trading in such asset on such exchange on 31.01.2018** The highest price of such asset on such exchange on a date immediately preceding 31.01.2018 when such asset was traded on such exchange.
(ii)	**UNLISTED UNITS:** In a case where the capital asset is a unit which is not listed on any recognized stock exchange as on 31.01.2018	The net asset value of such unit as on the said date
(iii)	In a case where the capital asset is an equity share in a company which is - Not listed on a recognized stock exchange as on 31.01.2018 **but listed on such exchange on the date of transfer** - Listed on a recognized stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not	An amount which bears to the cost of acquisition the same proportion as CII for the financial year 2017- 18 bears to the CII for the first year in which the asset was held by the assessee or on 01.04.2001, whichever is **LATER**.

	listed on such exchange as on 31.01.2018 by way of transaction not regarded as transfer under section 47	

5. **COA OF ANY OTHER CAPITAL ASSET [Section 55(2)(b)]**:
   a. **Where the capital asset become the property of the assessee before 1- 4-2001:** Cost of acquisition means the cost of acquisition of the asset to the assessee OR the fair market value of the asset on 1-4-2001, at the option of the assessee.

      However, in case of capital asset, being land or building or both, the fair market value of such asset on 1-4-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 1-4-2001.

   b. **Where the capital asset became the property of the assessee by any of the modes specified in section 49(1):** The cost of acquisition to the assessee will be the cost of acquisition to the previous owner. Even in such cases, where the capital asset became the property of the previous owner before 1-4-2001, the assessee can opt the fair market value as on 1-4-2001 as the cost of acquisition.

Note: The above provisions shall also apply to the financial assets and long-term capital assets referred to in section 112A.

      However, in case of capital asset, being land or building or both, the fair market value of such asset on 1-4-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 1-4-2001.

   c. **Where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation** and the assessee has been assessed to capital gains in respect of that asset under section 46, the cost of acquisition means the fair market value of the asset on the date of distribution.
   d. A share or a stock of a company may become the property of an assessee under the following circumstances:
      i. The consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares.
      ii. The conversion of any shares of the company into stock,
      iii. The re-conversion of any stock of the company into shares,
      iv. The sub-division of any of the shares of the company into shares of smaller amount, or
      v. The conversion of one kind of shares of the company into another kind.

      In the above circumstances the cost of acquisition to the assessee will mean the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.

6. **Where the cost for which the previous owner acquired the property cannot be ascertained [Section 55(3)]:**
   The cost of acquisition to the previous owner means the FAIR MARKET VALUE on the date on which the capital asset **became the property** of the previous owner.

(REFER ILLUSTRATION 8)

COST OF IMPROVEMENT [Section 55(1)]

1. **GOODWILL OF A BUSINESS, etc. [Section 55(1)(b)(1)]:** In relation to a capital asset being goodwill of a business or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, the cost of improvement shall be taken to be NIL**.**

2. **ANY OTHER CAPITAL ASSET [Section 55(1)(b)(2)]:**
   a. Where the capital asset became the property of the previous owner or the assessee before 1-4-2001, cost of improvement means all expenditure of a capital nature incurred in making any addition or alteration to the capital asset **on or after the said date** by the previous owner or the assessee. [i.e., COI Before 01.04.2001 shall be ignored]

   b. In any other case, cost of improvement means all expenditure of a capital nature incurred in making any additions or alterations to the capital assets by the assessee after it became his property.

   c. Where the capital asset become the property of the assessee by any of the modes specified in section 49(1), cost of improvement means capital expenditure in making any addition or alterations to the capital assets incurred by the previous owner.

   However, cost of improvement does not include any expenditure which is deductible in computing the income chargeable under the head "Income from house property", "Profits and gains of business or profession" or "Income from other sources".

COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS [Section 50 & 50A]

1. Section 50 will have over-riding effect in spite of anything contained in section 2(42A) which defines a short-term capital asset, where the capital asset is a depreciable asset forming part of a block of assets.

2. Accordingly, 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:
    a. **PART OF A BLOCK TRANSFERRED:** 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 with 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.

    b. **FULL BLOCK TRANSFERRED:**
        i. Where all assets in a block are transferred during the previous year, the block itself will cease to exist.
        ii. 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. [STCG / STCL]

3. **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.

(REFER ILLUSTRATION 9)

CAPITAL GAINS IN RESPECT OF SLUMP SALE [Section 50B]

1. **Meaning of slump sale [Section 2(42C)]:** Slump sale means transfer of one or more undertakings, by any means, for a lump sum consideration **without values being assigned to the individual assets** and liabilities in such transfer.
   Undertaking [Explanation 1]: It includes any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Note: The determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.

2. **CAPITAL GAINS – Whether long-term or short-term? [Section 50B(1)]:**
    a. **LTCG:** Any profits or gains arising from the slump sale of one or more undertakings held for more than 36 months, shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place.
    b. **STCG:** Any profits and gains arising from such transfer of one or more undertakings held by the assessee for not more than 36 months shall be deemed to be short-term capital gains.

3. **DEEMED COST OF ACQUISITION AND COST OF IMPROVEMENT [Section 50B(2)(i)]:**
    a. 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 in relation to capital assets of such undertaking or division transferred.
    b. No indexation benefit would, however, be available, even if the slump sale has taken place of an undertaking held for more than 36 months, resulting in a long-term capital gain.

4. **DEEMED FULL VALUE OF CONSIDERATION [Section 50B(2)(ii)]:**
    a. 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.
    b. Accordingly, the CBDT has prescribed that, for the purpose of section 50B(2)(ii), the fair market value (FMV) of capital assets would be the HIGHER OF:
        i. FMV 1, being the fair market value of capital assets transferred by way of slump sale (determined on the date of slump sale) and
        ii. FMV 2, being the fair market value of the consideration (monetary and non-monetary) received or accruing as a result of transfer by way of slump sale.

5. **REPORT OF A CHARTERED ACCOUNTANT [Section 50B(3)]:** Every assessee, in the case of slump sale, shall furnish in the prescribed form on or before 30th September of the A.Y. [i.e., the specified date referred under section 44AB, being the date one month prior to the due date for filing return of income under section 139(1)], a report of a chartered accountant indicating the computation of net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division has been correctly arrived at in accordance with the provisions of this section.

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:

1. **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);

2. **Self-Generated Assets [Not Acquired by the assessee]:** NIL

3. 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**

4. **For all other assets:** Book value

(REFER ILLUSTRATION 10)

DEEMED FULL VALUE OF CONSIDERATION FOR COMPUTING CAPITAL GAINS [Section 50C, 50CA & 50D]

A. FVC FOR LAND OR BUILDING OR BOTH [Section 50C]:

1. **ACTUAL CONSIDERATION:** If the stamp duty value on the date of agreement or the date of transfer, as the case may be ≤ 110% of the sale consideration received

2. **STAMP DUTY VALUE:** If Stamp Duty Value **>110%** of consideration received or accruing as a result of transfer.

    a. **SDV on Date of Agreement:** If date of agreement is different from the date of transfer and whole or part of the consideration is received by way of account payee cheque or account payee bank draft or ECS or through such other prescribed electronic modes (IMPS, UPI, RTGS, NEFT, Net banking, debit card, credit card or BHIM Aadhar Pay) on or before the date of agreement Stamp Duty Value on the date of agreement

    b. **SDV on the date of transfer:** If date of agreement is different from the date of transfer but the whole or part of the consideration has not been received by way

of account payee cheque or account payee bank draft or ECS or through such other prescribed electronic mode on or before the date of agreement.

3. **REFERENCE TO VALUATION OFFICER [Section 155(15)]:**
    a. **SDV:** If Valuation by Valuation Officer > Stamp Duty Value
    b. **Valuation by VO:** If Valuation by Valuation Officer < Stamp Duty Value

4. If stamp duty value has been adopted as full value of consideration, and subsequently the value is revised in any appeal or revision then Value so revised in such appeal or revision shall be FVC

Example: For transfer of building, the actual consideration is ₹ 100 lakh, the stamp duty value on the date of agreement is ₹ 109 lakh, and the stamp duty value on the date of transfer is ₹ 112 lakh

Case 1: If any part of the consideration is paid by prescribed electronic mode on or before the date of agreement

The actual consideration of ₹ 100 lakh would be the full value of consideration, since stamp duty value of ₹ 109 lakhs on the date of agreement does not exceed 110% of actual consideration of ₹ 100 lakhs.

Case 2: If no part of the consideration is paid by prescribed electronic mode on or before the date of agreement

Stamp duty value of ₹ 112 lakhs on the date of transfer would be the full value of consideration, since the same exceeds 110% of actual consideration of ₹ 100 lakhs.

B. FVC FOR UNQUOTED SHARE [Section 50CA]: If consideration received or accruing as a result of transfer **< FMV**, Deemed Full Value of Consideration shall be FMV of such share determined in the prescribed manner

However, the above provision SHALL NOT be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

C. CONSIDERATION NOT DETERMINABLE [Section 50D]: Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then the FVC shall be FMV of the said asset on the date of transfer.

Meaning of certain terms:

S. No.	Term	Section	Meaning

(i)	Stamp Duty Value	50C	The value adopted or assessed or assessable by any authority of a State Government (Stamp Valuation Authority) for the purpose of payment of stamp duty
(ii)	Assessable	50C	The term 'assessable' has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty. The term "assessable" has been added to cover transfers executed through power of attorney.
(iii)	Quoted Shares	50CA	The share quoted on any recognized stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

FORFIETURE OF ADVANCE MONEY RECEIVED [Section 51]

1. **FORFIETURE BEFORE AFTER 1ST APRIL 2014 [Section 56(2)(ix)]:** However, any such sum of money forfeited before 1st April, 2014, will be deducted from the cost of acquisition for computing capital gains.

   However, if advance 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.

2. **FORFIETURE ON OR AFTER 1ST APRIL 2014 [Section 56(2)(ix)]:** Any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset 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.

Note: 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.

PART 7 – EXEMPTION OF CAPITAL GAINS

EXEMPTION OF CAPITAL GAINS ON COMPULSORY ACQUISITION OF AGRICULTURAL LAND SITUATED WITHIN SPECIFIED URBAN LIMITS [Section 10(37)]

1. The capital gains arising to an individual or a HUF from transfer of urban agricultural land by way of compulsory acquisition is exempt from tax.
2. Such exemption is available where the compensation or the enhanced compensation or consideration, as the case may be, is received on or after 1.4.2004.
3. The exemption is available only when such land has been used for agricultural purposes during the preceding 2 years immediately preceding the date of transfer by such individual or a parent of his or by such HUF.

CAPITAL GAINS ON SALE OF RESIDENTIAL HOUSE [Section 54]

1. **ELIGIBLE ASSESSEES:** Individual & HUF

2. **CONDITIONS:**
   a. There should be a transfer of residential house (buildings or lands appurtenant thereto)
   b. It must be a long-term capital asset
   c. Income from such house should be chargeable under the head "Income from house property"

3. **EXEMPTION:**
   a. **Where the amount of capital gains exceeds ₹ 2 crore:** Where the amount of capital gain exceeds ₹ 2 crore, **1** residential house in India should be:
      i. Purchased within 1 year before or 2 years after the date of transfer **OR**
      ii. Constructed within a period of 3 years after the date of transfer.

   b. **Where the amount of capital gains does not exceed ₹ 2 crore:** Where the amount of capital gains does not exceed ₹ 2 crore, the assessee at his option:
      i. Purchase **2** residential houses in India within 1 year before or 2 years after the date of transfer **OR**
      ii. Construct **2** residential houses in India within a period of 3 years after the date of transfer.

   c. Where during any assessment year, the assessee has exercised the option to purchase or construct **2 residential houses in India**, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

Example: 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 ₹ 1.50 crores arising from transfer of residential house at Bombay in the P.Y. 2022- 23, then, he will not be entitled to avail the benefit of section 54 again in respect of purchase of two residential houses in, say, Pune and Baroda, in respect of capital gains of ₹ 1.20 crores arising from transfer of residential house in Jaipur in the P.Y. 2025-26, even though the capital gains arising on transfer of the residential house at Jaipur does not exceed ₹ 2 crore.

4. **QUANTUM OF EXEMPTION:**
   a. If cost of new residential house or houses, as the case may be ≥ long term capital gains, entire long term capital gains is exempt.
   b. If cost of new residential house or houses, as the case may be < long term capital gains, long term capital gains to the extent of cost of new residential house is exempt.

5. **CAPITAL GAIN ACCOUNT SCHEME [CGAS]:** Discussed later in this chapter.

6. **CONSEQUENCES OF TRANSFER OF NEW ASSET BEFORE 3 YEARS:** If the new asset is transferred before 3 years from the date of its acquisition or construction, then cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.

(REFER ILLUSTRATION 11)

CAPITAL GAINS ON TRANSFER OF URBAN AGRICULTURAL LAND [Section 54B]

1. **ELIGIBLE ASSESSEE:** Individual & HUF

2. **CONDITIONS:**
   a. There should be a transfer of urban agricultural land.
   b. Such land must have been used for agricultural purposes by the assessee, being an individual or his parent, or a HUF in the 2 years immediately preceding the date of transfer. [**Author Note:** Either as owner or tenant]
   c. He should purchase another agricultural land (urban or rural) within 2 years from the date of transfer.

3. **QUANTUM OF EXEMPTION**:
   a. If cost of new agricultural land ≥ capital gains, entire capital gains is exempt.

   If cost of new agricultural land < capital gains, capital gains to the extent of cost of new agricultural land is exempt.

4. **CGAS:** Discussed later in this chapter.

5. **CONSEQUENCES OF TRANSFER OF NEW AGRICULTURAL LAND BEFORE 3 YEARS:**
    a. If the new agricultural land is transferred before 3 years from the date of its acquisition, then cost of the land will be reduced by capital gains exempted earlier for computing capital gains of new agricultural land.

    b. However, if the new agricultural land is a rural agricultural land, there would be no capital gains on transfer of such land. [Loophole]

CAPITAL GAINS ON TRANSFER BY WAY OF COMPULSORY ACQUISITION OF LAND AND BUILDING OF AN INDUSTRIAL UNDERTAKING [Section 54D]

1. **ELIGIBLE ASSESSEE:** Any assessee

2. **CONDITIONS:**
    a. There must be compulsory acquisition of land and building or any right in land or building forming part of an industrial undertaking.
    b. The land and building should have been used by the assessee for purposes of the business of the industrial undertaking in the 2 years immediately preceding the date of transfer.
    c. The assessee must purchase any other land or building or construct any building (for shifting or re-establishing the existing undertaking or setting up a new industrial undertaking) within 3 years from the date of transfer.

3. **QUANTUM OF EXEMPTION:**
    a. If cost of new asset ≥ Capital gains, entire capital gains is exempt.
    b. If cost of new asset < Capital gains, capital gains to the extent of cost of new asset is exempt.

4. **CGAS:** Discussed later in this chapter.

Note: The exemption in respect of capital gains from transfer of capital asset would be available even in respect of short-term capital asset, being land or building or any right in any land or building, provided such capital asset is used by assessee for the industrial undertaking belonging to him, even if he was not the owner for the said period of 2 years

5. **CONSEQUENCES OF TRANSFER OF NEW ASSET BEFORE 3 YEARS:** If the new asset is transferred before 3 years from the date of its acquisition, then cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.

CAPITAL GAINS NOT CHARGEABLE ON INVESTMENT IN CERTAIN BONDS [Section 54EC]

1. **ELIGIBLE ASSESSEE:** Any assessee

2. **CONDITIONS:**
   a. There should be transfer of a long-term capital asset being land or building or both.
   b. Such asset can also be a depreciable asset (in this case, building) held for more than 24 months.
   c. The capital gains arising from such transfer should be invested in a long-term specified asset within 6 months from the date of transfer.

   Note: Long-term specified asset means specified bonds, redeemable after 5 years, issued on or after 1.4.2018 by the National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf [Bonds of Power Finance Corporation (PFC) and Indian Railways Finance Corporation (IRFC)].

   d. The assessee should not transfer or convert or avail loan or advance on the security of such bonds for a period of **5 years** from the date of acquisition of such bonds.

3. **QUANTUM OF EXEMPTION**:
   a. Capital gains or amount invested in specified bonds, whichever is LOWER.
   b. 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 ₹ 50 lakhs.

4. **VIOLATION OF CONDITION**: In case of transfer or conversion of such bonds or availing loan or advance on security of such bonds before the expiry of 5 years, the capital gain exempted earlier shall be taxed as long-term capital gain in the year of violation of condition.

(REFER ILLUSTRATION 12)

CAPITAL GAINS IN CASES OF INVESTMENT IN RESIDENTIAL HOUSE [Section 54F]

1. **ELIGIBLE ASSESSEES:** Individuals/ HUF

2. **CONDITIONS:**
    a. There must be transfer of a long-term capital asset, NOT BEING a residential house. Transfer of plot of land is also eligible for exemption

    b. The assessee should:
        i. Purchase 1 residential house situated in India within a period of 1 year before or 2 years after the date of transfer; or
        ii. Construct 1 residential house in India within 3 years from the date of transfer.

    c. The assessee SHOULD NOT OWN more than 1 residential house on the date of transfer.

    d. The assessee should not:
        i. Purchase any other residential house within a period of 2 years or
        ii. Construct any other residential house within a period of 3 years from the date of transfer of the original asset.

3. **QUANTUM OF EXEMPTION:**
    a. If cost of new residential house ≥ Net sale consideration of original asset, entire capital gains is exempt.
    b. If cost of new residential house < Net sale consideration of original asset, only proportionate capital gains is exempt i.e.

$$\text{LTCG} \times \frac{\text{Amount invested in new residential house}}{\text{Net sale consideration}}$$

4. **CGAS:** Discussed later in this chapter.

5. **VIOLATION OF CONDITIONS:**

    a. **Where the assessee purchases any other residential house within a period of 2 years or constructs any other residential house within a period of 3 years from the date of transfer of original asset:** The capital gains exempt earlier under section 54F shall be deemed to be taxable as long-term capital gains in the previous year in which such residential house is purchased or constructed.

    b. **Consequences if the new house is transferred within a period of 3 years from the date of its purchase**:
        i. Capital gains would arise on transfer of the new house and
        ii. The capital gains exempt earlier under section 54F would be taxable as long-term capital gains.

Note: In case the new residential house is sold after 2 years, the capital gains would be long-term capital gains and indexation benefit would be available.

CAPITAL GAINS ACCOUNT SCHEME (CGAS)

1. Under sections 54, 54B, 54D and 54F, capital gains is exempt to the extent of investment of such gains/ net consideration (in the case of section 54F) in specified assets within the specified time.

2. If such investment is not made before the date of filing of return of income, then the capital gain or net consideration (in case of exemption under section 54F) has to be deposited under the CGAS.

3. **TIME LIMIT**: Such deposit in CGAS should be made before filing the return of income or on or before the due date of filing the return of income, whichever is earlier.

4. Proof of such deposit should be attached with the return. The deposit can be withdrawn for utilization for the specified purposes in accordance with the scheme.

5. **UNUTILISED AMOUNT IN CGAS:**

    a. If the amount deposited is not utilized for the specified purpose within the stipulated period, then the unutilized amount shall be charged as capital gain of the previous year in which the specified period expires.
    b. In the case of section 54F, proportionate amount will be taxable.

Note: CBDT Circular No.743 dated 6.5.96 clarifies that in the event of death of an individual before the stipulated period, the unutilized amount is not chargeable to tax in the hands of the legal heirs of the deceased individual. Such unutilized amount is not income but is a part of the estate devolving upon them.

Note: Extension of time for acquiring new asset or depositing or investing amount of Capital Gain [Section 54H]:

In case of compulsory acquisition of the original asset, where the compensation is not received on the date of transfer, the period available for acquiring a new asset or making investment in CGAS under sections 54, 54B, 54D, 54EC and 54F would be considered from the date of receipt of such compensation and not from the date of the transfer.

PART 8 – MISCELLANEOUS PROVISIONS

REFERENCE TO VALUATION OFFICER [SECTION 55A]

Section 55A provides that the Assessing Officer may refer the valuation of a capital asset to a Valuation Officer in the following circumstances with a view to ascertaining the fair market value of the capital asset for the purposes of capital gains:

Case 1: In a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of the opinion that the value so claimed is at variance with its fair market value.

1. Under this provision, the Assessing Officer can make a reference to the Valuation Officer in cases where the fair market value is taken to be the sale consideration of the asset.
2. An Assessing Officer can also make a reference to the Valuation Officer in a case where the fair market value of the asset as on 01.04.2001 is taken as the cost of the asset, if he is of the view that there is any variation between the value as on 01.04.2001 claimed by the assessee in accordance with the estimate made by a registered valuer and the fair market value of the asset on that date.

Case 2: If the Assessing Officer is of the opinion that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than 15% of the value of asset as claimed OR by more than ₹ 25,000 of the value of the asset as claimed by the assessee.

Case 3: The Assessing Officer is of the opinion that, having regard to the nature of asset and other relevant circumstances, it is necessary to make the reference.

TAX ON SHORT TERM CAPITAL GAINS IN RESPECT OF EQUITY SHARES/ UNITS OF AN EQUITY ORIENTED FUND [Section 111A]

1. **CONCESSIONAL RATE OF TAX IN RESPECT OF STCG ON TRANSFER OF CERTAIN ASSETS:** This section provides for a concessional rate of tax (i.e., 15%) on the short-term capital gains on transfer of:
    a. An equity shares in a company or
    b. A unit of a business trust or
    c. A unit of an equity-oriented fund

2. **Conditions:** The conditions for availing the benefit of this concessional rate are:
    a. The transaction of sale of such equity share or unit should be entered into on or after 1.10.2004 and

b. Such transaction should be chargeable to securities transaction tax under the said Chapter.

Note: However, 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.

3. **ADJUSTMENT OF UNEXHAUSTED BASIC EXEMPTION LIMIT:** In the case of resident individuals or HUF, if the basic exemption is not fully exhausted by any other income, then, such short-term capital gain will be reduced by the unexhausted basic exemption limit and only the balance would be taxed at 15%. However, the benefit of availing the basic exemption limit is not available in the case of non-residents.

4. **No deduction under Chapter VI-A against STCG taxable under section 111A:** 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.

TAX ON LONG TERM CAPITAL GAINS [SECTION 112]

1. **CONCESSIONAL RATE OF TAX:** Where the total income of an assessee includes long-term capital gains, tax is payable by the assessee @20% on such long term capital gains. The treatment of long-term capital gains in the hands of different types of assessees are as follows:
    a. **RESIDENT INDIVIDUAL OR HINDU UNDIVIDED FAMILY:** Income-tax payable at normal rates on total income as reduced by long-term capital gains plus 20% on such long-term capital gains.

    UNEXAUSTED BEL: However, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income tax then such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains will be calculated @20%.

    b. **Domestic Company:** Long-term capital gains will be charged @20%.

    c. **Non-corporate non-resident or foreign company:**
        i. Long-term capital gains arising from the transfer of a capital asset, being unlisted securities, or shares of a company not being a company in which public are substantially interested, would be calculated at the rate of 10% on the capital gains in respect of such asset without giving effect to the indexation provision

under second proviso to section 48 and currency fluctuation under first proviso to section 48.

ii. In respect of other long-term capital gains, the applicable rate of tax would be 20%.

d. **ANY OTHER ASSESSEE BEING RESIDENTS:** Long-term capital gains will be charged @20%.

2. **LOWER RATE OF TAX FOR TRANSFER OF LISTED SECURITIES AND ZERO-COUPON BONDS:** Where the tax payable in respect of any income arising from the transfer of a listed security (other than a unit) or a zero coupon bond, being a long-term capital asset, exceeds 10% of the amount of capital gains before indexation, then such excess shall be ignored while computing the tax payable by the assessee.

Consequently, long term capital gains on transfer of units and unlisted securities are not eligible for concessional rate of tax@10% (without indexation benefit). Therefore, the long-term capital gains, in such cases, is taxable@20% (with indexation benefit).

However, in case of non-corporate non-residents and foreign companies, long term capital gains arising from transfer of a capital asset, being unlisted securities or shares in a company in which public are not substantially interested are eligible for a concessional rate of tax@10% (without indexation benefit).

3. **NO CHAPTER VI-A DEDUCTION AGAINST LTCG:** The provisions of section 112 make it clear that the deductions under Chapter VIA cannot be availed in respect of the long-term capital gains included in the total income of the assessee.

Summary of Tax on long-term capital gains [Section 112]

<table>
<tr><th></th><th>Person</th><th>Rate of tax</th><th colspan="2">Particulars</th></tr>
<tr><td>1.</td><td>Resident persons, other than companies
Resident Individuals and HUF</td><td>20%</td><td rowspan="5">Unexhausted basic exemption limit can be exhausted against LTCG taxable u/s 112

Unexhausted basic exemption limit cannot be adjusted against LTCG taxable u/s 112

Capital assets, other than unlisted securities or shares of closely held companies</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></td><td>Resident AOPs and BOIs</td><td>20%</td></tr>
<tr><td></td><td>Resident Firms and LLPs</td><td>20%</td></tr>
<tr><td>2.</td><td>Domestic companies</td><td>20%</td></tr>
<tr><td>3.</td><td>Non-corporate non-residents and foreign companies</td><td>20%</td></tr>
<tr><td></td><td></td><td>10%</td><td>Unlisted securities or shares of closely held</td><td></td></tr>
</table>

			companies (without benefit of indexation or foreign currency fluctuation)	

TAX ON LONG TERM CAPITAL GAINS ON CERTAIN ASSETS [SECTION 112A]

1. **CONCESSIONAL RATE OF TAX IN RESPECT OF LTCG ON TRANSFER OF CERTAIN ASSETS:** Section 112A provides that notwithstanding anything contained in section 112, a concessional rate of tax @10% will be leviable on the long-term capital gains exceeding ₹ 1,00,000 on transfer of:
   a. An equity share in a company or
   b. A unit of a business trust or
   c. A unit of an equity-oriented fund

2. **CONDITIONS:** The conditions for availing the benefit of this concessional rate are:
   a. In case of equity share in a company, STT has been paid on acquisition and transfer of such capital asset
   b. In case of unit of an equity-oriented fund or unit of business trust, STT has been paid on transfer of such capital asset.

   Note: Further, long-term capital gains arising from transaction undertaken on a recognized stock exchange located in an International Financial Service Centre (IFSC) would be taxable at a concessional rate of 10%, where the consideration for transfer is received or receivable in foreign currency, even though STT is not leviable in respect of such transaction.

3. **UNEXHAUSTED BASIC EXEMPTION LIMIT:** In the case of resident individuals or HUF, if the basic exemption is not fully exhausted by any other income, then such long-term capital gain exceeding ₹ 1 lakh will be reduced by the unexhausted basic exemption limit and only the balance would be taxed at 10%. However, the benefit of adjustment of unexhausted basic exemption limit is not available in the case of non-residents.

4. **NO DEDUCTION UNDER CHAPTER VI-A:** Deductions under Chapter VI-A cannot be availed in respect of such long-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.

5. **NO BENEFIT OF REBATE UNDER Section 87A:** Rebate under section 87A is not available in respect of tax payable @10% on LTCG under section 112A.

(REFER ILLUSTRATION 13)

The CBDT has issued clarification F. No. 370149/20/2018-TPL dated 04.02.2018 in the form of a Question-and-Answer format to clarify certain issues raised in different for a on various issues relating to the new tax regime for taxation of long-term capital gains. The relevant questions raised and answers to such questions as per the said Circular are given hereunder:

Q 1. What is the meaning of long term capital gains under the new tax regime for long term capital gains?

Ans 1. Long term capital gains mean gains arising from the transfer of long-term capital asset.

It provides for a new long-term capital gains tax regime for the following assets–

i. Equity Shares in a company listed on a recognised stock exchange;

ii. Unit of an equity oriented fund; and

iii. Unit of a business trust.

The new tax regime applies to the above assets, if–

a. the assets mentioned in (i) and (ii) are held for a minimum period of 12 months from the date of acquisition and the asset mentioned in (iii) is held for a minimum period of 36 months; and

b. the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).

Q 2. What is the point of chargeability of the tax?

Ans 2. The tax will be levied only upon transfer of the long-term capital asset on or after 1st April, 2018, as defined in clause (47) of section 2 of the Act.

Q 3. What is the method for calculation of long-term capital gains?

Ans 3. The long-term capital gains will be computed by deducting the cost of acquisition from the full value of consideration on transfer of the long-term capital asset.

Q 4. How do we determine the cost of acquisition for assets acquired on or before 31st January, 2018?

Ans 4. The cost of acquisition for the long-term capital asset acquired on or before 31st of January, 2018 will be the actual cost.

However, if the actual cost is less than the fair market value of such asset as on 31st of January, 2018, the fair market value will be deemed to be the cost of acquisition.

Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

Q 5. Please provide illustrations for computing long-term capital gains in different scenarios, in the light of answers to questions 4.

Ans 5. The computation of long-term capital gains in different scenarios is illustrated as under

Scenario 1 – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2022 at ₹ 250. As the actual cost of acquisition is less than the fair market value as on 31st of January, 2018, the fair market value of ₹ 200 will be taken as the cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 250 – ₹ 200).

Scenario 2 – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2022 at ₹ 150. In this case, the actual cost of acquisition is less than the fair market value as on 31st of January, 2018. However, the sale value is also less than the fair market value as on 31st of January, 2018. Accordingly, the sale value of ₹ 150 will be taken as the cost of acquisition and the long term capital gain will be NIL (₹ 150 – ₹ 150).

Scenario 3 – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 50 on 31st of January, 2018 and it is sold on 1st of April, 2022 at ₹ 150. In this case, the fair market value as on 31st of January, 2018 is less than the actual cost of acquisition, and therefore, the actual cost of ₹ 100 will be taken as actual cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 150 – ₹ 100).

Scenario 4 – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2022 at ₹ 50. In this case, the actual cost of acquisition is less than the fair market value as on 31st January, 2018. The sale value is less than the fair market value as on 31st of January, 2018 and also the actual cost of acquisition. Therefore, the actual cost of ₹ 100 will be taken as the cost of acquisition in this case. Hence, the long-term capital loss will be ₹ 50 (₹ 50 – ₹ 100) in this case.

Q 6. Whether the cost of acquisition will be inflation indexed?

Ans 6. Third proviso to section 48, provides that the long-term capital gain will be computed without giving effect to the provisions of the second provisos of section 48. Accordingly, it is clarified that the benefit of inflation indexation of the cost of acquisition would not be available for computing long-term capital gains under the new tax regime.

Q 7. What will be the tax treatment of transfer made on or after 1st April 2018?

Ans 7. The long-term capital gains exceeding ₹ 1 lakh arising from transfer of these assets made on after 1st April, 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued upto 31st January, 2018.

Q 8. What is the date from which the holding period will be counted?

Ans 8. The holding period will be counted from the date of acquisition.

Q 9. Whether tax will be deducted at source in case of gains by resident tax payer?
Ans 9. No. There will be no deduction of tax at source from the payment of longterm capital gains to a resident tax payer.

Q 10. What will be the cost of acquisition in the case of bonus shares acquired before 1st February 2018?
Ans 10. The cost of acquisition of bonus shares acquired before 31st January, 2018 will be determined as per section 55(2) (ac). Therefore, the fair market value of the bonus shares as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt[12].

Q 11. What will be the cost of acquisition in the case of right share acquired before 1st February 2018?
Ans 11. The cost of acquisition of right share acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of right share as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt[13].

Q 12. What will be the treatment of long-term capital loss arising from transfer made on or after 1st April, 2018?
Ans 12. Long-term capital loss arising from transfer made on or after 1st April, 2018 will be allowed to be set-off and carried forward in accordance with existing provisions of the Act. Therefore, it can be set-off against any other long-term capital gains and unabsorbed loss can be carried forward to subsequent eight years for set-off against long-term capital gains.

8. INCOME FROM OTHER SOURCES

PART 1	**Introduction and Charging Section [Section 56]**
PART 2	**Deductions under Income from Other Sources [Section 57]**
PART 3	**Inadmissible Deductions [Section 58]**

TAX RATES ON INCOME FROM OTHER SOURCES

Income	Tax rate and conditions
CASUAL INCOME **[by way of winnings from lotteries, crossword puzzles, races including horse races or card games and other games of any sort or from gambling or betting of any form]**	**@30% of such winnings** (further increased by surcharge, if applicable, and health and education cess@4%) a. No expenditure or allowance can be allowed from such income. b. Deduction under Chapter VI-A is not allowable from such income. c. Adjustment of unexhausted basic exemption limit is also not permitted against such income. d. Set-off of losses is not permissible against such income.
UNEXPLAINED cash credits/ investments/ money, bullion, jewellery etc./ expenditure, etc. [referred to in section 68 and sections 69 to 69D]	**@60% of such income plus surcharge @25% of tax** (Effective rate of tax is 78%, including health and education cess@4%) a. No deduction is allowable in respect of any expenditure or allowance against such income. b. Set-off of losses is not permissible against such income.
Other Income	Normal rates of tax

PART 1 – INTRODUCTION AND CHARGING SECTION 56

RESIDUARY HEAD OF INCOME [Section 56(1)]: Any income, profits or gains includible in the total income of an assessee, which cannot be included under any of the preceding heads of income, is chargeable under the head "Income from other sources". Thus, this head is the residuary head of income and brings within its scope all the taxable income, profits or gains of an assessee which fall outside the scope of any other head.

CERTAIN INCOMES ONLY UNDER OTHER SOURCES [Section 56(2)]: Certain incomes that are chargeable only under the head 'Income from other sources':

DIVIDEND INCOME [Section 56(2)(i)]

1. **BASIS OF CHARGE OF DIVIDEND [Section 8]**:
    a. **Dividend declared:** Dividend declared by the company at its annual general meeting is deemed to be the income of the shareholder in the previous year in which it is so declared.
    b. **Deemed dividend u/s 2(22)(a)/(b)/(c)/(d):** Distribution by a company which is deemed as dividend u/s 2(22)(a)/(b)/(c)/(d) would be the income of the previous year in which it is so distributed.
    c. **Deemed dividend u/s 2(22)(e):** Payment of advance or loan to a shareholder or a concern, as the case may be, which is deemed as dividend u/s 2(22)(e) will be the income of the previous year in which it is so paid.
    d. **Interim dividend:** Interim dividend would be deemed to be the income of the previous year in which such dividend id unconditionally made available by the company to the members who is entitled to it.

2. **TAX RATE ON DIVIDEND INCOME:**
    a. Dividend income is always taxable under the head "Income from other sources". The term 'dividend' as used in the Act has a wider scope and meaning than under the general law.
    b. Any income by way of dividends received by a resident from a company, whether domestic or foreign, is taxable in the hands of a resident shareholder at normal rates of tax.

3. **DEEMED DIVIDEND:** According to section 2(22), the following receipts are deemed to be dividend:
    a. **Distribution of accumulated profits, entailing the release of company's assets:** Any distribution of accumulated profits, whether capitalised or not, by a company to its shareholders is dividend if it entails the release of all or any part of its assets.

Note: If accumulated profits are distributed in cash, it is dividend in the hands of the shareholders. Where accumulated profits are distributed in kind, for example by delivery of shares etc. entailing the release of company's assets, the market value of such shares on the date of such distribution is deemed as dividend in the hands of the shareholder.

b. **Distribution of debentures, deposit certificates to shareholders and bonus shares to preference shareholders:**
   i. Any distribution to its shareholders by a company of debentures, debenture stock or deposit certificate in any form, whether with or without interest, and any distribution of bonus shares to preference shareholders to the extent to which the company possesses accumulated profits, whether capitalised or not, will be deemed as dividend.
   ii. The market value of such bonus shares is deemed as dividend in the hands of the preference shareholder.
   iii. In the case of debentures, debenture stock etc., their value is to be taken at the market rate and if there is no market rate they should be valued according to accepted principles of valuation.

Note: Bonus shares given to equity shareholders are not treated as dividend.

c. **Distribution on liquidation:** Any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not, is deemed to be dividend income.

Note: Any distribution made out of the profits of the company after the date of the liquidation cannot amount to dividend. It is a repayment towards capital.

d. **Distribution on reduction of capital:** Any distribution to its shareholders by a company on the reduction of its capital to the extent to which the company possessed accumulated profits, whether capitalised or not, shall be deemed to be dividend.

e. **Advance or loan by a closely held company to its shareholder:**

   i. **Payment to Shareholder:** Any payment by a company in which the public are not substantially interested, of any sum by way of advance or loan to any shareholder who is the beneficial owner of 10% or more of the equity capital of the company will be deemed to be dividend to the extent of the accumulated profits. If the loan is not covered by the accumulated profits, it is not deemed to be dividend.

   ii. **Advance or loan by a closely held company to a specified concern:** Any payment by a company in which the public are not substantially interested, TO ANY CONCERN (i.e., HUF/ Firm/ AOP/ BOI/ Company) in which a shareholder, having the beneficial ownership of at least 10% of the equity shares is a member or a

partner and in which he has a substantial interest (i.e., at least 20% share of the income of the concern) will be deemed to be dividend.

iii. Also, any payments by such a closely held company on behalf of, or for the individual benefit of any such shareholder will also be deemed to be dividend.

iv. **Exceptions:** The following payments or loan given would not be deemed as dividend:

1. **Loan granted in the ordinary course of business:** If the loan is granted in the ordinary course of its business and lending of money is a substantial part of the company's business, the loan or advance to a shareholder or to the specified concern is not deemed to be dividend.

2. **Dividend paid is set off against the deemed dividend:** Where a loan had been treated as dividend and subsequently, the company declares and distributes dividend to all its shareholders including the borrowing shareholder, and the dividend so paid is set off by the company against the previous borrowing, the adjusted amount will not be again treated as a dividend.

Note: Subsequent repayment of loan or charge of interest at market rate does not make any difference in the applicability of section 2(22)(e).

Apart from the exceptions cited above, the following also do not constitute "dividend":

1. **Distribution in respect of non-participating shares issued for full cash consideration:** Any distribution made in accordance with (c) or (d) in respect of any share issued for full cash consideration and the holder of such share is not entitled to participate in the surplus asset in the event of liquidation.

2. **Payment on buy back of shares:** Any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of the Companies Act.

3. **Distribution of shares to the shareholders on demerger by the resulting company:** Any distribution of shares on demerger by the resulting companies to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Meaning of "accumulated profits":

1. Accumulated profits in point (a), (b), (d) and (e) above include all profits of the company up to the date of distribution or payment of dividend.

2. Accumulated profits in point (c) include all profits of the company up to the date of liquidation whether capitalised or not. But where liquidation is consequent to the compulsory acquisition of an undertaking by the Government or by any corporation owned or controlled by the Government, the accumulated profits do not include any profits of the company prior to the 3 successive previous years immediately preceding the previous year in which such acquisition took place.

3. In the case of an amalgamated company, the accumulated profits, whether capitalized or not, of the amalgamating company on the date of amalgamation shall be included in the accumulated profits, whether capitalized or not or loss, as the case may be, of the amalgamated company.

Clarification regarding trade advance not to be treated as deemed dividend under section 2(22)(e): [Circular No. 19/2017, dated 12.06.2017]

Section 2(22)(e) provides that "dividend" includes any payment by a company in which public are not substantially interested, of any sum by way of **advance or loan** to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

The CBDT observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e) and such views have attained finality.

In view of the above, the CBDT has, vide this circular, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not to be treated as deemed dividend.

(REFER ILLUSTRATION 1)

CASUAL INCOME [Section 56 (2) (ib)]

Casual income means income in the nature of winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort, gambling, betting etc. Such winnings are chargeable to tax at a flat rate of 30% under section 115BB and tax is deductible at source @30% on such income in case it exceeds Rs. 10,000.

SHARE PREMIUM TREATED AS GIFT IN HANDS OF A CLOSELY HELD COMPANY [Section 56(2)(viib)]

1. Section 56(2)(viib) brings to tax the consideration received from a resident person by a company, other than a company in which public are substantially interested, which is in excess of the fair market value (FMV) of shares.

2. Such excess is to be treated as the income of a closely held company taxable under section 56(2) under the head "Income from Other Sources", in cases where consideration received for issue of shares exceeds the face value of shares i.e., where shares are issued at a premium. i.e., (Issue price of share – FMV of such share) x No. of shares.

3. Fair market value of the shares shall be the higher of, the value as may be:
   a. Determined in accordance with the prescribed method or
   b. Substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets on the date of issue of shares.

   For the purpose of computation of FMV, the value of assets would include the value of intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

4. **EXCEPTIONS:** However, these provisions would not be attracted where consideration for issue of shares is received:
   a. By a Venture Capital Undertaking (VCU) from a Venture Capital Company (VCC) or a Venture Capital Fund (VCF) or a Specified Fund or
   b. By a company from a class / classes of persons as notified by the Central Government for this purpose.

For Example:

Co.	No. of shares	Face value of shares (Rs.)	FMV of shares (Rs.)	Issue price of shares (Rs.)	Applicability of section 56(2)(viib)
Example:					
A (P) Ltd.	10,000	100	120	130	The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium (i.e., issue price exceeds the face value of shares). The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). Rs. 1,00,000 [10,000 × Rs. 10 (Rs. 130 -

					Rs. 120)] shall be treated as income in the hands of A (P) Ltd.
Example:					
B (P) Ltd.	20,000	100	120	110	The provisions of section 56(2)(viib) are attracted since the shares are issued at a premium. However, no sum shall be chargeable to tax in the hands of B (P) Ltd. under the said section as the shares are issued at a price less than the FMV of shares.
Example:					
C (P) Ltd.	30,000	100	90	98	Section 56(2)(viib) is not attracted since the shares are issued at a discount, though the issue price is greater than the FMV.
Example:					
D (P) Ltd.	40,000	100	90	110	The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium. The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). Therefore, Rs. 8,00,000 [40,000 × Rs. 20 (Rs. 110 - Rs. 90)] shall be treated as income in the hands of D (P) Ltd.

INTEREST ON COMPENSATION [Sections 56(2)(viii)]

1. As per section 145(1), 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.

2. Section 145B (1) provides that notwithstanding anything contained in section 145(1), the interest received by an assessee on compensation or on enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.

3. Section 56(2)(viii) provides that income by way of interest received on compensation or on enhanced compensation referred to in section 145B(1) shall be assessed as "Income from other sources" in the year in which it is received.

ADVANCE FORFEITED IN RELATION TO TRANFER OF CAPITAL ASSETS [Section 56(2)(ix)]

1. With effect from A.Y. 2015-16, 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. Such sum shall be 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.

2. 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), 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.

3. It may be noted that advance received and forfeited up to 31.3.2014 has to be reduced from cost of acquisition while computing capital gains, since such advance would not have been subject to tax under section 56(2)(ix). Only the advance received and forfeited on or after 1.4.2014 would be subject to tax under section 56(2)(ix). Hence, such advance would not be reduced from the cost of acquisition for computing capital gains.

GIFT TAXATION [Section 56(2)(x)]

A. TAXABILITY OF GIFTS: Any sum of money or the value of any property received by any person without consideration or the value of any property received for inadequate consideration is chargeable to tax as Gift.

1. **GIFT OF SUM OF MONEY:** If any sum of money is received without consideration and the aggregate value of which exceeds Rs. 50,000, the whole of the aggregate value of such sum is chargeable to tax.

2. **GIFT OF IMMOVABLE PROPERTY [LAND OR BUILDING OR BOTH]:**
    a. **Without consideration:** If an immovable property is received without consideration and where the stamp duty value of such property would be taxed as the income of the recipient if it exceeds Rs. 50,000.

    b. **For Inadequate consideration:** If consideration is less than the stamp duty value of the property and the difference between the stamp duty value and consideration is more than the HIGHER of:

i. Rs. 50,000 AND
ii. 10% of consideration.

Then the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the assessee as "Income from other sources".

Note: In case immovable property, being a residential unit fulfilling the stipulated conditions mentioned below, is received for inadequate consideration from a person who holds such property as his stock-in-trade, then, only if the stamp duty value of the residential unit exceeds the sale consideration by 20% of the consideration or Rs. 50,000, whichever is higher, would the difference between the stamp duty value and the actual consideration be chargeable to tax in the hands of the recipient of immovable property.

The benefit of higher threshold of 20% of consideration instead of 10% of consideration shall be available, subject to the satisfaction of following conditions:

(i) The residential unit is transferred during the period between 12.11.2020 and 30.6.2021.

(ii) Such transfer is by way of first-time allotment of the residential unit and

(iii) The consideration paid or payable as a result of such transfer ≤ Rs. 2 crores.

Though the residential unit should be the stock in trade of the seller for applicability of the higher threshold of 20%, it should be a capital asset in the hands of the buyer in the first place for attracting the provisions of section 56(2)(x).

Meaning of residential unit: 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.

3. **MOVABLE PROPERTY:** If movable property is received:
   a. **Without consideration:** The aggregate fair market value of such property on the date of receipt would be taxed as the income of the recipient, if it exceeds Rs. 50,000/-.

   b. **For inadequate consideration:** If the difference between the aggregate fair market value and such consideration exceeds Rs. 50,000/-, such difference would be taxed as the income of the recipient.

CLARIFICATIONS ABOUT STAMP DUTY VALUE IN CASE OF IMMOVABLE PROPERTY:

Value to be considered where the date of agreement is different from date of registration: Taking into consideration the possible time gap between the date of agreement and the date of registration, the stamp duty value may be taken as on the date of agreement instead of the date

of registration, if the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, provided whole or part of the consideration has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system (ECS) through a bank account or through such prescribed electronic mode on or before the date of agreement.

If the stamp duty value of immovable property is disputed by the assessee, the Assessing Officer may refer the valuation of such property to a Valuation Officer. If such value is less than the stamp duty value, the same would be taken for determining the value of such property, for computation of income under this head in the hands of the buyer.

B. APPLICABILITY OF Section 56(2)(x): The provisions of section 56(2)(x) would apply only to property which is the nature of a capital asset of the recipient and not stock-in-trade, raw material or consumable stores of any business of the recipient. Therefore, only transfer of a capital asset, without consideration or for inadequate consideration would attract the provisions of section 56(2)(x).

C. NON-APPLICABILITY of section 56(2)(x): However, any sum of money or value of property received, in the following circumstances would be EXEMPTED from section 56(2)(x):

a. **RELATIVE:** From any relative or
b. **MARRIAGE:** On the occasion of the marriage of the individual or
c. **WILL:** Under a will or by way of inheritance or
d. **CONTEMPLATION OF DEATH:** In contemplation of death of the payer or donor, as the case may be or
e. From any local authority or
f. From any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution or
g. From or by any trust or institution registered or
h. By any fund or trust or institution or any university or other educational institution or any hospital or other medical institution.
i. By way of transaction not regarded as transfer under section 47(i) / (iv) / (v) / (vi) / (vib) / (vid) / (vii).
j. From an individual by a trust created or established solely for the benefit of relative of the individual.
k. From such class of persons and subject to such conditions, as may be prescribed.
l. **INDIVIDUAL RECEIVED - COVID:** By an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to conditions notified by the Central Government. [Note 1] [Clause XII]
m. **FAMILY MEMBER RECEIVED – COVID:** By a member of the family of a deceased person :
    i. from the employer of the deceased person (without any limit) or

ii. from any other person or persons to the extent that such sum or aggregate of such sums ≤ Rs. 10 lakhs,

where the cause of death of such person is illness related to COVID-19 and the payment is:

1) Received within 12 months from the date of death of such person and
2) Subject to such other conditions notified by the Central Government [Note 2] [Clause XIII].

Note 1:
Accordingly, the Central Government has, vide Notification No. 91/2022 dated 5.8.2022, specified that for such purpose, the individual has to keep a record of the following documents, namely:

1. The COVID-19 positive report of the individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician for a person so admitted.

2. All necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered within 6 months from the date of being determined as a COVID-19 positive.

3. The details of the amount so received in any financial year has to be furnished in the prescribed form to the Income-tax Department within 9 months from the end of such financial year OR 31.12.2022, whichever is LATER.

Note 2:
Accordingly, the Central Government has, vide Notification No. 92/2022 dated 5.8.2022, specified the following conditions:

1. The death of the individual should be within 6 months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family.

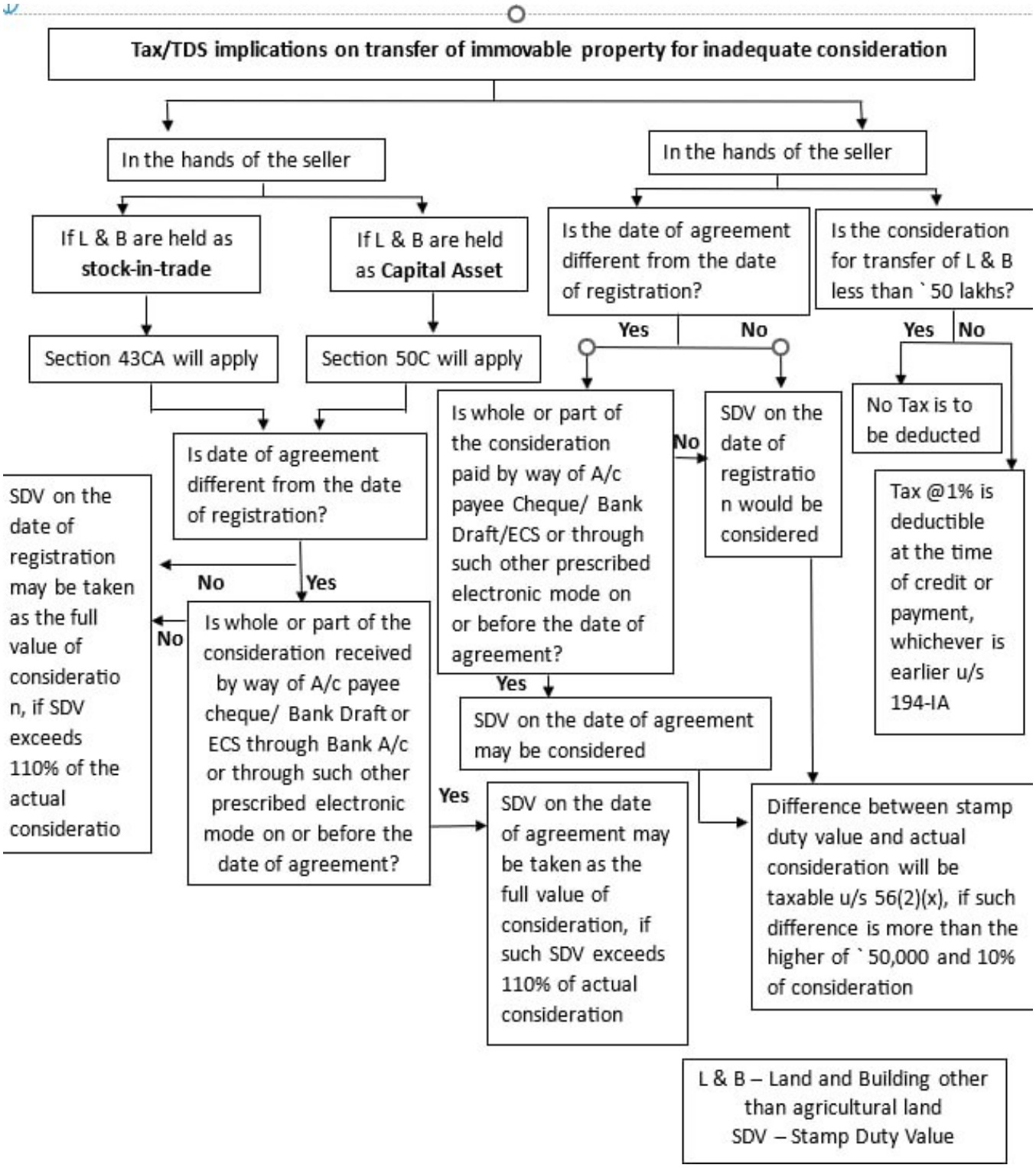
2. The family member of the individual has to keep a record of the following documents:
    a. The COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician;
    b. A medical report or death certificate issued by a medical practitioner or a government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).

3. The details of such amount received in any financial year has to be furnished in the prescribed form to the Assessing Officer within 9 months from the end of such financial year OR 31.12.2022, whichever is LATER.

MEANING OF CERTAIN TERMS:

Term	Meaning
Property	A **capital asset** of the assessee, namely: a. Immovable property being land or building or both, b. Shares and securities, c. Jewellery, d. Archaeological collections, e. Drawings, f. Paintings, g. Sculptures, h. Any work of art or **i.** Bullion.
Relative	**(a) In case of an individual:** 1. Spouse of the individual; 2. Brother or sister of the individual; 3. Brother or sister of the spouse of the individual; 4. Brother or sister of either of the parents of the individual; 5. Any lineal ascendant or descendant of the individual; 6. Any lineal ascendant or descendant of the spouse of the individual; 7. Spouse of any of the persons referred in (i) to (vi) above. **(b) In case of Hindu Undivided Family -** Any member thereof.
Family	For the purpose of (l) and (m) above, family in relation to an individual means (i) the spouse and children of the individual AND (ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.

(REFER ILLUSTRATION 2, 3 & 4)


Tax/TDS implications on transfer of immovable property for inadequate consideration
In the hands of the seller
If L & B are held as stock-in-trade
If L & B are held as Capital Asset
Section 43CA will apply
Section 50C will apply
Is date of agreement different from the date of registration?
No
Yes
SDV on the date of registration may be taken as the full value of consideratio n, if SDV exceeds 110% of the actual consideratio
Is whole or part of the consideration received by way of A/c payee cheque/ Bank Draft or ECS through Bank A/c or through such other prescribed electronic mode on or before the date of agreement?
No
Yes
SDV on the date of agreement may be taken as the full value of consideration, if such SDV exceeds 110% of actual consideration
In the hands of the seller
Is the date of agreement different from the date of registration?
Yes
No
Is whole or part of the consideration paid by way of A/c payee Cheque/ Bank Draft/ECS or through such other prescribed electronic mode on or before the date of agreement?
No
Yes
SDV on the date of registratio n would be considered
SDV on the date of agreement may be considered
Is the consideration for transfer of L & B less than ` 50 lakhs?
Yes
No
No Tax is to be deducted
Tax @1% is deductible at the time of credit or payment, whichever is earlier u/s 194-IA
Difference between stamp duty value and actual consideration will be taxable u/s 56(2)(x), if such difference is more than the higher of ` 50,000 and 10% of consideration
L & B – Land and Building other than agricultural land
SDV – Stamp Duty Value

COMPENSATION ON TERMINATION OF EMPLOYMENT [Section 56(2)(xi)]

Any compensation or any 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 shall be chargeable to tax under this head.

Income chargeable under the head "Income from other sources" Only If not chargeable under the head "PGBP"

1. Any sum received by an employer-assessee from his employees as contributions to any provident fund, superannuation fund or any other fund for the welfare of the employees
2. Income from letting out on hire, machinery, plant or furniture.
3. Where letting out of buildings is inseparable from the letting out of machinery, plant or furniture, the income from such letting.
4. Interest on securities, However, certain interest income arising to certain persons would be exempt under section 10(15), for example:
    a. Income by way of interest, premium on redemption or other payment on notified securities, bonds, annuity certificates or other savings certificates is exempt subject to such conditions and limits as may be specified in the notification.
    b. It may be noted that interest on Post Office Savings Bank Account be exempt from tax to the extent of:
        i. Rs. 3,500 in case of an individual account.
        ii. Rs. 7,000 in case of a joint account.
    c. Interest on Gold Deposit Bond issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetization Scheme, 2015 notified by the Central Government.
    d. Interest on bonds, issued by –
        i. A local authority or
        ii. A State Pooled Finance Entity

        and specified by the Central Government by notification in the Official Gazette.

    "State Pooled Finance Entity" means such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government in the Ministry of Urban Development.

KEYMAN INSURANCE POLICY

Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy is chargeable under the head "Income from other sources" if such income is not chargeable under the head "Profits and gains if business or profession" or under the head "Salaries"

i.e., if such sum is received by any person other than the employer who took the policy and the employee in whose name the policy was taken.

RESIDUAL INCOME

Any income chargeable to tax under the Act, but not falling under any other head of income shall be chargeable to tax under the head "Income from other sources" e.g., Salary received by an MPs/MLAs will not be chargeable to income-tax under the head 'Salary' but will be chargeable as "Income from other sources" under section 56.

Interest from non-SLR Securities of Banks: Whether chargeable under the head "Profits and gains of business or profession" or "Income from other sources"? [Circular No. 18, dated 2.11.2015]

The issue addressed by this circular is whether in the case of banks, expenses relatable to investment in non-SLR securities need to be disallowed under section 57(i), by considering interest on non-SLR securities as "Income from other sources."

Section 56(1)(id) provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

The CBDT clarified that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

PART 2 – DEDUCTIONS ALLOWABLE [Section 57]

The income chargeable under the head "Income from other sources" shall be computed after making the following deductions:

1. **In the case of dividend or income in respect of units of a mutual fund or income in respect of units of a specified company:** Interest expenditure to earn such income is allowed as deduction subject to a maximum of 20% of such income included in the total income, without deduction under this section.

2. **In the case of interest on securities:** Any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such interest on behalf of the assessee.

3. **Income consists of recovery from employees as contribution to any provident fund etc. in terms of section 2(24)(x):** A deduction will be allowed in accordance with the provisions of section 36(1)(va) i.e., to the extent the contribution is remitted before the due date under the respective Acts.

4. **Letting on hire of machinery, plant and furniture, with or without building:** The following items of deductions are allowable in the computation of such income:
    a. The amount paid on account of any current repairs to the machinery, plant, furniture or building.
    b. The amount of any premium paid in respect of insurance against risk of damage or destruction of the machinery or plant, furniture or building.
    c. The normal depreciation allowance in respect of the machinery, plant or furniture, due thereon.
5. **In the case of income in the nature of family pension:** A deduction of a sum equal to 1/3rd of such income OR Rs. 15,000, whichever is less, is allowable.

   For the purposes of this deduction, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.

Exemption in respect of family pension

1. The family pension received by the widow or children or nominated heirs, **of a member of the armed forces (including para-military forces)** of the Union, where the death of such member has occurred in the course of operational duties, in specified circumstances would, however, be exempt under section 10(19).

2. The family pension received by any member of the family of an individual who had been in the service of Central or State Government and had been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or other notified gallantry awards would be exempt under section 10(18)(ii).

6. **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.
7. **In case of income by way of interest on compensation/ enhanced compensation received chargeable to tax under section 56(2)(viii):** Flat Deduction of 50% of such income. No deduction would be allowable under any other clause of section 57 in respect of such income.

(REFER ILLUSTRATION 5)

PART 3 – INADMISSABLE EXPENSES [Section 58]

No deduction shall be made in computing the "Income from other sources" of an assessee in respect of the following items of expenses:

1. **In the case of any assessee:**
    a. Any personal expense of the assessee.
    b. Any interest chargeable to tax under the Act which is payable outside India on which tax has not been paid or deducted at source.
    c. Any payment chargeable to tax under the head "Salaries", if it is payable outside India unless tax has been paid thereon or deducted at source.

2. **UNREASONABLE PAYMENTS TO RELATED PERSONS:** In addition to these disallowances, section 58(2) specifically provides that the disallowance of any expenditure in respect of which a payment is made to a related person, to the extent the same is considered excessive or unreasonable by the Assessing Officer, having regard to the FMV and

3. **PAYMENTS IN CASH:** Disallowance of payment or aggregate of payments exceeding Rs. 10,000 made to a person during a day otherwise than by account payee cheque or draft or ECS through bank account or through such other prescribed electronic mode such as credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay covered by section 40A will be applicable to the computation of income under the head 'Income from other sources' as well.

4. **DISALLOWANCE OF 30% OF EXPENDITURE:** 30% of expenditure shall not be allowed, in respect of a sum which is payable to a resident and on which tax is deductible at source, if
    a. Such tax has not been deducted or
    b. Such tax after deduction has not been paid on or before the due date of return specified in section 139(1).

5. **NO DEDUCTION IN RESPECT OF ANY EXPENDITURE INCURRED IN CONNECTION WITH CASUAL INCOME:**
    a. No deduction in respect of any expenditure or allowance in connection with income by way of earnings from lotteries, cross word puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever shall be allowed in computing the said income.

b. The prohibition will not, however, apply in respect of the income of an assessee, being the owner of race horses, from the activity of owning and maintaining such horses. In respect of the activity of owning and maintaining race horses, expenses incurred shall be allowed even in the absence of any stake money earned.
c. Such loss shall be allowed to be carried forward in accordance with the provisions of section 74A.

MISCELLANEOUS

DEEMED INCOME CHARGEABLE TO TAX [SECTION 59]:

The provisions of section 41(1) are made applicable, so far as may be, to the computation of income under this head. Accordingly, where a deduction has been made in respect of a loss, expenditure or liability and subsequently any amount is received or benefit is derived in respect of such expenditure incurred or loss or trading liability allowed as deduction, then it shall be deemed as income in the year in which the amount is received or the benefit is accrued.

9. INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME

[CLUBBING OF INCOMES]

TRANSFER OF INCOME WITHOUT TRANSFER OF ASSET [Section 60]

If any person transfers the income from any asset without transferring the asset itself, such income is to be included in the total income of the transferor.

It is immaterial whether the transfer is revocable or irrevocable and whether it was made before the commencement of this Act or after its commencement.

Example: Mr. A confers the right to receive rent in respect of his house property to his wife, Mrs. A, without transferring the house itself to her. In this case, the rent received by Mrs. A will be clubbed with the income of Mr. A.

(REFER ILLUSTRATION 1)

INCOME ARISING FROM REVOCABLE TRANSFER OF ASSETS [Section 61]

1. All income arising to any person by virtue of a revocable transfer of assets is to be included in the total income of the transferor. [Section 61]

2. **Meaning of revocable transfer [Section 63]:** Transfer is deemed to be revocable if:
    a. It contains any provision for the retransfer, directly or indirectly, of the whole or any part of the income or assets to the transferor, or
    b. It gives, in any way to the transferor, a right to reassume power, directly or indirectly, over the whole or any part of the income or the assets.

This clubbing provision will operate even if only part of income of the transferred asset had been applied for the benefit of the transferor. Once the transfer is revocable, the entire income from the transferred asset is includible in the total income of the transferor.

3. **Exceptions to Section 61 [Section 62]:** Section 61 will not apply to any income arising to any person if there is:
    a. A transfer by way of trust which is not revocable during the life time of the beneficiary and
    b. Any other transfer, which is not revocable during the life time of the transferee.

In the above cases, the income from the transferred asset is not includible in the total income of the transferor, provided the transferor derives no direct or indirect benefit from such income.

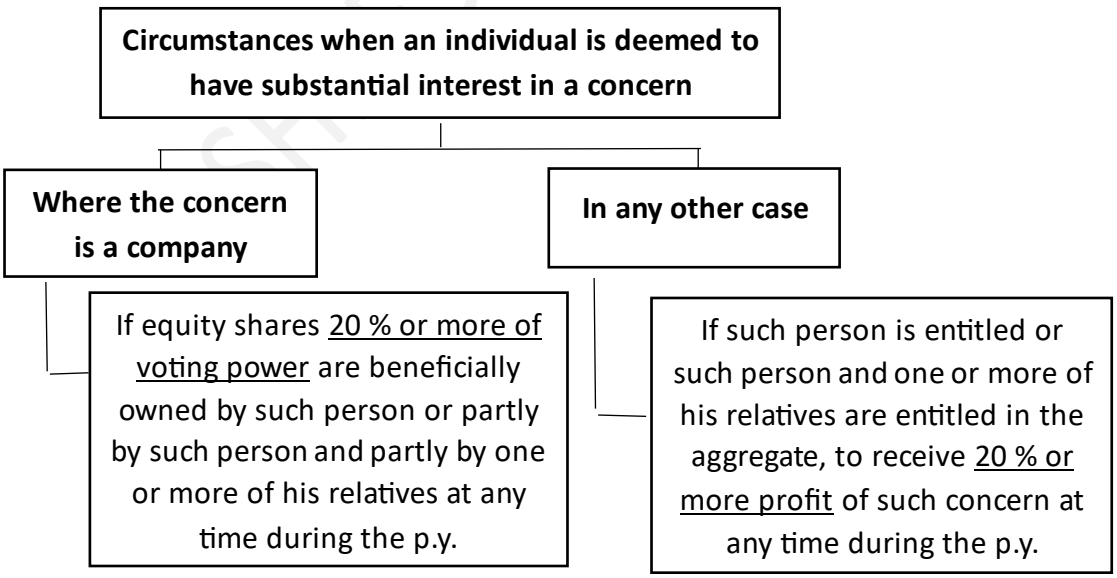
If the transferor receives direct or indirect benefit from such income, such income is to be included in his total income even though the transfer may not be revocable during the life time of the beneficiary or transferee, as the case may be.

As and when the power to revoke the transfer arises, the income arising by virtue of such transfer will be included in the total income of the transferor.

CLUBBING OF INCOME ARISING TO SPOUSE [Section 64(1)(ii)]

Income by way of remuneration from a concern in which the individual has substantial interest [Section 64(1)(ii)]:

1. In computing the total income of any individual, all such income which arises, directly or indirectly, to the spouse of such individual by way of salary, commission, fees or any other form of remuneration, whether in cash or in kind, from a concern in which such individual has a substantial interest.



The term **'relative'** in relation to an individual means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual [Section 2(41)].

2. **EXCEPTIONS:** Clubbing provisions, however, does not apply where the spouse of the said individual possesses technical or professional qualifications and the income to the spouse is

solely attributable to the application of his/her technical or professional knowledge or experience.

3. **BOTH HUSBAND AND WIFE HAVE SUBSTANTIAL INTEREST IN A CONCERN:** Where both husband and wife have substantial interest in a concern and both are in receipt of income by way of salary etc. from the said concern, such income will be includible in the hands of that spouse, whose total income, excluding such income is HIGHER.

Where any such income is once included in the total income of either spouse, income arising in the 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 to do so.

(REFER ILLUSTRATION 2,3 & 4)

INCOME FROM TRANSFERRED ASSET TO SPOUSE [Section 64(1)(iv)]

1. **Transfer of asset (other than house property):** Where there is a transfer of an asset (other than house property), directly or indirectly, from one spouse to the other, without adequate consideration, any income arising to the transferee-spouse from the transferred asset, either directly or indirectly, shall be included in the total income of the transferor-spouse.

2. **Exception:** If the asset is transferred in connection with an agreement to live apart then the above provision do not apply.

   Note: In case of the asset transferred is House Property then provisions of Section 27 will apply.

3. **Income from accretion of the transferred asset:** It may be noted that any income from the accretion of the transferred asset is not to be clubbed with the income of the transferor. i.e., the income arising on transferred assets alone have to be clubbed.

4. Income earned by investing such income (arising from transferred asset) cannot be clubbed.

Transferred asset invested in business: Where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee in the business, proportionate income arising to the transferee from such investment is to be included in the total income of the transferor. If the investment is in the nature of contribution of capital, proportionate interest receivable by the transferee from the firm will be clubbed with the income of the transferor.

Note: Such proportion has to be computed by taking into account the value of the aforesaid investment as on the 1st day of the previous year to the total investment in the business or by way of capital contribution in a firm as a partner, as the case may be, by the transferee as on that day.

(REFER ILLUSTRATION 5)

INCOME FROM INDIRECT TRANSFER OF ASSET TO SPOUSE [Section 64(1)(vii)]

All income arising directly or indirectly to any person or association of persons, from the assets transferred, directly or indirectly, to such person or association of persons by an individual without adequate consideration is includible in the income of the individual to the extent such income is used by the transferee for the immediate or deferred benefit of the transferor's spouse.

INCOME FROM TRANSFERRED ASSET TO SON's SPOUSE [Section 64(1)(vi)]

Asset transferred without adequate consideration: Where an asset is transferred, directly or indirectly, by an individual to his or her son's wife without adequate consideration, the income from such asset is to be included in the total income of the transferor.

Asset transferred invested in the business: For this purpose, where the assets transferred directly or indirectly by an individual to his or her son's wife are invested by the transferee in the business, proportionate income arising from such investment is to be included in the total income of the transferor.
If the investment is in the nature of contribution of capital, the proportionate interest receivable from firm will be clubbed with the income of the transferor.

Note: Such proportion has to be computed by taking into account the value of the aforesaid investment as on the 1st day of the previous year to the total investment in the business or by way of capital contribution in a firm as a partner, as the case may be, by the transferee as on that day.

INCOME FROM INDIRECT TRANSFER OF ASSET TO SON's SPOUSE [Section 64(1)(viii)]

All income arising directly or indirectly, to any person or association of persons from the assets transferred, directly or indirectly, without adequate consideration, to such person or association of persons by an individual will be included in the total income of the individual to the extent such income is used by the transferee for the immediate or deferred benefit of the transferor's son's wife.

Note: Where any asset is transferred by a person to any other person without consideration or for inadequate consideration, the provisions of 56(2)(x) would get attracted in the hands of transferee, if conditions specified thereunder are satisfied.

(REFER ILLUSTRATION 6)

CLUBBING OF MINOR'S INCOME [Section 64(1A)]

1. All income of a minor is to be included in the income of his or her parent.

2. The income of the minor will be included in the income of that parent, whose total income, excluding minor's income, is GREATER.

3. Once clubbing of minor's income is done with that of one parent, it will continue to be clubbed with that parent only, in subsequent years. The Assessing Officer, may, however, club the minor's income with that of the other parent, if, after giving the other parent an opportunity to be heard, he is satisfied that it is necessary to do so.

4. Where the marriage of the parents does not subsist, the income of the minor will be includible in the income of that parent who maintains the minor child in the relevant previous year.

5. **EXCEPTIONS TO ABOVE CLUBBING:**
    a. The income derived by the minor from manual work or from any activity involving his skill, talent or specialised knowledge or experience will not be included in the income of his parent. It shall be assessed in the hands of such minor only.
    b. The income of a minor child suffering from any disability of the nature specified in section 80U shall not be included in the hands of the parent but shall be assessed in the hands of the child.

Note: It may be noted that the clubbing provisions are attracted even in respect of income of minor married daughter.

6. Exemption in respect of clubbed income of minor [Section 10(32)]

a. In case the income of an individual (i.e., the parent) includes the income of his minor child in terms of section 64(1A), such parent shall be entitled to exemption of Rs. 1,500 in respect of each minor child. However, if income of any minor so includible is less than Rs. 1,500, then, the entire income shall be exempt.

b. In case the asset transferred to a minor child (not being a minor married daughter) without consideration or for inadequate consideration is a house property, then, by virtue of section 27(i), the transferor-parent will be the deemed owner of the house property. Therefore, the income from house property will be taxable in the hands of the transferor-parent, being the deemed owner and not in the hands of the minor child. Consequently, clubbing provisions under section 64(1A) would not be attracted in respect of such income, due to which the benefit of exemption u/s 10(32) (discussed above) cannot be availed against such income.

c. However, if the house property is transferred by a parent to his or her minor married daughter, without consideration or for inadequate consideration, then, section 27(i) is not attracted. In such a case, the income from house property will be included u/s 64(1A) in the hands of that parent, whose total income before including minor child's income is HIGHER and benefit of exemption u/s 10(32) can be availed by that parent in respect of the income so included.

(REFER ILLUSTRATION 7 & 8)

CROSS TRANSFERS

1. In the case of cross transfers also (e.g., A making gift of Rs. 50,000 to the wife of his brother B for the purchase of a house by her and a simultaneous gift by B to A's minor son of shares in a foreign company worth Rs. 50,000 owned by him), the income from the assets transferred would be assessed in the hands of the deemed transferor if the transfers are so intimately connected as to form part of a single transaction, and each transfer constitutes consideration for the other by being mutual or otherwise.
2. Thus, in the instant case, the transfers have been made by A and B to persons who are not their spouse or minor child so as to circumvent the provisions of this section, showing that such transfers constituted consideration for each other.
3. The Supreme Court, in case of CIT v. Keshavji Morarji[1967] 66 ITR 142,observed that if two transactions are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted.

4. Accordingly, the income arising to Mrs. B from the house property should be included in the total income of B and the dividend from shares transferred to A's minor son would be taxable in the hands of A. This is because A and B are the indirect transferors to their minor child and spouse, respectively, of income yielding assets, so as to reduce their burden of taxation.

(REFER ILLUSTRATION 9)

CONVERSION OF SELF-ACQUIRED PROPERTY INTO THE PROPERTY OF A HINDU UNDIVIDED FAMILY [Section 64(2)]

1. Where an individual, who is a member of the HUF, converts at any time after 31-12-1969, his individual property into property of the HUF of which he is a member OR throws such property into the common stock of the family OR transfers such individual property, directly or indirectly, to the family otherwise than for adequate consideration, the income from such property shall continue to be included in the total income of the individual.
2. Where the converted property has been partitioned, either by way of total or partial partition, the income derived from such converted property as is received by the spouse on partition will be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse and consequently, such income shall also be included in the total income of the individual who effected the conversion of such property.
3. Where income from the converted property is included in the total income of an individual under section 64(2), it will be excluded from the total income of the family or, as the case may be, of the spouse of the individual.

MISCELLANEOUS TOPICS

INCOME INCLUDES LOSS

As per the Explanation 2 to section 64, 'income' would include 'loss'. Accordingly, where the specified income to be included in the total income of the individual is a loss, such loss will be taken into account while computing the total income of the individual.

It is significant to note that this Explanation applies to clubbing provisions under both sections 64(1) and 64(2).

DISTINCTION BETWEEN SECTION 61 AND SECTION 64

It may be noted that the main distinction between the two sections is that section 61 applies only to a revocable transfer made by any person while section 64 applies to revocable as well as irrevocable transfers made only by individuals.

ACCRETION OF INCOME ARISING FROM ASSET

It may be noted that clubbing provisions are attracted in respect of income arising from the assets transferred, however, income arising on accretion of income arising from transferred asset, would not be clubbed except in case of minor child.

Example: Mr. X transferred debentures of Rs. 50,000 carrying 10% interest to his wife. The interest income of Rs. 5,000 would be clubbed in the hands of Mr. X. However, in case his wife deposited Rs. 5,000 in fixed deposits @8%. The interest income of Rs. 400 arising on FDR would not be clubbed in the hands of Mr. X.

10. SET-OFF AND CARRY FORWARD OF LOSSES

Part 1	**Set-off of Losses [Section 70 & 71]**
Part 2	**Carry Forward of Losses**
	– **House Property Loss [Section 71B]**
	– **Business Loss [Section 72]**
	– **Speculation Business Loss [Section 73]**
	– **Specified Business Loss [Section 73A]**
	– **Losses under Capital Gains [Section 74]**
	– **Loss from Maintenance of Race Horses [Section 74A]**
Part 3	**Miscellaneous**
	– **Order of Setoff of Losses**
	– **Filing of Return for Carry Forward of Losses [Section 80]**

PART 1 – SET-OFF OF LOSSES

"Set-off" means adjustment of losses against the profits from another source / head of income in the same assessment year. If losses cannot be set-off in the same year due to inadequacy of eligible profits, then such losses are carried forward to the next assessment year for adjustment against the eligible profits of that year.]

INTER SOURCE / INTRA HEAD ADJUSTMENT [Section 70]

1. **INTER-SOURCE SET-OFF OF LOSSES:** Under this section, the losses incurred by the assessee in respect of one source shall be set-off against income from any other source **under the same head of income,** since the income under each head is to be computed by grouping together the net result of the activities of all the sources covered by that head.

   In simpler terms, loss from one source of income can be adjusted against income from another source, both the sources being under the same head.

2. **EXCEPTIONS:** Inter-source set-off, however, is not permissible in the following cases:
   a. **Long-term capital loss [Section 70(3)]**: Short-term capital loss is allowed to be set off against both short-term capital gain and long-term capital gain. However, long-term capital loss can be set-off only against long-term capital gain and not against short-term capital gain.
   b. **Speculation loss [Section 73(1)]**: A loss in speculation business can be set-off only against the profits of any other speculation business and not against any other business or professional income. However, losses from other business can be adjusted against profits from speculation business.

c. **Loss from the activity of owning and maintaining race horses [Section 74A(3)]**: Such loss can be set-off only against income from the activity of owning and maintaining race horses.
d. **Losses from Specified business [Section 73A(1)]**: A loss in any specified business referred in section 35AD can be set-off only against any other specified business. However, losses from other business can be set-off against profits from specified business.

Note: It must be noted that loss from an exempt source cannot be set-off against profits from a taxable source of income.

INTER HEAD ADJUSTMENT [Section 71]

Loss under one head of income can be adjusted or set off against income under another head. However, the following are certain conditions and exceptions:

1. **Loss under any head OTHER THAN capital gains:** Where the net result of the computation under any head of income (other than "Capital Gains") is a loss, the assessee can set-off such loss against his income assessable for that assessment year under any other head, including "Capital Gains".

2. **Loss under the head "Profits and gains from business or profession:** Where the net result of the computation under the head "Profits and gains of business or profession" is a loss, such loss cannot be set off against income under the head "Salaries".

3. **Loss under the head "Capital Gains":** Where the net result of computation under the head 'Capital Gains' is a loss, such capital loss cannot be set-off against income under any other head.

   Which means Loss under the head capital gains can only be setoff against Gains under the head capital gains. Further please note that LTCL can only be set off against LTCG.

4. **Loss under the head "Income from house property":** Where the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the amount of such loss exceeding Rs. 2 lakhs would not be allowable to be set-off against income under the other head.

   In other words, the maximum loss from house property which can be set-off against income from any other head is Rs. 2 lakhs.

5. **Speculation loss**, **loss from the activity of owning and maintaining race horses** and **losses from specified business** referred to in section 35AD cannot be set off against income under any other head.

(REFER ILLUSTRATION 1)

PART 2 – CARRY FORWARD OF LOSSES

CARRY FOWARD & SET-OFF OF LOSS FROM HOUSE PROPERTY [Section 71B]

1. **Set-off and Carry Forward & Set-off of losses:** In any assessment year, if there is a loss under the head "Income from house property", such loss will first be set-off against income from any other head to the extent of Rs. 2,00,000 during the same year. The unabsorbed loss will be carried forward to the following assessment year to be set-off against income under the head "Income from house property".

2. **8 Years for carry forward & set-off of losses:** The loss under this head is allowed to be carried forward up to 8 assessment years immediately succeeding the assessment year in which the loss was first computed.

Note: It is to be remembered that once a particular loss is carried forward, it can be set off only against the income from the same head in the forthcoming assessment years.

CARRY FORWARD AND SET-OFF OF BUSINESS LOSSES [Section 72]

1. Section 72 covers the carry forward and set-off of losses arising from a business or profession. The assessee's right to carry forward business losses under this section is, however, subject to the following conditions:
    a. The loss should have been incurred in business, profession or vocation.
    b. The loss should not be in the nature of a loss in the business of speculation.

2. **Loss from one business can be carried forward & set-off against the income from any other business:** The loss may be carried forward and set-off against the income from business or profession though not necessarily against the profits and gains of the same business or profession in which the loss was incurred.

   However, a loss carried forward cannot, under any circumstances, be set-off against the income from any head other than "Profits and gains of business or profession".

3. **Person who incurred the loss alone is entitled to carry forward & set-off the loss:** The loss can be carried forward and set off only against the profits of the assessee who incurred the loss. That is, only the person who has incurred the loss is entitled to carry forward & set off the same.

Consequently, the successor of a business cannot carry forward & set off the losses of his predecessor except in the case of succession by inheritance.

4. **8 Years for carry forward & set-off of losses:** A business loss can be carried forward for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

(REFER ILLUSTRATION 2)

SPECULATION BUSINESS LOSSES [Section 73]

1. Since speculation is deemed to be a business distinct and separate from any other business carried on by the assessee, the losses incurred in speculation can be neither set off in the same year against any other non-speculation income nor be carried forward and set off against other income in the subsequent years.

   Therefore, if the losses sustained by an assessee in a speculation business cannot be set-off in the same year against any other speculation profit, they can be carried forward to subsequent years and set-off only against income from any speculation business carried on by the assessee.

2. **4 years for carry forward & set-off of losses:** The loss in speculation business can be carried forward only for a maximum period of 4 years from the end of the relevant assessment year in respect of which the loss was computed.

Note: Meaning of speculation business and non-Speculation are discussed in detailed under PGBP.

SPECIFIED BUSINESS LOSSES [Section 73A]

1. Any loss computed in respect of the specified business referred to in section 35AD shall be set off only against profits and gains, if any, of any other specified business. The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year and so on.
2. **Loss can be set-off indefinitely:** There is NO time limit specified for carry forward and set-off and therefore, such loss can be carried forward indefinitely for set-off against income from specified business.

Note: The loss of an assessee claiming deduction under section 35AD in respect of a specified business can be set-off against the profit of another specified business under section 73A, irrespective of whether the latter is eligible for deduction under section 35AD.

An assessee can, therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction under section 35AD, against the profits of the existing business of operating a hospital (with at least 100 beds for patients) or a hotel (of two-star or above category), even if the latter is not eligible for deduction under section 35AD.

CARRY FORWARD OF LOSSES UNDER CAPITAL GAINS [Section 74]

Section 74 provides that where, for any assessment year, the net result under the head 'Capital gains' is short term capital loss or long-term capital loss, the loss shall be carried forward to the following assessment year to be set off in the following manner:

1. **Short-term capital loss:** Where the loss so carried forward is a short-term capital loss, it shall be set off against ANY capital gains, short term or long term, arising in that year.

2. **Long-term capital loss:** Where the loss so carried forward is a long-term capital loss, it shall be set off only against long term capital gain arising in that year.

3. **Loss under head capital gains:** Net loss under the head capital gains cannot be set off against income under any other head.

4. **Maximum period for carry forward & set-off of loss:** Any unabsorbed loss shall be carried forward to the following assessment year up to a maximum of 8 assessment years immediately succeeding the assessment year for which the loss was first computed.

Note: With effect from 1st April 2018, the long-term capital gain exceeding Rs. 1,00,000 arising on sale of equity shares or units of equity-oriented fund or unit of business trust on which STT is paid

- in respect of equity shares, both at the time of acquisition and sale and

- in respect of units of equity-oriented fund or unit of business trust, at the time of sale

is taxable under section 112A@10%. Long-term capital loss on sale of such shares/units can, therefore, be set-off and carried forward for set-off against long-term capital gains by virtue of section 70 (3) and section 74.

(REFER ILLUSTRATION 3)

CARRY FORWARD OF LOSSES FROM ACTIVITY OF OWNING AND MAINTENANCE OF RACE HORSES [Section 74A]

1. **Set-off and Carry forward & set-off of loss:** According to the provisions of section 74A (3), the losses incurred by an assessee from the activity of owning and maintaining race horses cannot be set-off against the income from any other source other than the activity of owning and maintaining race horses.

2. **4 years for carry forward & set-off of losses:** Such loss can be carried forward for a maximum period of 4 assessment years for being set-off against the income from the activity of owning and maintaining race horses in the subsequent years.

Meaning of certain terms:

Term	Meaning
Amount of loss incurred by the assessee in the activity of owning and maintaining racehorses	**(i) In case assessee has no income by way of stake money:** amount of revenue expenditure incurred by the assessee wholly & exclusively for the purpose of maintaining race horses. **(ii) In case assessee has income by way of stake money:** The amount by which such income by way of stake money falls short of the amount of revenue expenditure incurred by the assessee wholly & exclusively for the purpose of maintaining race horses. ***i.e., Loss = Stake money – revenue expenditure for the purpose of maintaining race horses.***
Horse race	A horse race upon which wagering or betting maybe lawfully made.
Income by way of stake money	The gross amount of prize money received on a race horse or race horses by the owner thereof on account of the horse or horses or anyone or more of the horses winning or being placed second or in any lower position in horse races.

(REFER ILLUSTRATION 4)

PART 3 – MISCALLENEOUS

ORDER OF SET-OFF OF LOSSES

As per the provisions of section 72(2), brought forward business loss is to be set-off before setting off unabsorbed depreciation. Therefore, the order in which setoff will be effected is as follows:

1. Current year depreciation [Section 32(1)].
2. Current year capital expenditure on scientific research and current year expenditure on family planning, to the extent allowed.
3. Brought forward loss from business/profession [Section 72(1)].
4. Unabsorbed depreciation [Section 32(2)].
5. Unabsorbed capital expenditure on scientific research [Section 35(4)].
6. Unabsorbed expenditure on family planning [Section 36(1)(ix)].

(REFER ILLUSTRATION 5)

SUBMISSION OF RETURN OF LOSSES [SECTION 80]

1. The assessee must have filed a return of loss under section 139(3) in order to carry forward and set off of such losses in respect of the following losses:
    a. Business loss under section 72(1),
    b. Speculation business loss under section 73(2),
    c. Loss from specified business under section 73a (2),
    d. Loss under the head "capital gains" under section 74(1) and
    e. Loss from activity of owning and maintaining race horses under section 74A (3),

2. Such a return of loss should be filed within the time allowed under section 139(1).

3. However, this condition does not apply to a loss from house property carried forward under section 71B and unabsorbed depreciation carried forward under section 32(2).

11. DEDUCTIONS FROM GROSS TOTAL INCOME

PART 1	**Introduction & Gross Total Income [Section 80A, 80AB and 80B]**
PART 2	**Payment Based Deductions**
PART 3	**Income Based Deductions**

PART 1 – INTRODUCTION

INTRO TO DEDUCTIONS [Section 80A]

1. In computing the total income of an assessee, there shall be allowed from his gross total income, the deductions specified in sections 80C to 80U. [Section 80A(1)]

   The aggregate amount of the deductions under this chapter SHALL NOT exceed the gross total income of the assessee. [Section 80A(1)]

   Thus, an assessee cannot have a loss as a result of the deduction under Chapter VI-A and claim to carry forward the same for the purpose of set-off against his income in the subsequent year.

2. Section 80A(3) provides that in the case of AOP/BOI, if any deduction is admissible under section 80G/80GGA/80GGC, no deduction under the same section shall be made in computing the total income of a member of the AOP or BOI in relation to the share of such member in the income of the AOP or BOI.

Deductions in respect of certain Incomes:

3. The profits and gains allowed as deduction under section 10AA or under any provision of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" in any assessment year, shall not be allowed as deduction under any other provision of the Act for such assessment year [Section 80A(4)].

   The deduction, referred to in above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be [Section 80A(4)].

   No deduction under any of the provisions referred to in (iv) above, shall be allowed if the deduction has not been claimed in the return of income [Section 80A(5)]

   The transfer price of goods and services between such undertaking or unit or enterprise or eligible business and any other business of the assessee shall be determined at the market value of such goods or services as on the date of transfer [Section 80A(6)].

4. For this purpose, the expression "market value" has been defined to mean:
    a. in relation to any goods or services sold or supplied, the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any.
    b. in relation to any goods or services acquired, the price that such goods or services would cost if these were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any.

5. Where a deduction under any provision of this Chapter under the heading "C – Deductions in respect of certain incomes" is claimed and allowed in respect of the profits of such specified business for any assessment year, no deduction under section 35AD is permissible in relation to such specified business for the same or any other assessment year.

6. In short, once the assessee has claimed the benefit of deduction under section 35AD for a particular year in respect of a specified business, he cannot claim benefit under Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" for the same or any other year and vice versa.

7. Deductions specified in Chapter VI-A under the heading "C.-Deductions in respect of certain incomes", shall be allowed only to the extent such income computed in accordance with the provisions of the Income-tax Act, 1961 is included in the gross total income of the assessee. [Section 80AB]

    The effect of this provision is that in case of failure to file return of income on or before the stipulated due date, the undertakings would lose the benefit of deduction under these sections.

Table showing the deductions contained in Chapter VI-A under the heading "C. – Deductions in respect of certain income"

Section	Deduction
80-IA	Deductions in respect of profits and gains from undertakings or enterprises engaged in infrastructure development/ operation/ maintenance, generation/ transmission/ distribution of power etc.
80-IAB	Deduction in respect of profits and gains derived by an undertaking or enterprise engaged in development of SEZ
80-IAC	Deduction in respect of profits and gains derived by an eligible start-up from an eligible business
80-IB	Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings
80-IBA	Deduction in respect of profits and gains from housing projects/rental housing projects

80-IE	Deduction in respect of profits and gains from manufacture or production of eligible article or thing, substantial expansion to manufacture or produce any eligible article or thing or carrying on of eligible business 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
80LA	Deduction in respect of certain income of Offshore Banking Units and International Financial Services Centre
80M	Deduction in respect of certain inter-corporate dividends
80P	Deduction in respect of income of co-operative societies
80PA	Deduction in respect of certain income of Producer Companies
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

Note: The deductions under section 80-IA to 80-IE, 80JJA, 80LA, 80M, 80P and 80PA in respect of certain incomes will be dealt with in detail at the Final Level.

(REFER ILLUSTRATION 1)

GROSS TOTAL INCOME [Section 80B(5)]

"Gross total income" means the total income computed in accordance with the provisions of the Act without making any deduction under Chapter VI-A.

Computed in accordance with the provisions of the Act" implies:

1. That deductions under appropriate computation section have already been given effect to.
2. That income of other persons, if includible under sections 60 to 64, has been included.
3. The intra head and/or inter head losses have been adjusted and
4. That unabsorbed business losses, unabsorbed depreciation etc., have been set-off.

PART 2 – PAYMENT BASED DEDUCTIONS

DEDUCTION IN RESPECT OF INVESTMENT IN SPECIFIED ASSETS [Section 80C]

Section 80C provides for a deduction from the Gross Total Income of savings in specified modes of investments. The deduction under section 80C is available only to an individual or HUF.

The maximum permissible deduction under section 80C is Rs. 1,50,000.

The following are the investments/contributions eligible for deduction:

1. **Contribution in Unit-linked Insurance Plan 1971:**
    a. Contributions in the name of the individual, his or her spouse or any child of the individual for participation in the Unit-linked Insurance Plan 1971.
    b. In case of a HUF, the contribution can be in the name of any member.

2. **Contribution in Unit-linked Insurance Plan of LIC Mutual Fund:**
    a. Contributions in the name of the individual, his or her spouse or any child of the individual for participation in any Unit linked Insurance Plan of the LIC Mutual Fund.
    b. In case of a HUF, the contribution can be in the name of any member.

3. **Premium paid in respect of Life Insurance policy**:
    a. Premium paid on insurance on the life of the individual, spouse or any child (minor or major) and
    b. In the case of HUF, any member thereof.

    Note: This will include a life policy and an endowment policy.

Exemption on receipts from Life insurance policy (LIP) [Section 10(10D)]: Any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy shall not be included in the total income of a person.

The following is a tabular summary of the exemption available under section 10(10D) and deduction allowable under section 80C:

	Exemption u/s 10(10D)	Deduction u/s 80C
In respect of policies issued BEFORE 1.4.2003	Any sum received under a LIP including the sum allocated by way of bonus is exempt.	Premium paid to the extent of 20% of "actual capital sum assured".
In respect of policies issued between	Any sum received under a LIP including the sum allocated by way of bonus is exempt.	Premium paid to the extent of 20% of "actual capital sum assured".

1.4.2003 and 31.3.2012	However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 20% of "actual capital sum assured".		
In respect of policies issued on or after 1.4.2012 but before 1.4.2013	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of actual capital sum assured [has the same meaning as described in (a) below].		Premium paid to the extent of 10% of "actual capital sum assured"
In respect of policies issued on or after 1.4.2013	**(a)**	**Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB.**	
		Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 15% of "actual capital sum assured" i.e., "minimum capital sum assured" under the policy on the happening of the insured event at any time during the term of the policy, not taking into account: (i) the value of any premium agreed to be returned or (ii) 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.	Premium paid to the extent of 15% of "actual capital sum assured"
	(b)	**Where the insurance is on the life of any person, other than mentioned in (a) above**	
		Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of	Premium paid to the extent of 10% of "actual capital sum assured"

		"actual capital sum assured" (has the same meaning as described in (a) above).	

Note: Any sum received on the death of a person would not be included in the total income of a person. The condition of payment of premium of 10% or 15% or 20% would not be applicable in such a case.

Notes:

1. **Exemption is not available in respect of amount received from an insurance policy taken for disabled person under section 80DD:** Any sum received under section 80DD(3) shall not be exempt under section 10(10D). Accordingly, if the dependent disabled, in respect of whom an individual or the member of the HUF has paid or deposited any amount in any scheme of LIC or any other insurer, predeceases the individual or the member of the HUF, the amount so paid or deposited shall be deemed to be the income of the assessee of the previous year in which such amount is received. Such amount would not be exempt under 10(10D).
2. **Exemption is not available in respect of the sum received under a Keyman insurance policy:** Any sum received under a Keyman insurance policy shall also not be exempt.

Explanation 1 to section 10(10D) defines "Keyman insurance policy" as a life insurance policy taken by one person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first mentioned person.

The term includes within its scope a keyman insurance policy which has been assigned to any person during its term, with or without consideration. Therefore, such policies shall continue to be treated as a keyman insurance policy even after the same is assigned to the keyman. Consequently, the sum received by the keyman on such policies, being "keyman insurance policies", would not be exempt under section 10(10D).

(REFER ILLUSTRATION 2)

4. Premium paid in respect of a contract for deferred annuity:

a. Premium paid to effect and keep in force a contract for a deferred annuity on the life of the individual and/or his or her spouse or any child, provided such contract does not contain any provision for the exercise by the insured of an option to receive cash payments in lieu of the payment of the annuity.

b. It is pertinent to note here that a contract for a deferred annuity need not necessarily be with an insurance company. It follows therefore that such a contract can be entered into with any person.

5. **Any sum deducted from the salary payable of a Government employee for securing a deferred annuity**:

   Amount deducted by or on behalf of the Government from the salary of a Government employee in accordance with the conditions of his service for securing a deferred annuity or making provision for his spouse or children. The excess, if any, over 1/5th of the salary is to be ignored.

6. **Contribution to SPF/PPF/RPF:**
   a. Contributions to any provident fund to which the Provident Funds Act, 1925 applies and recognized provident fund qualifies for deduction under section 80C.
   b. Contribution made to any Provident Fund set up by the Central Government and notified in his behalf (i.e., the Public Provident Fund established under the Public Provident Fund Scheme, 1968) also qualifies for deduction under section 80C.
   c. Such contribution can be made in the name of the individual, his spouse and any child of the individual; and any member of the family, in case of a HUF.
   d. The maximum limit for deposit in PPF is Rs. 1,50,000 in a year.

(REFER ILLUSTRATION 3)

7. **Contribution to approved superannuation Fund:**
   Contribution by an employee to an approved superannuation fund qualifies for deduction under section 80C.

8. **Any sum paid or deposited in Sukanya Samridhi Account:**
   Subscription to any such security of the Central Government or any such deposit scheme as the Central Government as may notify in the Official Gazette. Accordingly, Sukanya Samriddhi Scheme has been notified to provide that any sum paid or deposited during the previous year in the said Scheme, by an individual in the name of:
   a. Any girl child of the individual or
   b. Any girl child for whom such individual is the legal guardian

   Would be eligible for deduction under section 80C.

9. **Subscription to National Savings Certificates VIII**:
   Subscription to any Savings Certificates under the Government Savings Certificates Act, 1959 notified by the Central Government in the Official Gazette (i.e., National Savings Certificate (VIII Issue) issued under the Government Savings Certificates Act, 1959).

10. **Contribution to approved annuity plan of LIC:**
    Contributions to approved annuity plans of LIC (New Jeevan Dhara and New Jeevan Akshay, New Jeevan Dhara I and New Jeevan Akshay I, II and III) or any other insurer (Tata AIG Easy Retire

Annuity Plan of Tata AIG Life Insurance Company Ltd.) as the Central Government may, by notification in the Official Gazette, specify in this behalf.

11. Subscription towards notified units of mutual fund or UTI:

Subscription to any units of any mutual fund or from the Administrator or the specified company under any plan formulated in accordance with such scheme notified by the Central Government.

12. Contribution to notified pension fund set up by mutual fund or UTI:

Contribution by an individual to a pension fund set up by any Mutual Fund or by the Administrator or the specified company as the Central Government may specify (i.e., UTI-Retirement Benefit Pension Fund set up by the specified company referred to in section 2(h) of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 as a pension fund).

"Specified company" means a company formed and registered under the Companies Act, 19562 and whose entire capital is subscribed by such financial institutions or banks as may be specified by the Central Government, by notification in the Official Gazette, for the purpose of transfer and vesting of the undertaking

"Administrator" means a person or a body of persons appointed as Administrator by the Central Government. The Central Government shall appoint a person or a body of persons, as the "Administrator of the specified undertaking of the Unit Trust of India" for the purpose of taking over the administration thereof and the Administrator shall carry on the management of the specified undertaking of the Trust for and on behalf of the Central Government.

"Specified undertaking" includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and Development Reserve Fund.

13. Contribution to National Housing Bank (Tax Saving) Term Deposit Scheme, 2008

Subscription to any deposit scheme or contribution to any pension fund set up by the National Housing Bank i.e., National Housing Bank (Tax Saving) Term Deposit Scheme, 2008.

14. Subscription to notified deposit scheme:

Subscription to any such deposit scheme of

a. a public sector company which is engaged in providing long-term finance for construction, or purchase of houses in India for residential purposes or
b. any such deposit scheme of any authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both.

The deposit scheme should be notified by the Central Government, for example, public deposit scheme of HUDCO.

15. Payment of tuition fees to any university, college, school or other educational institution within India for full-time education for maximum 2 children:

a. Payment of tuition fees by an individual assessee at the time of admission or thereafter to any university, college, school or other educational institutions within India for the purpose of full-time education of any 2 children of the individual.
b. This benefit is only for the amount of tuition fees for full-time education and shall not include any payment towards development fees or donation or payment of similar nature and payment made for education to any institution situated outside India.

16. Repayment of housing loan including stamp duty, registration fee and other expenses:

a. Any payment made towards the cost of purchase or construction of a new residential house property. The income from such property:
    i. Should be chargeable to tax under the head "Income from house property"
    ii. Would have been chargeable to tax under the head "Income from house property" had it not been used for the assessee's own residence.

b. The approved types of payments are as follows:
    i. Any instalment or part payment of the amount due under any self-financing or other schemes of any development authority, Housing Board or other authority engaged in the construction and sale of house property on ownership basis; or
    ii. Any instalment or part payment of the amount due to any company or a cooperative society of which the assessee is a shareholder or member towards the cost of house allotted to him or
    iii. Repayment of amount borrowed by the assessee from:
        1) The Central Government or any State Government.
        2) Any bank including a co-operative bank.
        3) The Life Insurance Corporation.
        4) The National Housing Bank.
        5) Any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under section 36(1)(viii).
        6) Any company in which the public are substantially interested or any cooperative society engaged in the business of financing the construction of houses.
        7) The assessee's employer, where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act.
        8) the assessee's employer where such employer is a public company or public sector company or a university established by law or a college affiliated to such university or a local authority or a co-operative society.

iv. Stamp duty, registration fee and other expenses for the purposes of transfer of such house property to the assessee.

c. **Inadmissible payments:** However, the following amounts do not qualify for rebate:
   i. Admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming a shareholder or member; or
   ii. The cost of any addition or alteration or renovation or repair of the house property after the issue of the completion certificate in respect of the house property or after the house has been occupied by the assessee or any person on his behalf or after it has been let out; or
   iii. Any expenditure in respect of which deduction is allowable under section 24.

17. Subscription to certain equity shares or debentures:
Subscription to equity shares or debentures forming part of any eligible issue of capital approved by the Board on an application made by a public company or as subscription to any eligible issue of capital by any public financial institution in the prescribed form.

18. Subscription to certain units of mutual fund:
Subscription to any units of any mutual fund and approved by the Board on an application made by such mutual fund in the prescribed form.

It is necessary that such units should be subscribed only in the eligible issue of capital of any company.

19. Investment in 5 - year term deposit: Investment in term deposit
(i) for a period of not less than 5 years with a scheduled bank; and
(ii) which is in accordance with a scheme framed and notified by the Central Government in the Official Gazette

qualifies as an eligible investment for availing deduction under section 80C.

The maximum limit for investment in term deposit is Rs. 1,50,000.

20. Subscription to notified bonds issued by NABARD:
Subscription to such bonds issued by NABARD (as the Central Government may notify in the Official Gazette) qualifies for deduction under section 80C.

21. Investment in 5 year Post Office time deposit:
Investment in 5 year time deposit in an account under Post Office Time Deposit Rules, 1981 qualifies for deduction under section 80C.

22. Deposit in Senior Citizens Savings Scheme Rules, 2004:

Deposit in an account under the Senior Citizens Savings Scheme Rules, 2004 qualifies for deduction under section 80C.

23. Contribution to additional account under NPS [Tier II] for CG Employees:
Contribution by a Central Government employee to additional account under NPS (specified account) referred to in section 80CCD for a fixed period of not less than 3 years and which is in accordance with the scheme notified by the Central Government for this purpose qualifies for deduction under section 80C. It may be noted that only the contribution to the additional account under NPS will qualify for deduction under section 80C.

Notes:

a. There are 2 types of NPS account i.e., Tier I and Tier II, to which an individual can contribute.

b. Section 80CCD provides deduction in respect of contribution to individual pension account [Tier I account] under the NPS [referred to in section 20(2)(a) of the Pension Fund Regulatory and Development Authority Act, 2013 (PFRDA)] whereas deduction under section 80C is allowable in respect of contribution by Central Government employee to additional account [Tier II account] of NPS [referred to in section 20(3) of the PFRDA], which does not qualify for deduction under section 80CCD.

c. Thus, Tier II account is the additional account under NPS, contribution to which would qualify for deduction under section 80C only in the hands of a Central Government employee.

RETAXABILITY

Termination of Insurance Policy or Unit Linked Insurance Plan or transfer of House Property or withdrawal of deposit: Where, in any previous year, an assessee:

1. Terminates his contract of insurance referred to in (3) above, by notice to that effect or where the contract ceases to be in force by reason of not paying the premium, by not reviving the contract of insurance, -
    a. in case of any single premium policy, within 2 years after the date of commencement of insurance or
    b. in any other case, before premiums have been paid for 2 years or

2. Terminates his participation in any Unit Linked Insurance Plan referred to in (1) or (2) above, by notice to that effect or where he ceases to participate by reason of failure to pay any contribution, by not reviving his participation, before contributions in respect of such participation have been paid for 5 years, or

3. Transfers the house property referred to in (16) above, before the expiry of 5 years from the end of the financial year in which possession of such property is obtained by him, or receives back, whether by way of refund or otherwise, any sum specified in (16) above, then, no deduction will be allowed to the assessee in respect of sums paid during such previous year and the total amount of deductions of income allowed in respect of the previous year or years preceding such previous year, shall be deemed to be income of the assessee of such previous year and shall be liable to tax in the assessment year relevant to such previous year.

4. Further, where any amount is withdrawn by the assessee from his account under the Senior Citizens Savings Scheme or under the Post Office Time Deposit Rules before the expiry of a period of 5 years from the date of its deposit, the amount so withdrawn shall be deemed to be the income of the assessee of the previous year in which the amount is withdrawn. Accordingly, the amount so withdrawn would be chargeable to tax in the assessment year relevant to such previous year. The amount chargeable to tax would also include that part of the amount withdrawn which represents interest accrued on the deposit.

   However, if any part of the amount relating to interest so received or withdrawn has been subject to tax in any of the earlier years, such amount shall not be taxed again.

   If any amount has been received by the nominee or legal heir of the assessee, on the death of such assessee, the amount would not be chargeable to tax. But if the amount relating to interest on deposit was not included in the total income of the assessee in any of any earlier years, then such interest would be chargeable to tax.

DEDUCTION IN RESPECT OF CONTRIBUTION TO CERTAIN PENSION FUNDS [Section 80CCC]

1. **ELIGIBLE ASSESSEE:** Where an assessee, being an individual, has in the previous year paid or deposited any amount out of his income chargeable to tax to effect or keep in force a contract for any annuity plan of LIC of India or any other insurer for receiving pension from the fund set up by LIC or such other insurer, he shall be allowed a deduction in the computation of his total income.
   For this purpose, the interest or bonus accrued or credited to the assessee's account shall not be reckoned as contribution.

   Note: Where any amount paid or deposited by the assessee has been taken into account for the purposes of this section, a deduction under section 80C shall not be allowed with reference to such amount.

2. **MAXIMUM DEDUCTION:** The maximum permissible deduction is Rs. 1,50,000 (Further, the overall limit of Rs. 1,50,000 prescribed in section 80CCE will continue to be applicable i.e., the

maximum permissible deduction under sections 80C, 80CCC and 80CCD (1) put together is Rs. 1,50,000).

3. **DEEMED INCOME:** Where any amount standing to the credit of the assessee in the fund in respect of which a deduction has been allowed, together with interest or bonus accrued or credited to the assessee's account is received by the assessee or his nominee on account of the surrender of the annuity plan in any previous year or as pension received from the annuity plan, such amount will be deemed to be the income of the assessee or the nominee in that previous year in which such withdrawal is made or pension is received. It will be chargeable to tax as income of that previous year.

DEDUCTION IN RESPECT OF CONTRIBUTION TO PENSION SCHEME NOTIFIED BY THE CENTRAL GOVERNMENT [Section 80CCD]

The benefit of this scheme is available to individuals employed by Government, any other employer as well as to self-employed individuals.

1. **DEDUCTION:** Section 80CCD provides deduction in respect of contribution made to the pension scheme notified by the Central Government. Accordingly, in exercise of the powers conferred by section 80CCD (1), the Central Government has notified the 'Atal Pension Yojana (APY)' as a pension scheme, contribution to which would qualify for deduction under section 80CCD in the hands of the individual.

2. **QUANTUM OF DEDUCTION:**

TOWARDS ASSESSEE CONTRIBUTION

a. Section 80CCD (1) provides a deduction for the amount paid or deposited by an employee in his pension account subject to a maximum of 10% of his salary.
b. The deduction in the case of a self-employed individual would be restricted to 20% of his gross total income in the previous year.
c. Section 80CCD(1B) provides for an additional deduction of up to Rs. 50,000 in respect of the whole of the amount paid or deposited by an individual assessee under NPS in the previous year, whether or not any deduction is allowed under section 80CCD(1).
d. Whereas the deduction under section 80CCD(1) is subject to the overall limit of Rs. 1.50 lakh under section 80CCE (i.e., the maximum permissible deduction under sections 80C, 80CCC and 80CCD(1) put together), the deduction of up to Rs. 50,000 under section 80CCD(1B) is in addition to the overall limit of Rs. 1.50 lakh provided under section 80CCE.

TOWARDS EMPLOYER CONTRIBUTION

a. Under section 80CCD(2), contribution made by the Central Government **or State Government** or any other employer in the previous year to the said account of an employee, is allowed as a deduction in computation of the total income of the assessee.
b. The entire employer's contribution would be included in the salary of the employee.
c. However, deduction under section 80CCD(2) would be restricted to:
    a. 14% of salary, in case of contribution made by the Central Government or State Government, and
    b. 10% of salary, in case of contribution made by any other employer.

Notes:

1. The limit of Rs. 1,50,000 under section 80CCE does not apply to employer's contribution to pension scheme of Central Government which is allowable as deduction under section 80CCD(2).
2. No deduction will be allowed under section 80C in respect of amounts paid or deposited by the assessee, for which deduction has been allowed under section 80CCD(1) or under section 80CCD(1B).

3. **DEEMED INCOME:** The amount standing to the credit of the assessee in the pension account (for which deduction has already been claimed by him under this section) and accretions to such account, shall be taxed as income in the year in which such amounts are received by the assessee or his nominee on:
    a. Closure of the account or
    b. His opting out of the said scheme or
    c. Receipt of pension from the annuity plan purchased or taken on such closure or opting out.

    However, the amount received by the nominee on the death of the assessee under the circumstances referred to in (a) and (b) above, shall not be deemed to be the income of the nominee.

    Further, the assessee shall be deemed not to have received any amount in the previous year if such amount is used for purchasing an annuity plan in the same previous year.

Notes:

1. **Exemption on payment from NPS Trust to an assessee on closure of his account or on his opting out of the pension scheme [Section 10(12A)]**
    (i) As per section 80CCD, any payment from National Pension System Trust to an assessee on account of closure or his opting out of the pension scheme is chargeable to tax.
    (ii) Section 10(12A) provides that any payment from National Pension System Trust to an assessee on account of closure or his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed **60%** of the total amount payable to him at the time of closure or his opting out of the scheme, shall be exempt from tax.

2. Exemption on payment from NPS Trust to an employee on partial withdrawal [Section 10(12B)]

To provide relief to an employee subscriber of NPS, section 10(12B) provides that any payment from National Pension System Trust to an employee under the pension scheme referred to in section 80CCD, on partial withdrawn made out of his account in accordance with the terms and conditions specified under the Pension Fund Regulatory and Development Authority Act, 2013 and the regulations made there under, shall be exempt from tax to the extent it does not exceed 25% of amount of contributions made by him.

Limit on deductions under sections 80C, 80CCC & 80CCD(1) [Section 80CCE]

1. This section restricts the aggregate amount of deduction under section 80C, 80CCC and 80CCD(1) to Rs. 1,50,000.
2. It may be noted that the deduction of up to Rs. 50,000 under section 80CCD(1B) and employer's contribution to pension scheme, allowable as deduction under section 80CCD(2) in the hands of the employee, would be outside the overall limit of Rs. 1,50,000 stipulated under section 80CCE.

The following table summarizes the ceiling limit under these sections:

Section	Particulars	Ceiling limit (Rs.)
80C	Investment in LIP, Deposit in PPF/SPF/RPF etc.	1,50,000
80CCC	Contribution to certain pension funds	1,50,000
80CCD(1)	Contribution to NPS of Government	10% of salary or 20% of GTI, as the case may be.
80CCE	Aggregate deduction under sections 80C, 80CCC & 80CCD(1)	1,50,000
80CCD(1B)	Contribution to NPS notified by the Central Government (outside the limit of Rs. 1,50,000 under section 80CCE)	50,000
80CCD(2)	Contribution by the Central Government **or State Government** to NPS A/c of its employees (outside the limit of Rs. 1,50,000 under section 80CCE)	14% of salary
	Contribution by any other employer to NPS A/c of its employees (outside the limit of Rs.1,50,000 under section 80CCE)	10% of salary

Note: For computation of limit under section 80CCD(1) and (2), salary includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

(REFER ILLUSTRATION 4 & 5)

DEDUCTION IN RESPECT OF MEDICAL INSURANCE PREMIUM [Section 80D]

A. IN CASE OF AN INDIVIDUAL

1. **DEDUCTION IN RESPECT OF INSURANCE PREMIUM PAID FOR FAMILY:** A deduction to the extent of Rs. 25,000 is allowed in respect of the following payments:
   a. Premium paid to effect or to keep in force an insurance on the health of self, spouse and dependent children or
   b. Any contribution made to the Central Government Health Scheme or
   c. Such other health scheme as may be notified by the Central Government. Contributory Health Service Scheme of the Department of Space has been notified by the Central Government.

2. **DEDUCTION IN RESPECT OF INSURANCE PREMIUM FOR PARENTS:** A further deduction up to Rs. 25,000 is allowable to effect or to keep in force an insurance on the health of parents of the assessee.

Note: In both the above cases, the payment must be paid by any mode other than cash.

Quantum of deduction in case of senior citizen: An increased deduction of **Rs. 50,000** (instead of Rs. 25,000) shall be allowed in case any of the persons mentioned above is a senior citizen

i.e., an individual resident in India of the age of 60 years or more at any time during the relevant previous year.

3. **DEDUCTION IN RESPECT OF PAYMENT TOWARDS PREVENTIVE HEALTH CHECK-UP:**
   a. Section 80D provides that deduction to the extent of Rs. 5,000 shall be allowed in respect payment made on account of preventive health check-up of self, spouse, dependent children or parents during the previous year.
   b. However, the said deduction of **Rs. 5,000** is within the overall limit of Rs. 25,000 or Rs. 50,000, specified in (i) and (ii) above.
   c. **Mode of Payment:** Cash or Otherwise

4. **DEDUCTION FOR MEDICAL EXPENDITURE INCURRED ON SENIOR CITIZENS:** As a welfare measure towards **senior citizens** i.e., person of the age of 60 years or more and resident in India, who are unable to get health insurance coverage, deduction of up to **Rs. 50,000** would be allowed in respect of any payment made on account of medical expenditure in respect of a such person(s), **IF** no payment has been made to keep in force an insurance on the health of such person(s).

'Senior citizen' means an individual resident in India who is of the age of 60 years or more at any time during the relevant previous year.

B. IN CASE OF A HUF

Deduction under section 80D is allowable in respect of premium paid to insure the health of any member of the family. The maximum deduction available to a HUF would be Rs. 25,000 and in case any member is a senior citizen, **Rs. 50,000**.

Further, the amount paid on account of medical expenditure incurred on the health of any member(s) of a family who is a resident senior citizen would qualify for deduction subject to a maximum of **Rs. 50,000** provided no amount has been paid to effect or keep in force any insurance on the health of such person(s).

5. **CLARIFICATION ON MAXIMUM DEDUCTION U/S 80D:**
   a. In case the individual or any of his family members is a senior citizen, the aggregate of deduction, in respect of payment of premium, contribution to CGHS and medical expenditure incurred, as specified in **(1) & (4)** above, cannot exceed **Rs. 50,000.**
   b. In case one of the parents is a senior citizen who is covered under Mediclaim policy and another is also a senior citizen but not covered under Mediclaim policy, the aggregate of deduction, in respect of payment of medical insurance premium and medical expenditure incurred, as specified in **(2) & (4)** above, cannot exceed **Rs. 50,000.**

6. **PREMIUM FOR HEALTH INSURANCE IS PAID IN LUMP SUM [Section 80D(4A)]:** In a case where Mediclaim premium is paid in lumpsum for more than 1 year by:
   a. An individual, to effect or keep in force an insurance on his health or health of his spouse, dependent children or parents or
   b. A HUF, to effect or keep in force an insurance on the health of any member of the family,

   then, the deduction allowable under this section for each of the relevant previous year would be equal to the appropriate fraction of such lump sum payment.

Meaning of certain terms

Term	Meaning
Appropriate fraction	1 ÷ Total number of relevant previous years
Relevant previous year	The previous year in which such lump sum amount is paid; and the subsequent previous year(s) during which the insurance would be in force.

(REFER ILLUSTRATION 6 & 7)

DEDUCTION IN RESPECT OF MAINTENANCE INCLUDING MEDICAL TREATMENT OF A DEPENDANT DISABLED [Section 80DD]

1. **ELIGIBLE ASSESSEE:** Section 80DD provides deduction to an assessee, who is a resident in India, being an individual or Hindu undivided family.

2. **PAYMENTS QUALIFYING FOR DEDUCTION:**
   a. Deduction is allowed for any amount:
      i. Incurred for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability, or
      ii. Paid or deposited under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the Specified Company for the maintenance of a dependant, being a person with disability

   b. The scheme should provide for payment of annuity or a lump sum amount for the benefit of a dependant, being a person with disability,
      i. in the event of the death of the individual or member of the HUF, in whose name subscription was made; or
      ii. on attaining the age of 60 years or more by such individual or the member of the HUF, and the payment or deposit to such scheme has been discontinued

      and the assessee must nominate either the dependant, being a person with disability or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability.

   c. The benefit of deduction under this section is also available to assessees incurring expenditure on maintenance including medical treatment of persons suffering from autism, cerebral palsy and multiple disabilities.

3. **QUANTUM OF DEDUCTION:**
   a. **Normal Disability:** The quantum of deduction is FLAT* Rs. 75,000 and
   b. **Severe Disability:** In case of severe disability (i.e., person with 80% or more disability) the deduction shall be FLAT* Rs. 1,25,000

   *Irrespective of Actual expenditure and Actual deposited amount.

4. **DEEMED INCOME:** If the dependent, being a person with disability, predeceases the individual or the member of HUF, in whose name subscription was made, then, the amount paid or deposited under the said scheme would be chargeable to tax in the hands of the assessee (individual or member of HUF) in the previous year in which such amount is received by him.

   However, such deeming provisions would not apply, to the amount received by the dependant, being a person with disability, before his death, by way of annuity or lump sum under the

scheme mentioned in II of (b) above i.e., when the individual or member of HUF attains the age of 60 years or more, and the payment or deposit to such scheme has been discontinued.

5. **CONDITIONS:**
   a. For claiming the deduction, the assessee shall have to furnish a copy of the certificate issued by the medical authority under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 along with the return of income under section 139.
   b. Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned in the original certificate in order to continue to claim the deduction.

Meaning of "Dependant":

	Assessee	Dependant
(1)	Individual	The spouse, children, parents, brother or sister of the individual who is wholly or mainly dependant on such individual and not claimed deduction under section 80U in the computation of his income
(2)	HUF	A member of the HUF, wholly or mainly dependant on such HUF and not claimed deduction under section 80U in the computation of his income

(REFER ILLUSTRATION 8 & 9)

DEDUCTION IN RESPECT OF MEDICAL TREATMENT etc. [Section 80DDB]

1. **ELIGIBLE ASSESSEE:**
   a. This section provides deduction to an assessee, who is resident in India, being an individual and Hindu undivided family.
   b. The deduction is available to an individual for medical expenditure incurred on himself or a dependant.
   c. It is also available to a Hindu undivided family (HUF) for such expenditure incurred on any of its members.

Meaning of "Dependant":

	Assessee	Dependant
(1)	Individual	The spouse, children, parents, brother or sister of the individual who is wholly or mainly dependant on such individual and not claimed deduction under section 80U in the computation of his income
(2)	HUF	A member of the HUF, wholly or mainly dependant on such HUF and not claimed deduction under section 80U in the computation of his income

2. **PAYMENT QUALIFYING FOR DEDUCTION:** Any amount actually paid for the medical treatment of such disease or ailment as may be specified in the rules made in this behalf by the Board for himself or a dependant, in case the assessee is an individual, or for any member of a HUF, in case the assessee is a HUF, will qualify for deduction.

3. **QUANTUM OF DEDUCTION:**

   a. The amount of deduction under this section shall be equal to the amount actually paid OR Rs. 40,000**,** whichever is LESS, in respect of that previous year in which such amount was actually paid.
   b. In case the amount is paid in respect of a senior citizen, i.e., a resident individual of the age of 60 years or more at any time during the relevant previous year, then the deduction would be the amount actually paid OR **Rs. 1,00,000,** whichever is LESS.

   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 assessee or the dependant

4. **CONDITION:** No such deduction shall be allowed unless the assessee obtains the prescription for such medical treatment from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist, as may be prescribed.

DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR HIGHER EDUCATION [Section 80E]

1. **ELIGIBLE ASSESSEE:** Section 80E provides deduction to an individual-assessee in respect of any interest on loan paid by him in the previous year out of his income chargeable to tax.

2. **CONDITIONS:**
   a. The loan must have been taken for the purpose of pursuing his higher education OR for the purpose of higher education of his or her relative.
   b. The loan must have been taken from any financial institution or approved charitable institution.

3. **PERIOD OF DEDUCTION:** The deduction is allowed in computing the total income in respect of the initial assessment year (i.e., the assessment year relevant to the previous year, in which the assessee starts paying the interest on the loan) and 7 assessment years immediately succeeding the initial assessment year or until the interest is paid in full by the assessee, whichever is earlier.

Meaning of Certain terms:

1. **RELATIVE:** Spouse and children of the individual OR the student for whom the individual is the legal guardian.

2. **HIGHER EDUCATION:** It means any course of study (including vocational studies) 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 authorized by the Central Government or State Government or local authority to do so. Therefore, interest on loan taken for pursuing any course after Class XII or its equivalent, will qualify for deduction under section 80E.

(REFER ILLUSTRATION 10)

DEDUCTION FOR INTEREST ON LOAN BORROWED FOR ACQUISITION OF HOUSE PROPERTY BY AN INDIVIDUAL [Section 80EE]

1. **ELIGIBLE ASSESSEE:** An individual who has taken a loan for acquisition of residential house property from any financial institution. Interest payable on such loan would qualify for deduction under this section.

2. **CONDITIONS:** The conditions to be satisfied for availing this deduction are as follows:
   a. Value of house ≤ Rs. 50 lakhs
   b. The assessee should not own any residential house on the date of sanction of loan
   c. Loan should be sanctioned during the P.Y.2016-17
   d. Loan sanctioned ≤ Rs. 35 lakhs

3. **PERIOD OF BENEFIT:** The benefit of deduction under this section would be available till the repayment of loan continues.

4. **QUANTUM OF DEDUCTION:** The maximum deduction allowable is Rs. 50,000. The deduction of up to Rs. 50,000 under section 80EE is over and above the deduction of up to Rs. 2,00,000 available under section 24 for interest paid in respect of loan borrowed for acquisition of a self-occupied property.

(REFER ILLUSTRATION 11)

DEDUCTION IN RESPECT OF INTEREST PAYABLE ON LOAN TAKEN FOR ACQUISITION OF RESIDENTIAL HOUSE PROPERTY [Section 80EEA]

1. **ELIGIBLE ASSESSEE:** An individual who has taken a loan for acquisition of residential house property from any financial institution. Interest payable on such loan would qualify for deduction under this section.

2. **CONDITIONS:** The conditions to be satisfied for availing this deduction are as follows:
   a. Stamp Duty Value of house ≤ Rs. 45 lakhs
   b. Loan should be sanctioned by a Financial Institution during the period between 1st April, 2019 and 31st March 2022
   c. The individual should not be eligible to claim deduction u/s 80EE
   d. The individual should not own any residential house on the date of sanction of loan.

3. **PERIOD OF BENEFIT:** The benefit of deduction under this section would be available from A.Y. 2020-21 and subsequent assessment years till the repayment of loan continues.

4. **QUANTUM OF DEDUCTION:** The maximum deduction allowable is Rs. 1,50,000. The deduction of up to Rs. 1,50,000 under section 80EEA is over and above the deduction available under section 24(b) in respect of interest payable on loan borrowed for acquisition of a residential house property.

   Note:
   a. In respect of self-occupied house property, interest deduction under section 24(b) is restricted to Rs. 2,00,000.
   b. In case of let out or deemed to be let out property, even though there is no limit under section 24(b), section 71(3A) restricts the amount of loss from house property to be set-off against any other head of income to Rs. 2,00,000. Accordingly, if interest payable in respect of acquisition of eligible house property is more than Rs. 2,00,000, the excess can be claimed as deduction under section 80EEA, subject to fulfilment of conditions.

5. **NO DEDUCTION UNDER ANY OTHER PROVISION:** The interest allowed as deduction under section 80EEA will not be allowed as deduction under any other provision of the Act for the same or any other assessment year.

DEDUCTION IN RESPECT OF INTEREST PAYABLE ON LOAN TAKEN FOR PURCHASE OF ELECTRIC VEHICLE [Section 80EEB]

1. **ELIGIBLE ASSESSEE:** An individual who has taken a loan for purchase of an electric vehicle from any financial institution. Interest payable on such loan would qualify for deduction under this section.

2. **CONDITIONS:** The conditions to be satisfied for availing this deduction are as follows:

    a. The assessee should be an individual.
    b. Loan should be taken for purchase of an electric vehicle
    c. Loan should be sanctioned during the period between 1.4.2019 and 31.3.2023
    d. Loan should be sanctioned by a FI (bank or specified NBFCs)

3. **PERIOD OF BENEFIT:** The benefit of deduction under this section would be available from A.Y. 2020-21 and subsequent assessment years till the repayment of loan continues.

4. **QUANTUM OF DEDUCTION:** Interest payable, subject to a maximum of Rs. 1,50,000.

5. **NO DEDUCTION UNDER ANY OTHER PROVISION:** The interest allowed as deduction under section 80EEB will not be allowed as deduction under any other provision of the Act for the same or any other assessment year.

ELECTRIC VEHICLE: A vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle. The vehicle should have electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy.

(REFER ILLUSTRATION 12)

DEDUCTION IN RESPECT OF DONATIONS [Section 80G]

1. **ELIGIBLE ASSESSEE:** Any assessee who pays any sum as donation to eligible funds or institutions, is entitled to a deduction, subject to certain limitations, from the gross total income.

2. **QUANTUM OF DEDUCTION:** There are 4 categories of deductions.

CATEGORY 1

DONATION QUALIFYING FOR 100% DEDUCTION

(1)	The National Defence Fund set up by the Central Government
(2)	Prime Minister's National Relief Fund.
(3)	Prime Minister's Armenia Earthquake Relief Fund
(4)	The Africa (Public Contributions-India) Fund
(5)	The National Children's Fund
(6)	The National Foundation for Communal Harmony
(7)	Approved University or educational institution of national eminence
(8)	Chief Minister's Earthquake Relief Fund, Maharashtra
(9)	Any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of the Gujarat earthquake
(10)	Any Zila Saksharta Samiti constituted in any district for improvement of primary education in villages and towns and for literacy and post-literacy activities
(11)	National Blood Transfusion Council or any State Blood Transfusion Council whose sole objective is the control, supervision, regulation or encouragement in India of the services related to operation and requirements of blood banks.
(12)	Any State Government Fund set up to provide medical relief to the poor
(13)	The Army Central Welfare Fund or Indian Naval Benevolent Fund or Air Force Central Welfare Fund established by the armed forces of the Union for the welfare of past and present members of such forces or their dependents.
(14)	The Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996
(15)	The National Illness Assistance Fund
(16)	The Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund in respect of any State or Union Territory
(17)	The National Sports Fund set up by the Central Government
(18)	The National Cultural Fund set up by the Central Government
(19)	The Fund for Technology Development and Application set up by the Central Government
(20)	National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities
(21)	The Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of CSR u/s 135(5) of the Companies Act, 2013

(22)	The Clean Ganga Fund, set up by the Central Government, where such assessee is a resident, other than the sum spent in pursuance of CSR u/s 135(5) of the Companies Act, 2013
(23)	The National Fund for Control of Drug Abuse
(24)	Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund **(PM Cares Fund)**

CATEGORY 2

DONATION QUALIFYING FOR 50% DEDUCTION

(1)	The Jawaharlal Nehru Memorial Fund
(2)	Prime Minister's Drought Relief Fund
(3)	Indira Gandhi Memorial Trust
(4)	Rajiv Gandhi Foundation

CATEGORY 3

DONATION QUALIFYING FOR 100% DEDUCTION SUBJECT TO QUALIFYING LIMIT

(1)	**For Family Planning:** The Government or to any approved local authority, institution or association for promotion of family planning
(2)	**Indian Olympic Association:** Sum paid by a company as donation to the Indian Olympic Association or any other association/institution established in India, as may be notified by the Government for the development of infrastructure for sports or games, or the sponsorship of sports and games in India

CATEGORY 4

DONATION QUALIFYING FOR 50% DEDUCTION SUBJECT TO QUALIFYING LIMIT

(1)	**Charitable Trusts:** Any Institution or Fund established in India for charitable purposes fulfilling prescribed conditions
(2)	**To the Government for Charitable Purpose:** The Government or any local authority for utilisation for any charitable purpose other than the purpose of promoting family planning
(3)	**Housing Development Authority:** An authority constituted in India by or under any other law enacted either for dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both.
(4)	**Promotion of Minorities Interest:** Any Corporation established by the Central Government or any State Government for promoting the interests of the members of a minority community

(5)	**Renovation of Religious Premises:** for renovation or repair of Notified temple, mosque, gurdwara, church or other place of historic, archaeological or artistic importance or which is a place of public worship of renown throughout any State or States.

3. **QUALIFYING LIMIT:** The eligible donations referred to in Category 3 and Category 4 should be aggregated and the sum total should be limited to 10% of the adjusted gross total income. This would be the maximum permissible deduction.

STEPS FOR COMPUTATION OF QUALIFYING LIMIT:

Step 1:	Compute adjusted total income i.e., the GTI as reduced by the following: (i) Deductions under Chapter VI-A, except under section 80G (ii) Short-term capital gain taxable under section 111A (iii) Long-term capital gains taxable under sections 112 & 112A (iv) Any income on which income-tax is not payable
Step 2:	Calculate 10% of adjusted total income
Step 3:	Calculate the actual donation, which is subject to qualifying limit (Total of Category 3 and 4 donations, shown in the table above)
Step 4:	Lower of Step 2 or Step 3 is the maximum permissible deduction.
Step 5:	The said deduction is adjusted first against donations qualifying for 100% deduction (i.e., Category III donations). Thereafter, 50% of balance qualifies for deduction under section 80G.

4. **OTHER CONDITIONS:**
   a. 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 qualify for deduction under any other provision of the Act for the same or any other assessment year.
   b. Donations in kind shall not qualify for deduction.
   c. No deduction shall be allowed in respect of donation of any sum exceeding **Rs. 2,000** unless such sum is paid by any mode other than cash.
   d. The deduction under section 80G can be claimed whether it has any nexus with the business of the assessee or not.
   e. As per Circular No.2/2005 dated 12.1.2005, in cases where employees make donations to the Prime Minister's National Relief Fund, the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund through their respective employers, it is not possible for such funds to issue separate certificate to every such employee in respect of donations made to such funds as contributions made to these funds are in the form of a consolidated cheque. An employee who makes donations towards these funds is eligible to claim deduction under section 80G.
   It is, hereby, clarified that the claim in respect of such donations as indicated above will be admissible under section 80G on the basis of the certificate issued by the Drawing and Disbursing Officer (DDO)/Employer in this behalf.

f. The claim of the assessee for deduction in respect of any donation made to an institution or fund referred to in Category 4 "Donation qualifying for 50% deduction, subject to qualifying limit"], in the return of income for any assessment year filed by him, will be allowed on the basis of information relating to said donation furnished by the institution or fund to the prescribed income-tax authority or person authorized by such authority, subject to verification as per the risk management strategy formulated by the CBDT from time to time.

(REFER ILLUSTRATION 13)

DEDUCTION IN RESPECT OF RENT PAID [Section 80GG]

1. **ELIGIBLE ASSESSEE:** Assessee, who is not in receipt of HRA qualifying for exemption under section 10(13A) from employer AND who pays rent for accommodation occupied by him for residential purposes.

2. **CONDITIONS:** The following conditions have to be satisfied for claiming deduction under section 80GG:
   a. The assessee should not be receiving any house rent allowance exempt under section 10(13A).
   b. The accommodation should be occupied by the assessee for the purposes of his own residence.
   c. The assessee should fulfill such other conditions or limitations as may be prescribed, having regard to the area or place in which such accommodation is situated and other relevant considerations.
   d. The assessee or his spouse or his minor child or a HUF of which he is a member should not own any accommodation at the place where he ordinarily resides or perform duties of his office or employment or carries on his business or profession or
   e. If the assessee owns any accommodation at any place other than that referred to above, such accommodation should not be in the occupation of the assessee and its annual value is not required to be determined under section 23(2)(a) or section 23(4)(a).
   f. The assessee should file a declaration in the prescribed form, confirming the details of rent paid and fulfillment of other conditions, with the return of income.

3. **QUANTUM OF DEDUCTION:** The deduction admissible will be the LEAST of the following:
   a. Actual rent paid minus 10% of the total income of the assessee before allowing the deduction, or
   b. 25% of such total income (arrived at after making all deductions under Chapter VI A but before making any deduction under this section), or
   c. Amount calculated at Rs. 5,000 p.m.

(REFER ILLUSTRATION 14)

DEDUCTION IN RESPECT OF DONATIONS FOR SCIENTIFIC RESEARCH AND RURAL DEVELOPMENT [Section 80GGA]

1. **ELIGIBLE ASSESSEE:** Any assessee not having income chargeable under the head "Profits and gains of business or profession", who makes donations for scientific research or rural development.

2. **DONATIONS QUALIFYING FOR DEDUCTION:**
   a. Any sum paid by the assessee in the previous year 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. Such association, University, college or institution must be approved under section 35(1)(ii).

   b. Any sum paid to a Research Association which has as its object the undertaking of research in social science or statistical research, University, College or other institution to be used for research in social science or statistical research. Such association, University, college or institution must be approved under section 35(1)(iii).

   c. Any sum paid by the assessee in the previous year to an association or institution which has as its object the undertaking of any programme of rural development, to be used for carrying out any programme of rural development approved by the prescribed authority for purposes of section 35CCA or to an institution or association which has as its object the training of persons for implementing programmes of rural development.

      Note: It has been clarified that the deduction to which an assessee (i.e., donor) is entitled on account of payment of any sum to
      - a research association or university or college or other institution for scientific research or research in a social science or statistical research or
      - an association or institution for carrying out the programme of rural development or

      shall not be denied merely on the ground that subsequent to payment of such sum by the assessee, the approval granted to any of the aforesaid entities is withdrawn.

   d. Any sum paid to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme.

      It has been clarified that the deduction to which an assessee (i.e., donor) is entitled on account of above shall not be denied merely on the ground that subsequent to payment of such sum by the assessee, the approval granted to any of the aforesaid entities is withdrawn

or the notification notifying the eligible project or scheme carried out aforesaid entities has been withdrawn.

e. Any sum paid to a rural development fund set up and notified under section 35CCA.
f. Any sum paid by the assessee in the previous year to National Urban Poverty Eradication Fund (NUPEF).

3. **RESTRICTIONS ON DEDUCTION:**
   a. No deduction under this section would be allowed in the case of an assessee whose gross total income includes income which is chargeable under the head "Profits and gains of business or profession."
   b. Where a deduction under this section is claimed and allowed for any assessment year, deduction shall not be allowed in respect of such payment under any provision of this Act for the same or any other assessment year.
   c. No deduction shall be allowed in respect of donation of any sum exceeding **Rs. 2,000** unless such sum is paid by any mode other than cash.
   d. The claim of the assessee for deduction in respect of any sum referred above in the return of income for any assessment year filed by him, will be allowed on the basis of information relating to such sum furnished by the payee to the prescribed income-tax authority or person authorized by such authority, subject to verification as per the risk management strategy formulated by the CBDT from time to time.

DEDUCTION IN RESPECT OF CONTRIBUTIONS GIVEN BY COMPANIES TO POLITICAL PARTIES [Section 80GGB]

1. **DEDUCTION & CONDITIONS:**
   a. This section provides for deduction of any sum contributed in the previous year by an Indian company to any political party or an electoral trust.
   b. However, no deduction shall be allowed in respect of any sum contributed by way of cash.

2. **Meaning of "Contribute":** For the purposes of this section, the word "contribute" has the same meaning assigned to it under section 293A of the Companies Act, 1956 , which provides that:
   (a) a donation or subscription or payment given by a company to a person for carrying on any activity which is likely to effect public support for a political party shall also be deemed to be contribution for a political purpose;
   (b) the expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed to be a contribution to such political party or a contribution for a political purpose to the person publishing it.

(REFER ILLUSTRATION 15)

DEDUCTION IN RESPECT OF CONTRIBUTIONS GIVEN BY ANY PERSON TO POLITICAL PARTIES [Section 80GGC]

1. **DEDUCTION & CONDITIONS:** This section provides for deduction of any sum contributed in the previous year by any person to a political party or an electoral trust. However, no deduction shall be allowed in respect of any sum contributed by way of cash.

2. **PERSONS NOT ELIGIBLE FOR DEDUCTION:** This deduction will, however, not be available to a local authority and an artificial juridical person, wholly or partly funded by the Government.

3. **Meaning of "Political party":** It means a political party registered under section 29A of the Representation of the People Act, 1951.

PART 3 – INCOME BASED DEDUCTIONS

DEDUCTION IN RESPECT OF EMPLOYMENT OF NEW EMPLOYEES [Section 80JJAA]

1. **QUANTUM AND PERIOD OF DEDUCTION:** Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, a deduction of an amount equal to 30% of additional employee cost incurred in the course of such business in the previous year, would be allowed for 3 assessment years including the assessment year relevant to the previous year in which such employment is provided.

2. **CONDITIONS TO BE FULFILLED:** The deduction would be allowed only subject to fulfilment of the following conditions:
    a. The business should not be formed by splitting up, or the reconstruction, of an existing business
    b. The business is not acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation
    c. The report of the accountant, giving the prescribed particulars, has to be furnished before 30th September of the A.Y., being the specified date referred to in Section 44AB i.e., the date one month prior to due date for filing ROI u/s 139(1)

3. **MEANING OF CERTAIN TERMS:**
    a. Additional employee cost: Total emoluments paid or payable to additional employees employed during the previous year.
        i. In the case of an existing business: The additional employee cost shall be Nil, if:
            1. There is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year.
            2. Emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through any other prescribed electronic mode [credit card, debit card, net banking, IMPS (Immediate Payment Services), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Fund Transfer), BHIM (Bharat Interface for Money) Aadhar Pay].
        ii. In the first year of a new business: The emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost.

    b. **Additional employee:** An employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year. The following are various Exclusions from the definition:

i. An employee whose total emoluments are more than Rs. 25,000 per month or
ii. An employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; or
iii. An employee who does not participate in the recognised provident fund.
iv. An employee employed for a period of less than 240 days during the previous year.

In case of an assessee engaged in the business of manufacturing of apparel or footwear or leather products, an employee employed for a period of less than 150 days during the previous year or

Note: If an employee is employed during the previous year for less than 240 days or 150 days, as the case may be, but is employed for a period of 240 days or 150 days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year. Accordingly, the employer would be entitled to deduction of 30% of additional employee cost of such employees for 3 years from the succeeding year.

c. **Emoluments:** Any sum paid or payable to an employee in lieu of his employment by whatever name called. Exclusions from the definition:
   i. Any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force and
   ii. Any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

(REFER ILLUSTRATION 16)

DEDUCTION IN RESPECT OF ROYALTY INCOME, ETC., OF AUTHORS OF CERTAIN BOOKS OTHER THAN TEXT BOOKS [Section 80QQB]

1. **ELIGIBLE ASSESSEE & QUANTUM OF DEDUCTION:** Under section 80QQB, deduction of up to a maximum Rs. 3,00,000 is allowed to an individual resident in India in respect of income derived as author or joint author i.e., the deduction shall be the income derived as author or as joint author OR Rs. 3,00,000, whichever is less.

2. **ELIGIBLE INCOME:**
   a. This income may be received either by way of a lumpsum consideration for the assignment or grant of any of his interests in the copyright of any book.

b. Such book should be a work of literary, artistic or scientific nature, or of royalties or copyright fees (whether receivable in lump sum or otherwise) in respect of such book.
c. This deduction shall not, however, be available in respect of royalty income from textbook for schools, guides, commentaries, brochures, diaries, magazines, newspapers, journals, pamphlets, tracts and other publications of similar nature.

Note - Where an assessee claims deduction under this section, no deduction in respect of the same income may be claimed under any other provision of the Income-tax Act, 1961.

3. **MANNER OF COMPUTATION OF DEDUCTION:** For the purpose of calculating the deduction under this section, the amount of eligible income (royalty or copyright fee received otherwise than by way of lumpsum) before allowing expenses attributable to such income, shall not exceed 15% of the value of the books sold during the previous year.

However, this condition is not applicable where the royalty or copyright fees is receivable in lump sum in lieu of all rights of the author in the book.

4. **CONDITIONS:**
   a. **Furnishing of certificate in prescribed form:** For claiming the deduction, the assessee shall have to furnish a certificate in the prescribed manner in the prescribed format, duly verified by the person responsible for making such payment, setting forth such particulars as may be prescribed.

   b. **Period for repatriation of income earned outside India:** Where the assessee earns any income from any source outside India, he should bring such income into India in convertible foreign exchange within a period of 6 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 for the purpose of claiming deduction under this section.

(REFER ILLUSTRATION 17)

DEDUCTION IN RESPECT OF ROYALTY ON PATENTS [Section 80RRB]

1. **ELIGIBLE ASSESSEE:** 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 and earning income by way of royalty of a patent registered on or after 1.4.2003.

2. **QUANTUM OF DEDUCTION:** Income by way of royalty of a patent registered on or after 1.4.2003, subject to a maximum of Rs. 3 lakhs.

3. **ELIGIBLE INCOME:** This exemption shall be restricted to the royalty income including consideration for transfer of rights in the patent or for providing information for working or use of a patent, use of a patent or the rendering of any services in connection with these activities.

   The exemption shall not be available on any consideration for sale of product manufactured with the use of the patented process or patented article for commercial use.

4. **CONDITIONS:** In respect of any such income which is earned from sources outside India, the deduction shall be restricted to such sum as is brought to India in convertible foreign exchange within a period of 6 months from the end of the previous year in which such income is earned or extended period as is allowed by the competent authority (Reserve Bank of India).

   For claiming this deduction the assessee shall be required to furnish a certificate in the prescribed form signed by the prescribed authority.

DEDUCTION IN RESPECT OF INTEREST ON DEPOSITS IN SAVINGS ACCOUNTS [Section 80TTA]

1. **ELIGIBLE ASSESSEE AND QUANTUM OF DEDUCTION:** Section 80TTA provides that in case the gross total income of an assessee, being an individual or a Hindu Undivided Family, includes any income by way of an interest on deposits in a saving account (not being time deposits, which are deposits repayable on expiry of fixed periods), deduction up to **Rs. 10,000** in aggregate shall be allowed while computing the total income of such assessee. Such deduction shall be allowed in case the saving account is maintained 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.

   Note: Deduction under this section would, however, not be available to a senior citizen eligible for deduction under section 80TTB.

2. **RESTRICTIONS:** If the aforesaid income is derived from any deposit in a savings account held by, or on behalf of, a firm, an AOP/BOI, **NO** deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the AOP or any individual of the BOI.

   In otherwords, the deduction under this section shall be allowed only in respect of the income derived in form of the interest on the saving bank deposit (other than time deposits) made by the individual or Hindu Undivided Family directly.

DEDUCTION IN RESPECT OF INTEREST ON DEPOSITS IN CASE OF SENIOR CITIZENS [Section 80TTB]

1. **ELIGIBLE ASSESSEE:** A senior citizen (a resident individual who is of the age of 60 years or more at any time during the relevant previous year), whose gross total income includes income by way of interest on deposits (both fixed deposits and saving accounts) with –
   a. a banking company to which Banking Regulation Act, 1949 applies
   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)
   c. a Post Office.

2. **QUANTUM OF DEDUCTION:** Actual amount of interest on deposits or **Rs. 50,000,** whichever is LOWER.

3. **Non-availability of deduction to partner/member, where deposit held by firm/AOP/BOI:** Where interest income is derived from any deposit held by, or on behalf of, a firm, an AOP or a BOI, the partner of the firm or member of AOP/BOI would not be allowed deduction in respect of such income while computing their total income.

(REFER ILLUSTRATION 18 & 19)

DEDUCTION IN THE CASE OF A PERSON WITH DISABILITY [Section 80U]

1. **Eligible assessee:** This section is applicable to a resident individual, who, at any time during the previous year, is certified by the medical authority to be a person with disability.

   The benefit of deduction under this section is also available to persons suffering from autism, cerebral palsy and multiple disabilities.

2. **Quantum of deduction:** A deduction of Rs. 75,000 in respect of a person with disability and Rs. 1,25,000 in respect of a person with severe disability (having disability over 80%) is allowable under this section.

3. **Conditions:**
   a. The assessee claiming a deduction under this section shall furnish a copy of the certificate issued by the medical authority in the form and manner, as may be prescribed, along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed.

b. Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned on the original certificate in order to continue to claim the deduction.

12. COMPUTATION OF TOTAL INCOME AND TAX PAYABLE

	Capacity in which income is earned by an individual	Treatment of income earned in each capacity
(1)	In his personal capacity (Under the 5 heads of income)	Income from salaries, Income from house property, Profits and gains of business or profession, Capital gains and Income from other sources.
(2)	As a partner of a firm	a. Salary, bonus etc. received by a partner is taxable as his business income. b. Interest on capital and loans to the firm is taxable as business income of the partner. The income mentioned in (a) and (b) above are taxable to the extent they are allowed as deduction to the firm. c. Share of profit in the firm is exempt in the hands of the partner.
(3)	As a member of HUF	a. Share of income of HUF is exempt in the hands of the member b. Income from an impartible estate of HUF is taxable in the hands of the holder of the estate who is the eldest member of the HUF c. Income from self-acquired property converted into joint family property, without adequate consideration
(4)	Income of other persons included in the income of the individual	a. Transferee's income, where there is a transfer of income without transfer of assets b. Income arising to transferee from a revocable transfer of an asset. In cases (i) and (ii), income is includible in the hands of the transferor. c. Income of spouse as mentioned in section 64(1)(ii)/(iv) d. Income from assets transferred otherwise than for adequate consideration to any person for the benefit of spouse [Section 64(1)(vii)]. e. Income from assets transferred otherwise than for adequate consideration to son's wife or to any person for the benefit of son's wife [Section 64(1)(vi)/(viii)]. f. Income of minor child as mentioned in section 64(1A)

ALTERNATE MINIMUM TAX (AMT) [Section 115JEE]

1. **APPLICABILITY:** Any person other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VIA under the heading "C – Deductions in respect of certain incomes [80IA series, 80JJAA, 80QQB, 80RRB]" or under section 10AA or investment-linked deduction under section 35AD would be subject to AMT [Section 115JEE(1)].

2. **NON-APPLICABILITY:**

    a. The provisions of AMT would, however, not be applicable to an individual, HUF, AOPs, BOIs, whether incorporated or not, or artificial juridical person, if the adjusted total income of such person does not exceed Rs. 20 lakh [Section 115JEE(2)].

    b. Further, the provisions of AMT would also not apply in case an individual or HUF opting for concessional rates of tax under section 115BAC and co-operative society opting for section 115BAD.

3. **TAX AMOUNT:**
    a. Where the regular income-tax payable by a person for a previous year computed as per the provisions of the Income-tax Act, 1961 is less than the AMT payable for such previous year, the adjusted total income shall be deemed to be the total income of the person.

    b. Such person shall be liable to pay income-tax on the adjusted total income @ 18.5% plus surcharge, if applicable, and HEC @4% [Section 115JC].

    c. However, in case of a co-operative society, alternate minimum tax would be 15% of adjusted total income plus surcharge, if applicable, and HEC @4%.

4. **"Adjusted total income"** would mean the total income before giving effect to Chapter XII-BA as increased by
    a. The deductions claimed, if any, under section 10AA;
    b. The deduction claimed under section 35AD, as reduced by the depreciation allowable under section 32, as if no deduction under section 35AD was allowed in respect of the asset for which such deduction is claimed; and
    c. Deduction under any section included in Chapter VI-A under the heading C - Deductions in respect of certain incomes [For Intermediate level, the relevant sections are 80JJAA, 80QQB & 80RRB].

5. **TAX CREDIT FOR AMT [SECTION 115JD]:**
    a. Tax credit is the excess of AMT paid over the regular income-tax payable under the provisions of the Income-tax Act, 1961 for the year.

b. Such tax credit shall be carried forward and set-off against income-tax payable in the later year to the extent of excess of regular income-tax payable under the provisions of the Act over the AMT payable in that year.
c. The balance tax credit, if any, shall be carried forward to the next year for set-off in that year in a similar manner.
d. AMT credit can be carried forward for set-off up to a maximum period of 15 assessment years succeeding the assessment year in which the credit becomes allowable.
e. Tax Credit allowable even if Adjusted Total Income does not exceed Rs. 20 lakh in the year of set-off [Section 115JEE(3)]
f. In case where the assessee has not claimed any deduction under section 10AA or section 35AD or deduction under section 80JJAA, 80QQB & 80RRB in any previous year and the adjusted total income of that year does not exceed Rs. 20 lakh, it would still be entitled to set-off his brought forward AMT credit in that year.

Note: The provisions of the Income-tax Act, 1961 relating to advance tax, interest under sections 234A, 234B and 234C etc. shall also apply to an assessee paying alternate minimum tax.

OPTION TO PAY INCOME-TAX AT CONCESSIONAL TAX SLAB RATES [Section 115BAC]

1. As per section 115BAC, individuals or HUFs have an option to pay tax in respect of their total income (other than income chargeable to tax at special rates under Chapter XII such as section 111A, 112, 112A, 115BB etc.) at the following concessional rates, subject to certain conditions specified under section 115BAC (2):

(i)	Up to Rs. 2,50,000	NIL
(ii)	From Rs. 2,50,001 to Rs. 5,00,000	5%
(iii)	From Rs. 5,00,001 to Rs. 7,50,000	10%
(iv)	From Rs. 7,50,001 to Rs. 10,00,000	15%
(v)	From Rs. 10,00,001 to Rs. 12,50,000	20%
(vi)	From Rs. 12,50,001 to Rs. 15,00,000	25%
(vii)	Above Rs. 15,00,000	30%

2. **CONDITIONS TO BE SATISFIED:** The following are the conditions to be satisfied for availing concessional rates of tax:

<table>
<tr><th>S. No.</th><th>Particulars</th></tr>
<tr><td>(1)</td><td>CERTAIN DEDUCTIONS/EXEMPTIONS NOT ALLOWABLE: Section 115BAC(2) provides that while computing total income, the following deductions/exemptions would not be allowed, if an individual or HUF opts for concessional rates of taxes under section 115BAC(1):
<table>
<tr><th>Section</th><th>Exemption/Deduction</th></tr>
<tr><td>10(5)</td><td>Leave travel concession</td></tr>
<tr><td>10(13A)</td><td>House rent allowance</td></tr>
<tr><td>10(14)</td><td>Exemption in respect of special allowances or benefit to meet expenses relating to duties or personal expenses (other than those as may be prescribed for this purpose) (See additional point 1 on page no. 8.20).</td></tr>
<tr><td>10(17)</td><td>Daily allowance or constituency allowance of MPs and MLAs</td></tr>
<tr><td>10(32)</td><td>Exemption in respect of income of minor child included in the income of parent</td></tr>
<tr><td>10AA</td><td>Tax holiday for units established in SEZ</td></tr>
<tr><td>16</td><td>(i) Standard deduction under the head “Salaries”
(ii) Entertainment allowance
(iii) Professional tax</td></tr>
<tr><td>24(b)</td><td>Interest on loan in respect of self-occupied property</td></tr>
<tr><td>32(1)(iia)</td><td>Additional depreciation</td></tr>
<tr><td>35(1)(ii),(iia),(iii) or 35(2AA)</td><td>Deduction in respect of contribution to
- notified approved research association/ university/ college/ other institutions for scientific research [Section 35(1)(ii)]
- approved Indian company for scientific research [Section 35(1)(iia)]
- notified approved research association/ university/ college/ other institutions for research in social science or statistical research [Section 35(1)(iii)]</td></tr>
</table></td></tr>
</table>

		- An approved National laboratory/ university/ IIT/ specified person for scientific research undertaken under an approved programme [Section 35(2AA)]
	35AD	Investment linked tax incentives for specified businesses
	57(iia)	Deduction in respect of family pension
	80C to 80U	Deductions under Chapter VI-A (other than employers contribution towards NPS under section 80CCD(2) and deduction in respect of employment of new employees under section 80JJAA).

(2)	**CERTAIN LOSSES NOT ALLOWED TO BE SET-OFF:** While computing total income, set-off of any loss: a. carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (1) above; or b. under the head house property with any other head of income; would not be allowed.
(3)	**DEPRECIATION OR ADDITIONAL DEPRECIATION:** Depreciation u/s 32 is to be determined in the prescribed manner. Depreciation in respect of any block of assets entitled to more than 40%, would be restricted to 40% on the written down value of such block of assets. Additional depreciation u/s 32(1)(iia), however, cannot be claimed.
(4)	**EXEMPTION OR DEDUCTION FOR ALLOWANCES OR PERQUISITE:** While computing total income, any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being force in India would not be allowed.

ADDITIONAL POINTS:

1. An individual opting for the provisions of section 115BAC would be entitled for
   a. Travelling allowance (i.e., allowance granted to meet the cost of travel on tour or transfer);
   b. Daily allowance (i.e., allowance granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty);
   c. Conveyance allowance (i.e., allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit, where free conveyance is not provided by the employer); and
   d. Exemption in respect of transport allowance granted to an employee who is blind or deaf and dumb or orthopedically handicapped with disability of the lower extremities of the body to the extent of Rs. 3,200 p.m.
2. An individual, being an employee opting for section 115BAC, WOULD NOT be entitled for exemption of perquisite of free food and non-alcoholic beverages provided by an employer through paid vouchers

3. In case of an individual or HUF opting for section 115BAC, total income should be computed without set-off of any loss brought forward or depreciation from any earlier assessment year, where such loss or depreciation is attributable to any of the deductions listed in above [Such loss and depreciation would be deemed to have been already given effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year]

4. Where there is a depreciation allowance in respect of a block of asset from an earlier assessment year attributable to additional depreciation u/s 32(1)(iia), which has not been given full effect to prior to A.Y. 2021-22 and which is not allowed to be set-off in the A.Y.2021-22 due to exercise of option u/s 115BAC from that year, corresponding adjustment shall be made to the WDV of such block of assets as on 1.4.2020 in the prescribed manner i.e., the WDV as on 1.4.2020 will be increased by the unabsorbed additional depreciation **not allowed to be set-off.** .

Example: Let us consider the case of Mr. X, who carries on business of manufacturing of steel. He has unabsorbed depreciation as on 1.4.2020, which includes amount attributable to additional depreciation u/s 32(1)(iia) of P.Y.2019-20 or any earlier previous year in respect of block of plant and machinery. If he exercises option under section 115BAC for P.Y.2020-21 relevant to A.Y.2021-22, the amount so attributable to additional depreciation of earlier years remaining unabsorbed as on 1.4.2020 would not be eligible for set-off against current year income. Accordingly, the WDV of the block as on 1.4.2020 has to be increased by the said amount not allowed to be set-off.

3. **TIME LIMIT FOR EXERCISE OF OPTION:** The concessional rate would be applicable only if option is exercised in the prescribed manner:
    a. **In case of an individual or HUF having no income from business or profession:**
        i. Where such individual or HUF has no business income, the option has to be exercised along with the return of income to be furnished under section 139(1) for a previous year relevant to the assessment year. In effect, such individual or HUF can choose whether or not to exercise the option in each previous year.

        ii. He may choose to exercise the option in one year and not to exercise the option in another year.

    b. **In case of an individual or HUF having income from business or profession:**
        i. The option has to be exercised on or before the due date specified under section 139(1) for furnishing the return of income for any previous year and once such option is exercised, it would apply to subsequent assessment years.

        ii. The option can be withdrawn only once where it was exercised by the individual or HUF having business or profession income for a previous year other than the year in which it was exercised. Thereafter, the individual or HUF shall never be eligible to exercise option under this section, except where such individual or HUF ceases to have any business income in which case, option under (i) above shall be available.

4. **CONSEQUENCES FOR FAILURE TO SATISFY CONDITIONS MENTIONED IN Section 115BAC(2):** The following are the consequences for failure to satisfy the conditions mentioned above:
    a. **In case of an individual or HUF having no income from business or profession:**
        i. On failure to satisfy the conditions mentioned above in any previous year, the option exercised would be invalid in respect of the assessment year relevant to that previous year.

        ii. Consequently, the other provisions of the Income-tax Act, 1961 would apply as if the option had not been exercised for the assessment year relevant to that previous year.

    b. **In case of an individual or HUF having income from business or profession:**
        i. On failure to satisfy the conditions mentioned above in any previous year, the option exercised would be invalid in respect of the assessment year relevant to that previous year and subsequent assessment years.

        ii. Consequently, the other provisions of the Income-tax Act, 1961 would apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

5. **AMT liability not attracted:** Individuals or HUFs exercising option u/s 115BAC are not liable to alternate minimum tax u/s 115JC.

13. ADVANCE TAX, TAX DEDUCTION AT SOURCE AND INTRODUCTION TO TAX COLLECTION AT SOURCE

PART 1	**INTRODUCTION**
PART 2	**TAX DEDUCTED AT SOURCE [TDS]**
PART 3	**GENERAL POINTS OF TDS PROVISIONS**
PART 4	**MISCELLANEOUS PROVISIONS**
PART 5	**ADVANCE TAX**
PART 6	**TAX COLLECTION AT SOURCE**

PART 1 – INTRODUCTION

A. DEDUCTION OF TAX AT SOURCE AND ADVANCE PAYMENT [SECTION 190]

1. The total income of an assessee for the Previous year is taxable in the Relevant Assessment year.

   For example, the total income for the P.Y. 2022-23 is taxable in the A.Y. 2023-24. However, income-tax is recovered from the assessee in the previous year itself through:
   a. Tax deduction at source (TDS)
   b. Tax collection at source (TCS)
   c. Payment of Advance tax

2. Another mode of recovery of tax is from the employer through tax paid by him under section 192(1A) on the non-monetary perquisites provided to the employee.

3. These taxes are deductible from the total tax due from the assessee. The assessee, while filing his return of income, has to pay self-assessment tax under section 140A, if tax is due on the total income as per his return of income after adjusting, inter alia, TDS, TCS, relief of tax claimed under section 89, tax credit claimed to be set off in accordance with the provisions of section 115JD, any tax or interest payable according to the provisions of section 191(2) and advance tax.

B. DIRECT PAYMENT [SECTION 191]

1. Section 191 provides that in the following cases, tax is payable by the assessee directly:
   a. in the case of income in respect of which tax is not required to be deducted at source; and

b. income in respect of which tax is liable to be deducted but is not actually deducted.

2. In view of this provision, the proceedings for recovery of tax necessarily had to be taken against the assessee whose tax was liable to be deducted, but not deducted.

3. In order to overcome this difficulty, the Explanation to this section provides that if any person, including the principal officer of a company:

   a. Who is required to deduct tax at source or

   b. An employer paying tax on non-monetary perquisites under section 192(1A),

   does not deduct, or after deducting fails to pay such tax, or does not pay, the whole or part of the tax, then, such person shall be deemed to be an assessee-in-default.

   However, if the assessee himself has paid the tax, this provision will not apply.

4. In a case where the income of the assessee includes the value of any specified security or sweat equity shares allotted or transferred by the current employer, being an eligible start-up, free of cost or at concessional rate to the assessee, the income-tax on such income has to be paid by the assessee within 14 days from the EARLIEST of the following dates:

   a. After the expiry of 48 months from the END of the Relevant Assessment Year or
   b. From the Date of the Sale of such specified security or sweat equity share by the assessee or
   c. From the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity shares.

   [Section 191(2)]

   Note: Employer has to deduct tax on the above-mentioned date. Such tax has to deducted or paid on the basis of rates in force for the financial year in which said specified security or sweat equity share is allotted or transferred.

PART 2 – TAX DEDUCTED AT SOURCE [TDS]

A. SALARY [Section 192]

1. **Applicability of TDS under section 192**: This section casts an Obligation on EVERY PERSON responsible for paying any income chargeable to tax under the head 'Salaries' to deduct income-tax on the amount payable.

2. **Manner of deduction of tax:**

   a. **TDS @ Average Rate:** Such income-tax has to be calculated at the Average Rate of Income tax computed on the basis of the rates in force for the relevant financial year in which the payment is made, on the Estimated Total Income of the assessee. Therefore, the liability to deduct tax at source in the case of salaries arises only at the Time of Payment.

   However, in case an employee intends to opt for concessional rate of tax under section 115BAC and he intimates to the deductor, being his employer, of such intention, then, the employer shall compute his total income, and deduct tax thereon in accordance with the provisions of section 115BAC. If such intimation is not made by the employee, the employer shall deduct tax at source without considering the provision of section 115BAC of the Act.

   Average rate of income-tax: The rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income.

   b. **Tax on Non-Monetary Perks:** The concept of payment of tax on non-monetary perquisites has been provided in sections 192(1A) and (1B). These sections provide that the employer may pay this tax, at his option, in lieu of deduction of tax at source from salary payable to the employee. Such tax will have to be worked out at the average rate applicable to aggregate salary income of the employee and payment of tax will have to be made every month along with tax deducted at source on monetary payment of salary, allowances etc.

   c. **TDS on Allotment by Eligible Startup:** An employer, being an eligible start up, responsible for paying any income to the assessee by way of perquisite being any specified security or sweat equity shares allotted or transferred free of cost or at concessional rate to the assessee, has to deduct or pay, as the case may be, tax on the value of such perquisite provided to its employee within 14 days from the EARLIEST of the following dates:

      i. After the expiry of 48 months from the end of the relevant assessment year; or
      ii. From the date of the sale of such specified security or sweat equity share by the assessee; or
      iii. From the date of the assessee ceasing to be the employee of the employer who allotted such shares

Such tax has to deducted or paid on the basis of rates in force for the financial year in which said specified security or sweat equity share is allotted or transferred. (Similar point written above)

d. More than One Employer: In cases where an assessee is simultaneously employed under more than one employer or the assessee takes up a job with another employer during the financial year after his resignation or retirement from the services of the former employer, he may furnish the details of the income under the head "Salaries" due or received by him from the other employer, the tax deducted therefrom and such other particulars to his current employer. Thereupon, the subsequent employer should take such information into consideration and then deduct the tax remaining payable in respect of the employee's remuneration from both the employers put together for the relevant financial year.

e. In respect of Salary payments to employees of Government or to employees of companies, co-operative societies, local authorities, universities, institutions, associations or bodies, deduction of tax at source should be made after allowing relief under section 89(1), where eligible.

f. A tax payer having salary income in addition to other income chargeable to tax for that financial year, may send to the employer, the following particulars of:

i. Such other income and of any tax deducted under any other provision

ii. LOSS, if any, under the head 'Income from house property'.

The employer shall take the above particulars into account while calculating tax deductible at source.

g. It is also provided that Except in cases where loss from house property has been adjusted against salary income, the tax deductible from salary should not be reduced as a consequence of making the above adjustments.

3. **Furnishing of Statement of Particulars of perquisites or profits in lieu of salary by employer to employee**: Sub-section (2C) provides that the employer shall furnish to the employee, a statement in **Form No. 12BA** giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof. The statement shall be in the prescribed form and manner.

   a. This requirement is applicable only where the salary paid/payable to an employee **Exceeds Rs. 1,50,000**.

   b. For Other Employees, the particulars of perquisites/profits in lieu of salary shall be given in Form 16 itself.

4. **Circular issued by CBDT:** Every year, the CBDT issues a circular giving details and direction to all employers for the purpose of deduction of tax from salaries payable to the employees during the relevant financial year. These instructions should be followed.

5. **Requirement to obtain evidence/ proof/ particulars of claims from the employee by the employer**: Sub-section (2D) casts responsibility on the person responsible for paying any income chargeable under the head "Salaries" to obtain from the assessee, the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner, for the purposes of –
   a. Estimating income of the assessee; or
   b. Computing tax deductible under section 192(1).

Rule 26C requires furnishing of evidence of the following claims by an employee to the person responsible for making payment under section 192(1) in **Form No.12BB** for the purpose of estimating his income or computing the tax deduction of tax at source:

S. No.	Nature of Claim	Evidence or particulars
1.	House Rent Allowance	Name, Address and PAN of the landlord(s) where the aggregate rent paid during the previous year **exceeds Rs. 1 lakh**.
2.	Leave Travel Concession or Assistance	Evidence of expenditure
3.	Deduction of Interest under the head "Income from house property"	Name, address and PAN of the **Lender**
4.	Deduction under Chapter VI-A	Evidence of investment or expenditure.

B. PREMATURE WITHDRAWAL FROM EMPLOYEES PROVIDENT FUND [Section 192A]

1. COMPLIANCE WITH RULE 9 OF PART A OF THE FOURTH SCHEDULE: CERTAIN CONCERNS

a. EMPLOYERS CAN MANAGE THEIR OWN PROVIDENT FUND AS PER EPF & MP ACT,1952

Under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952), certain specified employers are required to comply with the Employees Provident Fund Scheme, 1952 (EPFS). However, these employers are also permitted to establish and manage their own private provident fund (PF) scheme subject to fulfillment of certain conditions.

b. RECOGNISED PROVIDENT FUND

The provident funds established under a scheme framed under EPF & MP Act, 1952 or Provident Fund exempted under section 17 of the said Act and recognised under the Income-tax Act, 1961 are termed as Recognised Provident fund (RPF) under the Act.

c. EXEMPTION FROM INCOME TAX

Part A of the Fourth Schedule to the Income-tax Act, 1961 contains the provisions relating to RPFs. Under the existing provisions of **Rule 8 of Part A** of the Fourth Schedule, the withdrawal of accumulated balance by an employee from the RPF is Exempt from taxation.

d. TAXABILITY ON WITHDRAWAL

For the purpose of discouraging pre-mature withdrawal and promoting long term savings, if the employee makes withdrawal before continuous service of five years (Other Than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.) and does not opt for transfer of accumulated balance to the new employer, the withdrawal would be subject to tax.

e. TIME TO DEDUCT TDS

Rule 9 of Part A of the Fourth Schedule provides the manner of computing the tax liability of the employee in respect of such pre- mature withdrawal. In order to ensure collection of tax in respect of such pre-mature withdrawals, **Rule 10** of Part A of the Fourth Schedule casts responsibility on the trustees of the RPF to deduct tax as computed in Rule 9 **AT THE TIME OF PAYMENT.**

f. COMPUTATION OF TDS

Rule 9 provides that the tax on withdrawn amount is required to be calculated by re-computing the tax liability of the years for which the contribution to RPF has been made by Treating the Same as Contribution to Unrecognized Provident Fund. The trustees of private

provident fund schemes, are generally a part of the employer group and hence, have access to or can easily obtain the information regarding taxability of the employee making pre-mature withdrawal for the purposes of computation of the amount of tax liability under Rule 9. However, it may not always be possible for the trustees of EPFS to get the information regarding taxability of the employee such as year-wise amount of taxable income and tax payable for the purposes of computation of the amount of tax liability under Rule 9.

2. APPLICABILITY AND RATE OF TDS

Section 192A provides for deduction of tax **@10%** on premature taxable withdrawal from employees provident fund scheme. Accordingly, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax **@10% AT THE TIME OF PAYMENT.**

3. NON-APPLICABILITY OF TDS UNDER SECTION 192A

No tax deduction is to be made under this section, if the amount of such payment or aggregate amount of such payment to the payee is **LESS THAN Rs. 50,000**.

4. DEDUCTION AT MAXIMUM MARGINAL RATE IN CASE OF NON-SUBMISSION OF PAN

Any person entitled to receive any amount on which tax is deductible under this section has to furnish his PAN to the person responsible for deducting such tax. In case he fails to do so, tax would be deductible at the **Maximum Marginal Rate @ 42.744%.**

C. INTEREST ON SECURITIES [Section 193]

1. PERSON RESPONSIBLE FOR DEDUCTION OF TAX AT SOURCE AND RATE OF TDS:

a. This section casts responsibility on **Every Person** responsible for paying to a **Resident** any income by way of Interest on Securities.

b. Such person is vested with the responsibility to deduct income-tax at the rates in force from the amount of interest payable.

c. The rate at which tax is deductible under section 193 is **10%**, both in the case of domestic companies and non-corporate resident assessees.

2. TIME OF TAX DEDUCTION AT SOURCE

Tax should be deducted at the time of credit of such income to the account of the payee (OR) At the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is EARLIER.

Where any income by way of interest on securities is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and tax has to be deducted at source. The account to which such interest is credited may be called "Interest Payable account" or "Suspense account" or by any other name.

3. NON-APPLICABILITY OF TDS UNDER SECTION 193:

a.	On National Development Bonds.
b.	On 7-year National Savings Certificates (IV Issue).
c.	On debentures issued by any institution or authority or any public sector company or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as notified by the Central Government.

Accordingly, the Central Government has, vide Notification No. 27 & 28/2018, dated 18-06-2018, notified-

"Power Finance Corporation Limited 54EC Capital Gains Bond" issued by Power Finance Corporation Limited {PFCL} and

"Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" issued by Indian Railway Finance Corporation Limited {IRFCL}

Thus, no tax is required to be deducted at source on interest payable on "Power Finance Corporation Limited 54EC Capital Gains Bond" and "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond". The benefit of this exemption would, however, be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs PFCL/IRFCL by registered post within a period of sixty days of such transfer.

d.	On any security of the Central Government or a State Government **Note** – It may be noted that tax has to be deducted at source in respect of interest payable on 8% Savings (Taxable) Bonds, 2003, or 7.75% Savings (Taxable) Bonds, 2018, only if such interest payable exceeds Rs. 10,000 during the financial year.
e.	On any debentures (whether listed or not listed on a recognized stock exchange) issued by the company in which the public are substantially interested to a resident individual or HUF. However, (i) the interest should be paid by the company by an account payee cheque; (ii) the amount of such interest or the aggregate thereof paid or likely to be paid during the financial year by the company to such resident individual or HUF should not exceed Rs. 5,000.
f.	On securities to LIC, GIC, subsidiaries of GIC or any other insurer, provided – (i) the securities are owned by them or (ii) they have full beneficial interest in such securities.
g.	On any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.

D. DIVIDENDS [Section 194]

1. APPLICABILITY OF TDS UNDER SECTION 194

The Principal Officer of a **Domestic Company** is required to deduct tax on dividend distributed or paid by it to its **Resident Shareholders**.

The provision of tax deduction at source under section 194, therefore, applies only to dividend distributed or paid to resident shareholders.

2. Rate of TDS

The rate of deduction of tax in respect of such dividend is **10%.**

3. Time of tax deduction at source

The deduction of tax has to be made before making any payment by any mode in respect of any dividend or before making any distribution or payment to a resident shareholder of any amount deemed as dividend under section 2(22)(a)/(b)/(c)/(d)/(e).

4. NON-APPLICABILITY OF TDS

a. No tax is to deducted in case of a shareholder, being **an individual**, where –

i. the dividend is paid by any mode other than cash. and

ii. the amount of such dividend or aggregate of dividend distributed or paid or likely to be distributed or paid during the financial year by the company to such shareholder does not exceed **Rs. 5,000.**

b. The TDS provisions will **Not** apply to such dividend credited or paid to:

i. LIC, GIC, subsidiaries of GIC or any other insurer provided the shares are owned by them, or they have full beneficial interest in such shares

ii. any other person as may be notified by the Central Government.

E. INTEREST OTHER THAN INTEREST ON SECURITIES [Section 194A]

1. APPLICABILITY OF TDS UNDER SECTION 194A

a. This section applies only to interest, other than "interest on securities", credited or paid by assessees other than individuals or Hindu undivided family.

b. However, an individual or Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceed Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession during the immediately preceding financial year is liable to deduct tax at source under this section. These provisions apply only to interest paid or credited to residents.

2. TIME OF TAX DEDUCTION AT SOURCE:

a. The deduction of tax must be made:
    a. At the time of crediting such interest to the account of the payee or
    b. At the time of its payment in cash or by any other mode,

    Whichever is EARLIER.

b. Where any such interest is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and the tax has to be deducted at source. The account to which such interest is credited may be called "Interest Payable account" or "Suspense account" or by any other name.

(Same as 193)

Note: Clarification via circular "regarding deduction of tax at source on payment of interest on time deposits under section 194A by banks following Core-branch Banking Solutions (CBS) software". It has been clarified that Explanation to section 194A is not meant to apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software. It has been further clarified that since no constructive credit to the depositor's/payee's account takes place while calculating interest on time deposits on daily or monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only. In such cases, tax shall be deducted:

a. At source on accrual of interest at the end of financial year or
b. At periodic intervals as per practice of the bank or
c. As per the depositor's/ payee's requirement or
d. On maturity or on encashment of time deposits

Whichever event takes place EARLIER and whenever the aggregate of amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

Note - The time for making the payment of tax deducted at source would reckon from the date of credit of interest made constructively to the account of the payee.

3. RATE OF TDS

The rate at which the deduction is to be made is given in Part II of the First Schedule to the Annual Finance Act. The rate at which tax is to be deducted is **10%** both in the case of non-corporate resident assessees and domestic companies.

4. NON-APPLICABILITY OF TDS UNDER SECTION 194A

No deduction of tax shall be made in the following cases:

a. If the aggregate amount of interest **paid or credited** during the financial year does not exceed **Rs. 5,000.**

However, the above limit will be **Rs. 40,000** where the PAYER is a –

i. Banking Company.
ii. a Co-operative society engaged in Banking business.
iii. Post office and interest is credited or paid in respect of any deposit under notified schemes.

In respect of (i), (ii) and (iii) above, the limit is **Rs. 50,000**, in case of **PAYEE, being a senior citizen.**

The limit will be calculated with respect to income credited or paid by a branch of a banking company or a co-operative society or a public company in case of:

i. time deposits with a banking company
ii. time deposits with a co-operative society carrying on the business of banking. and
iii. deposits with housing finance companies, Provided:
    d. They are public companies formed and registered in India
    e. Their main object is to carry on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

The threshold limit will be reckoned with reference to the total interest credited or paid by the banking company or the co-operative society or the public company, as the case may be, (and not with reference to each branch), where such banking company or co-operative society or public company has adopted core banking solutions.

b. Interest paid or credited by a firm to any of its partners.

c. Interest paid or credited in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf.

d. Interest income credited or paid in respect of deposits (other than time deposits made on or after 1.7.1995) with a bank to which the Banking Regulation Act, 1949 applies;

e. Income paid or credited **by** a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society.

f. Interest income credited or paid in respect of –

(i) deposits with primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank.

(ii) deposit (other than time deposits made on or after 1.7.1995) with a co-operative society [other than cooperative society or bank referred to in (i)] engaged in carrying on the business of banking.

From a combined reading of (e) and (f), it can be inferred that a cooperative bank other than mentioned in (i) above is required to deduct tax at source on payment of interest on time deposit. However, it is not required to deduct tax from the payment of interest on time deposit, to a depositor, being a co-operative society.

However, a cooperative society referred to in (e) or (f) is **liable to deduct tax if** :

(i) The total sales, gross receipts or turnover of the co-operative society **exceeds Rs. 50 crore** during the financial year **immediately preceding the financial year** in which interest is credited or paid.

AND

(ii) The amount of interest or the aggregate amount of interest credited or paid, or is likely to be credited or paid, during the financial year is more than Rs. 50,000 in case of payee being a senior citizen and Rs. 40,000, in any other case.

Thus, such co-operative society is required to deduct tax under section 194A on interest credited or paid by it –

a. to its member or to any other co-operative society; or
b. in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank or
c. in respect of deposits with a co-operative bank other than a co-operative society or bank engaged in carrying on the business of banking

g. Interest income credited or paid **by** the Central Government under any provision of the Income-tax Act, 1961.

h. Interest paid or credited **TO** the following entities:

(i) Banking Companies, or Co-Operative Societies Engaged in the Business of Banking, including co-operative land mortgage' banks;

(ii) Financial Corporations established under any Central, State or Provincial Act.
(iii) The Life Insurance Corporation of India.
(iv) Companies and co-operative societies carrying on the business of insurance.
(v) Unit Trust of India; and
(vi) Notified institution, association, body or class of institutions, associations or bodies (These have been notified by the Central Government for this purpose, National Skill Development Fund and Housing and Urban Development Corporation Ltd. (HUDCO), New Delhi).

i. Income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal

j. Income PAID by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year **does not exceed Rs. 50,000**.

k. income paid or payable in relation to a zero coupon bond issued on or after 1.6.2005 by :
- An infrastructure capital company
- Infrastructure capital fund
- Infrastructure debt fund
- Public sector company or scheduled bank.

Notes:

1. The expression "**time deposits**" [for the purpose of (4) (a), (d) and (f) above] means the deposits, including recurring deposits, repayable on the expiry of fixed periods.

2. Senior citizen means an individual resident in India who is of the age of 60 years or more at any time during the relevant previous year.

5. POWER TO THE CENTRAL GOVERNMENT TO ISSUE NOTIFICATION

The Central Government is empowered to issue notification for non-deduction of tax at source or deduction of tax at a lower rate, from such payment to such person or class of persons, specified in that notification.

CIRCULARS AND NOTIFICATIONS

I. Applicability of provisions for deduction of tax at source under section 194A on interest on fixed deposit made in the name of the Registrar General of Court or the depositor of the Fund on directions of Courts [Circular No.23/2015, dated 28-12-2015]

Section 194A stipulates deduction of tax at source (TDS) on interest other than interest on securities if the aggregate of amount of such interest credited or paid to the account of the payee during the financial year exceeds the specified amount.

In the case of UCO Bank in Writ Petition No. 3563 of 2012 and CM No. 7517/2012 vide judgment dated 11/11/2014, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also Unascertainable. The Delhi High Court, thus, held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No.8/2011.

The CBDT has accepted the aforesaid judgment. Accordingly, it is clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

II. Deduction of tax at source on interest income accrued to minor child, where both the parents have deceased [Notification No. 05/2017, dated 29.05.2017]

Under Rule 31A(5) of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of, inter alia, the statements and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements in the manner so specified.

The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), specified that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

III. Deduction of tax at source on interest on deposits made under Capital Gains Accounts Scheme, 1988 where depositor has deceased [Notification No. 08/2017, dated 13.09.2017]

The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), vide this notification, specified that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has **deceased**:
TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported **against PAN of the depositor**, and

TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported **against PAN of the legal heir**,

Unless a declaration is filed under Rule 37BA (2) that credit for tax deducted has to be given to another person.

(REFER ILLUSTRATION 1)

F. WINNINGS FROM LOTTERIES, CROSSWORD PUZZLES AND HORSE RACES [Sections 194B and 194BB]

1. RATE OF TAX ON CASUAL INCOME

Any income of a casual and non-recurring nature of the type of winnings from lottery, crossword puzzle, card game and other game of any sort, races including horse races, etc. will be charged to income-tax at a flat rate of **30%** [Section 115BB].

2. TDS ON WINNING FROM LOTTERIES, CROSSWORD PUZZLES ETC.

According to the provisions of section 194B, EVERY PERSON responsible for paying to any person, whether **resident or non-resident**, any income by way of winnings from lottery or crossword puzzle or card game and other game of any sort, is required to deduct income-tax therefrom at the rate of **30%** if the amount of payment **exceeds Rs. 10,000.**

Winnings by way of jackpot would also fall within the scope of section 194B.

3. CASES WHERE WINNINGS ARE PARTLY IN KIND AND PARTLY IN CASH

In a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

4. PERSON RESPONSIBLE FOR DEDUCTION OF TAX UNDER SECTION 194BB

Section 194BB casts responsibility on the following persons to deduct tax at source:

- **a.** a bookmaker; or
- **b.** a person to whom a license has been granted by the Government under any law for the time being in force:
  - for horse racing in any race course; or
  - for arranging for wagering or betting in any race course.

5. THRESHOLD LIMIT AND RATE OF TDS UNDER SECTION 194BB

- **a.** The obligation to deduct tax at source under section 194BB arises when the abovementioned persons make payment to any person of any income by way of winnings from any horse race in **excess of Rs. 10,000.** The rate applicable for deduction of tax at source is **30%.**
- **b.** Tax will have to be deducted at source from winnings from horse races even though the winnings may be paid to the person concerned in instalments of less than **Rs.** 10,000**.** Similarly, in cases where the book-maker or other person responsible for paying the winnings, credits such winnings and debits the losses to the individual account of the punter, tax has to be deducted **@30% on winnings** before set-off of losses. Thereafter, the net amount, after deduction of tax and losses, has to be paid to the winner.

6. MEANING OF THE EXPRESSION "HORSE RACE"

In the context of the provisions of section 194BB, the expression 'any horse race' used therein must be taken to include, wherever the circumstances so necessitate, more than one horse race.

G. PAYMENTS TO CONTRACTORS AND SUB-CONTRACTORS [Section 194C]

1. APPLICABILITY OF TDS UNDER SECTION 194C

Section 194C provides for deduction of tax at source from the payment made to **resident** contractors and sub-contractors. Tax has to be deducted at source under section 194C by any person responsible for paying any sum to a resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the:

- **a.** the Central Government or any State Government; or
- **b.** any local authority; or
- **c.** any statutory corporation; or
- **d.** any company; or
- **e.** any co-operative society; or
- **f.** any statutory authority dealing with housing accommodation; or
- **g.** any society registered under the Societies Registration Act, 1860; or
- **h.** any trust; or
- **i.** any university established under a Central, State or Provincial Act and an institution declared to be a university under the UGC Act, 1956; or
- **j.** any firm; or
- **k.** any Government of a foreign State or foreign enterprise or any association or body established outside India; or
- **l.** any person, being an individual, HUF, AOP or BOI, who has total sales, gross receipts or turnover from the business or profession carried on by him exceeding Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor.

2. TIME OF DEDUCTION

Tax has to be deducted at the EARLIEST of the following

- At the time of payment of such sum or
- At the time of credit of such sum to the account of the contractor

Where any such sum is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and the tax has to be deducted at source. The account to which such sum is credited may be called "Suspense account" or by any other name.

However, NO tax has to be deducted at source in respect of payments made by individuals/HUF to a contractor exclusively **for personal purposes**.

3. RATE OF TDS

The rate of TDS under section 194C on payments to contractors would be:

- 1%, where the payee is an individual or HUF

- 2% in respect of other payees.

The same rates of TDS would apply for both contractors and sub-contractors.

The applicable rates of TDS under section 194C are as follows :

Payee	TDS rate
Individual HUF contractor/sub-contractor	1%
Other than individual/HUF contractor/ sub-contractor	2%
Contractor in transport business (if PAN is furnished)	Nil
Sub-contractor in transport business (if PAN is furnished)	Nil

4. THRESHOLD LIMIT FOR DEDUCTION OF TAX AT SOURCE UNDER SECTION 194C

No deduction will be required to be made if the consideration for the contract **does not exceed Rs. 30,000.** However, to prevent the practice of composite contracts being split up into contracts valued at less than **Rs.** 30,000 to avoid tax deduction, it has been provided that tax will be required to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor

- Exceeds **Rs. 30,000** in a single payment

  Or
- Exceeds **Rs. 1,00,000** in the aggregate during a financial year.

Therefore, even if a single payment to a contractor does not exceed Rs. 30,000, TDS provisions under section 194C would be attracted where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid to the contractor during the financial year exceeds Rs. 1,00,000.

(Refer Illustration 2)

5. DEFINITION OF "WORK"

Work **includes**:

a. Advertising;
b. Broadcasting and telecasting (including production of programmes for such broadcasting or telecasting).
c. Carriage of goods or passengers by any mode of transport other than by railways.
d. Catering.
e. Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person related to the customer in such manner as defined u/s 40A(2)(b), (the customer would be in the place of assessee and the associate would be the related person(s) mentioned in that section).
   - In this case, tax shall be deducted on the invoice value excluding the value of material purchased from such customer or its associate, if such value is **mentioned separately** in the invoice. Where the material component has not

been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value.

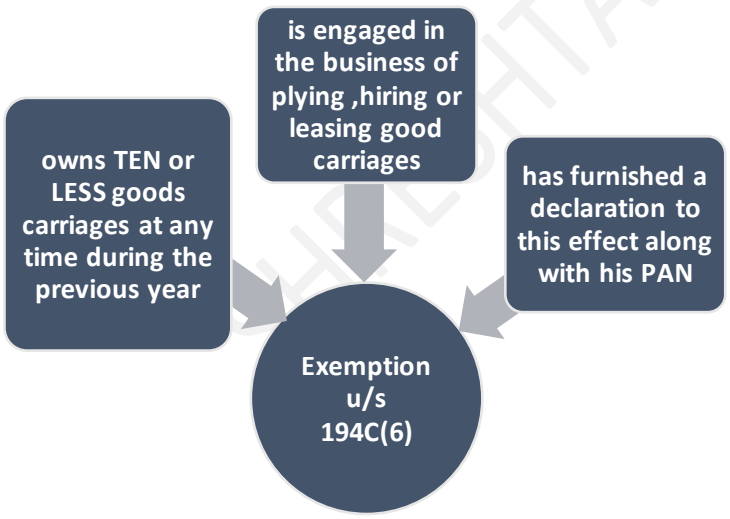
Work SHALL **NOT INCLUDE**:

Manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer or associate of such customer, as such a contract is a contract for 'sale'. However, this will not be applicable to a contract which does not entail manufacture or supply of an article or thing (e.g. a construction contract).

6. **NON-APPLICABILITY OF TDS u/s 194C(6)**

No deduction is required to be made from the sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor, during the course of the business of plying, hiring or leasing goods carriages, if he furnishes his PAN to the deductor.

In order to convey the true intent of law, it has been clarified that this relaxation from the requirement to deduct tax at source shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor, who fulfills the following three conditions cumulatively –



Meaning of Goods carriage:

Goods carriage means:

- any motor vehicle constructed or adapted for use solely for the carriage of goods; or
- any motor vehicle not so constructed or adapted, when used for the carriage of goods.

The term "motor vehicle" does **not include** Having less than four wheels and with engine capacity not exceeding 25cc as well as vehicles running on rails or vehicles adapted for use in a factory or in enclosed premises.

NOTE

a. The deduction of income-tax will be made from sums paid for carrying out any work or for supplying labour for carrying out any work. In other words, the section will apply only in relation to 'works contracts' and 'labour contracts' and will not cover contracts for sale of goods.

b. Contracts for rendering professional services by lawyers, physicians, surgeons, engineers, accountants, architects, consultants etc., cannot be regarded as contracts for carrying out any "work" and, accordingly, no deduction of income-tax is to be made from payments relating to such contracts under this section. (Separate provisions for fees for professional services have been made under section 194J).

7. Deduction of tax at source on payment of gas transportation charges by the purchaser of natural gas to the seller of gas [Circular No. 9/2012 dated 17.10.2012]

In case the Owner/Seller of the natural gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in section 194C. Therefore, in such circumstances, the provisions of Chapter XVIIB are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. Further, the use of different modes of transportation of gas by Owner/Seller will not alter the position.

However, transportation charges paid to a third party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and tax shall be deductible at source on such payment to the third party at the applicable rates.

8. CIRCULARS AND NOTIFICATIONS

Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting [Circular No. 04/2016, dated 29-2-2016]

The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' liable for tax deduction at source under section 194C or a contract for 'professional or technical services' liable for tax deduction at source under section 194J.

In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

(i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster.

(ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house.

In case of situation (i) , Copyright of the content/programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term work' in section 194C and, therefore, it is subject to TDS under that section.

In case of situation (ii), there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.

(REFER ILLUSTRATION 3)

H. INSURANCE COMMISSION [Section 194D]

1. APPLICABILITY OF TDS UNDER SECTION 194D

Section 194D casts responsibility on any person responsible for paying **to a resident** any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including the business relating to the continuance, renewal or revival of policies of insurance) to deduct tax at source.

2. RATE OF TDS	3. TIME OF DEDUCTION	4. THRESHOLD LIMIT
Such person is required to deduct income-tax at the rate of **5%.**	The deduction is to be made at the earliest of: – At the time of the credit of the income to the account of the payee or – At the time of making the payment (by whatever mode) to the payee	The tax under this section has to be deducted at source only if the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year to the account of the payee **exceeds Rs. 15,000.**

I. PAYMENT IN RESPECT OF LIFE INSURANCE POLICY [Section 194-DA]

1. TAXABILITY OF SUM RECEIVED UNDER A LIFE INSURANCE POLICY

Under section 10(10D), any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy is exempt subject to fulfillment of conditions specified under the said section.

Consequently, the sum received under a life insurance policy which does not fulfill the conditions specified under section 10(10D) is taxable.

2. RATE OF TDS

For ensuring a proper mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempt under section 10(10D),
Section 194DA provides for deduction of tax at the rate of **5%** on the amount of income comprised therein (After deducting the amount of insurance premium paid by the resident assessee from the total sum received).

3. THRESHOLD LIMIT

Tax deduction is required only if the payment or aggregate payment of under a life insurance policy, including the sum allocated by way of bonus in a financial year to an assessee is **Rs. 1,00,000 or more.** This is for alleviating the compliance burden on the small tax payers.

(REFER ILLUSTRATION 4)

J. PAYMENTS TO NON-RESIDENT SPORTSMEN OR SPORTS ASSOCIATIONS [Section 194E]

1. APPLICABILITY

This section provides for deduction of tax at source in respect of any income referred to in section 115BBA payable to a **non-resident sportsman** (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution.

2. RATE OF TDS

Deduction of tax at source **@20% (plus surcharge, if applicable, and health and education cess@4%)** should be made by the person responsible for making the payment.

3. TIME OF DEDUCTION OF TAX

Deducted at the **earliest** of the following:

- At the time of credit of such income to the account of the payee or
- At the time of payment thereof in cash or by issue of a cheque or draft or by any other mode

4. INCOME REFERRED TO IN SECTION 115BBA

a. Income received or receivable by a non-resident sportsman who is not a citizen of India (including an athlete) by way of-

- Participation in any game or sport in India (However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein). or
- Advertisement. or
- Contribution of articles relating to any game or sport in India in newspapers, magazines, or journals.

b. Guarantee amount paid or payable to a non-resident sports association or institution in relation to any game or sport played in India. However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein.

c. Income received or receivable by a non-resident entertainer (who is not a citizen of India) from his performance in India.

(REFER ILLUSTRATION 5)

K. PAYMENTS IN RESPECT OF DEPOSITS UNDER NATIONAL SAVINGS SCHEME ETC. [Section 194EE]

1. RATE OF TDS

Rate of TDS The person responsible for paying to any person any amount **from** National Savings Scheme Account shall deduct income-tax thereon at the **rate of 10% at the time of payment**.

2. Threshold limit

No such deduction shall be made where the amount of payment or the aggregate amount of payments in a financial year is **less than Rs. 2,500.**

3. Non-applicability of TDS

Under section 194EE The provisions of this section shall not apply to the payments made to the heirs of the assessee.

L. REPURCHASE OF UNITS BY MUTUAL FUND OR UNIT TRUST OF INDIA [Section 194F]

A person responsible for paying to any person any amount on account of repurchase of units covered under section 80CCB (2) shall deduct tax at source at the rate of **20%** at the time of payment of such amount.

M. COMMISSION ON THE SALE OF LOTTERY TICKETS [Section 194G]

1. APPLICABILITY, RATE OF TDS AND THRESHOLD LIMIT

Under section 194G, the person responsible for paying to any person any income by way of commission, remuneration or prize (by whatever name called) on lottery tickets in an amount **exceeding Rs. 15,000** shall deduct income-tax thereon at the rate of **5%**.

2. TIME OF DEDUCTION OF TAX

Such deduction should be made at the earliest of the following

- At the time of credit of such income to the account of the payee OR
- At the time of payment of such income by cash, cheque, draft or any other mode.

Where any such income is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

N. COMMISSION OR BROKERAGE [Section 194H]

1. APPLICABILITY AND RATE OF TDS

a. ANY PERSON **other than an individual or HUF**, who is responsible for paying any income by way of commission (other than insurance commission) or brokerage to a **resident** shall deduct income tax at the rate of **5%.**

b. However, an individual or HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed Rs. 1 crore in case of business and Rs. 50

lakhs in case of profession during the financial year immediately preceding financial year in which such commission or brokerage is credited or paid, is liable to deduct tax at source.

2. TIME OF DEDUCTION

Such deduction should be made at the earliest of the following

- At the time of credit of such income to the account of the payee OR
- At the time of payment of such income by cash, cheque, draft or any other mode.

Even where income is credited to some other account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit to the account of the payee for the purposes of this section.

3. THRESHOLD LIMIT

No deduction is required if the amount of such income or the aggregate of such amount does **not exceed Rs. 15,000** during the financial year.

4. MEANING OF "COMMISSION OR BROKERAGE"

"Commission or brokerage" **includes** any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered, or for any services in the course of buying or selling of goods, or in relation to any transaction relating to any asset, valuable article or thing, other than securities.

5. NON-APPLICABILITY OF TDS u/s 194H

a. This section is not applicable to professional services.

"Professional Services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as notified by the CBDT for the purpose of compulsory maintenance of books of account under section 44AA.

b. Further, there would be no requirement to deduct tax at source on commission or brokerage payments **by** BSNL or MTNL to their public call office (PCO) franchisees.

6. CIRCULAR

Applicability of TDS provisions on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements [Circular No. 05/2016, dated 29-2-2016]

1. There are 2 types of payments involved in the advertising business:
    a. Payment by client to the advertising agency, and
    b. Payment by advertising agency to the television channel/newspaper company

2. The fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' for attracting the provisions of section 194H.

3. The CBDT has clarified that NO TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

(REFER ILLUSTRATION 6)

O. RENT [Section 194-I]

1. APPLICABILITY & RATE OF TDS

Any person other than individual or HUF, who is responsible for paying to a resident any income by way of rent, shall deduct income tax at the rate of:

- 2% in respect of rent for plant, machinery or equipment;
- 10% in respect of other rental payments (Rent for use of any land or building, including factory building, or land appurtenant to a building, including factory building, or furniture or fittings).

However, an individual or HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession during the financial year immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source.

2. TIME OF DEDUCTION

Such deduction should be made at the earliest of the following

- At the time of credit of such income to the account of the payee OR
- At the time of payment of such income by cash, cheque, draft or any other mode.

Where any such income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section will apply accordingly.

3. THRESHOLD LIMIT

No deduction need be made where the amount of such income or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of the payee **does not exceed Rs. 2,40,000.**

4. MEANING OF "RENT "

Rent means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any:

- Land; or
- building (including factory building); or
- land appurtenant to a building (including factory building); or
- machinery; or
- plant; or
- equipment; or
- furniture; or
- fittings,

whether or not any or all of the above are owned by the payee.

5. CIRCULARS:

A. Applicability of TDS provisions under section 194-I to payments made by the customers on account of cooling charges to the cold storage owners

CBDT Circular No.1/2008 dated 10.1.2008 provides clarification regarding applicability of provisions of section 194-I to payments made by the customers on account of cooling charges to the cold storage owners.

The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only **incidental in nature**. The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provisions of 194-I are not applicable to the cooling charges paid by the customers of the cold storage.

However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194-C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.

B. No requirement to deduct tax at source under section 194-I on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator [Circular No. 21/2017, dated 12.06.2017]

Section 194-I requires deduction of tax at source at specified percentage on any income payable to a resident by way of rent. Explanation to this section defines the term "rent" as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any (a) land; or (b) building; or (c) land appurtenant to a building; or (d) machinery; (e) plant; (f) equipment (g) furniture; or (h) fitting, whether or not any or all of them are owned by the payee.

The primary requirement of any payment to qualify as rent is that the payment must be for the use of land and building and mere incidental/minor/ insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so section 194-I will not get attracted.

Accordingly, the CBDT has, vide this circular, clarified that the provisions of section 194-I shall **not** be applicable on payment of PSF by an airline to Airport Operator.

C. Applicability of TDS provisions under section 194-I to service tax component of rental income

CBDT Circular No.4/2008 dated 28.4.2008 provides clarification on deduction of tax at source (TDS) on service tax component of rental income under section 194-I.

As per the provisions of 194-I, tax is deductible at source on income by way of rent paid to any resident. Further, rent has been defined in 194-I (See definition above)

Service tax paid by the tenant doesn't partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore, tax deduction at source under section 194-I would be required to be made on the amount of rent paid/payable without including the service tax.

Note- It is possible to take a view that the clarification given in Circular No.4/2008 would apply in the GST regime also.

Clarification regarding TDS on Goods and Services Tax (GST) component comprised in payments made to residents [Circular No. 23/2017 dated 19.07.2017]

The CBDT had, vide Circular No. 1/2014 dated 13.01.2014, clarified that wherever in terms of the agreement or contract between the payer and the payee, the service tax component 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 service tax component.

In order to harmonize the same treatment with the new system for taxation of services under the GST regime w.e.f. 01.07.2017, the CBDT has, vide this circular, 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.

Further, for the purposes of this Circular, any reference to "service tax" in an existing agreement or contract which was entered into prior to 01.07.2017 shall be treated as

"GST on services" with respect to the period from 01.07.2017 onward till the expiry of such agreement or contract.

D. Clarification on applicability of TDS provisions of section 194-I on lumpsum lease premium paid for acquisition of long-term lease [Circular No.35/2016, dated 13-10-2016]

The issue of whether or not TDS under section 194-I is applicable on 'lump sum lease premium' or 'one-time upfront lease charges" paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by the CBDT.

Accordingly, the CBDT has, vide this Circular, clarified that lump sum lease premium or one-time upfront lease charges, which are **not adjustable** against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I. Therefore, such payments are not liable for TDS under section 194-I.

P. PAYMENT ON TRANSFER OF CERTAIN IMMOVABLE PROPERTY OTHER THAN AGRICULTURAL LAND [Section 194-IA]

1. APPLICABILITY AND RATE

Every transferee responsible for paying any sum as consideration for transfer of immovable property (Land (other than agricultural land) or building or part of building) to a resident transfer shall deduct tax:

At the rate of 1% of such sum or the stamp duty value of such property, whichever is HIGHER.

"Agricultural land", for the purpose of this section, means rural agricultural land.

In other words, transfer of urban agricultural land, will attract the provision of section 194-IA, if the consideration or the stamp duty value of such land**,** is Rs. 50 lakhs or more.

2. TIME OF DEDUCTION

Such deduction should be made at the EARLIEST of the following

- At the time of credit of such income to the account of the resident transferor OR
- At the time of payment of such sum to a resident transferor.

3. THRESHOLD LIMIT

Tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property and the stamp duty value of such property, are both**, less than Rs. 50 lakhs.**

4. NON-APPLICABILITY OF TDS u/s 194-IA

Since tax deduction at source for compulsory acquisition of immovable property is covered under section 194LA, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

5. NO REQUIREMENT TO OBTAIN TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IA.

6. MEANING OF "CONSIDERATION FOR TRANSFER OF IMMOVABLE PROPERTY "

Consideration for transfer of immovable property **include** all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

(REFER ILLUSTRATION 7)

Q. PAYMENT OF RENT BY CERTAIN INDIVIDUALS OR HINDU UNDIVIDED FAMILY [Section194-IB]

1. APPLICABILITY AND RATE OF TDS

Section 194-IB requires **any person, being individual or HUF**, other than those individual or HUF whose total sales, gross receipts or turnover from the business or profession exceeds Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession in the financial year immediately preceding the financial year in which such rent was credited or paid, responsible for paying to a resident any income by way of rent, to deduct income tax @**5%.**

2. THRESHOLD LIMIT

Under this section, tax has to be deducted at source only if the amount of such rent **exceeds Rs. 50,000** for a month or part of a month during the previous year.

3. TIME OF DEDUCTION

This deduction is to be made at the time of credit of such rent, for the **last month** of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

4. NO REQUIREMENT TO OBTAIN TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IB.

5. MEANING OF "RENT"

Rent **means** any payment, by whatever name called, under any lease, sublease, tenancy or any other agreement or arrangement for the use of any land or building or both.

6. DEDUCTION NOT TO EXCEED RENT FOR LAST MONTH

Where the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be

[Section 206AA providing for deduction of tax at source at a higher rate is discussed at length later on in this chapter]

(REFER ILLUSTRATION 8)

R. PAYMENT UNDER SPECIFIED AGREEMENT [Section 194-IC]

1. APPLICABILITY AND RATE

This section casts responsibility on **any person** responsible for paying to a **resident** any sum by way of consideration, not being consideration in kind, under a specified agreement under section 45(5A), to deduct income-tax at the rate of **10%.**

2. TIME OF DEDUCTION

Such deduction should be made at the earliest of the following

- At the time of credit of such income to the account of the payee OR
- At the time of payment thereof in cash or by issue of cheque or draft or by any other mode

3. NON-APPLICABILITY OF SECTION 194-IA

Since tax deduction at source for specified agreement under section 45(5A) is covered under section 194-IC, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

4. MEANING OF SPECIFIED AGREEMENT

Specified agreement under section 45(5A):

- It means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both.
- The consideration, in this case, is a share, being land or building or both in such project; Part of the consideration may also be in cash.

S. FEES FOR PROFESSIONAL OR TECHNICAL SERVICES [Section 194J]

1. Applicability and Rate of TDS

Every person other than an individual or a HUF, who is responsible for paying to a resident any sum by way of:

- **a.** fees for professional services; or
- **b.** fees for technical services; or
- **c.** any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company (Directors Remuneration) or
- **d.** Royalty, or
- **e.** Non-compete fees referred to in section 28(va)

Shall deduct tax at source at the rate of –

a. **2%** in case of fees for technical services (not being professional services) or royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films; and
b. **10%** in other cases.

However, in case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source @**2%**

2. TIME OF DEDUCTION

Such deduction should be made at the earliest of the following

- At the time of credit of such income to the account of the payee OR
- At the time of payment thereof in cash or by issue of cheque or draft or by any other mode

Where such sum is credited to any account, whether called suspense account or by any other name, in the books of accounts of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and tax has to be deducted accordingly.

3. THRESHOLD LIMIT

No tax deduction is required if the amount of fees or the aggregate of the amounts of fees credited or paid or likely to be credited or paid during a financial year

does not exceed

a. **Rs. 30,000** in the case of fees for professional services
b. **Rs. 30,000** in the case of fees for technical services
c. **Rs. 30,000** in the case of royalty
d. **Rs. 30,000** in the case of non-compete fees referred to in section 28(va).

The limit of Rs. 30,000 under section 194J is applicable separately for fees for professional services, fees for technical services, royalty and non-compete fees referred to in section 28(va).

It implies that if the payment to a person towards "each of the above is less than Rs. 30,000", **no tax** is required to be deducted at source, even though the aggregate payment or credit exceeds Rs. 30,000.

However, there is no such exemption limit for deduction of tax on any remuneration or fees or commission payable to director of a company [**Director Remuneration - NO Limit**].

(REFER ILLUSTRATION 9)

4. NON-APPLICABILITY OF TDS UNDER SECTION 194J

a. An individual or a Hindu undivided family is not liable to deduct tax at source.

Note: An individual or HUF, whose total sales, gross receipts or turnover from business or profession carried by him exceeds Rs. 1 crore in case of business or Rs. 50 lakhs in case of profession in the financial year immediately preceding the financial year in which the **fees for professional services or fees for technical services** is credited or paid is required to deduct tax on such fees.

Note - It may be noted that since this provision requires such individuals/HUFs to deduct tax at source only in respect of fees for professional services or fees for technical services, it can be inferred that individuals and HUFs are **NOT** required to deduct tax at source under section 194J on royalty and non-compete fees.

b. Further, an individual or Hindu Undivided Family, shall not be liable to deduct income-tax on the sum payable by way of fees for professional services, in case such sum is credited or paid exclusively for personal purposes.

5. MEANING OF "PROFESSIONAL SERVICES"

a. Professional services mean services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA or of this section.

b. Other professions notified for the purposes of section 44AA are as follows:
   i. Profession of "authorised representatives".
   ii. Profession of "film artist".
   iii. Profession of "company secretary".
   iv. Profession of "information technology".

c. The CBDT has notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:
   i. Sports Persons,
   ii. Umpires and Referees,
   iii. Coaches and Trainers,
   iv. Team Physicians and Physiotherapists,
   v. Event Managers,

vi. Commentators,
vii. Anchors and
viii. Sports Columnists.

Accordingly, the requirement of TDS as per section 194J would apply to all the aforesaid professions. The term "profession", as such, is of a very wide import.

Note: All other professions would be outside the scope of section 194J.

E.g., This section will not apply to professions of teaching, sculpture, painting etc. unless they are notified.

6. MEANING OF "FEES FOR TECHNICAL SERVICES"

a. **INCLUDES:** Fees for technical services **means** any consideration (including any lump sum consideration) for rendering of any of the following services:
   i. Managerial services;
   ii. Technical services;
   iii. Consultancy services;
   iv. Provision of services of technical or other personnel.

b. **EXCLUDES:** It is expressly provided that the term 'fees for technical services' will not include following types of consideration:
   i. Consideration for any construction, assembly, mining or like project, or
   ii. Consideration which is chargeable under the head 'Salaries'.

7. TPA's LIABLE TO DEDUCT TAX UNDER SECTION 194J ON PAYMENT TO HOSPITALS ON BEHALF OF INSURANCE COMPANIES

The CBDT has, through **Circular** No.8/2009 dated 24.11.2009, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.

8. CONSIDERATION FOR USE OR RIGHT TO USE OF COMPUTER SOFTWARE IS ROYALTY WITHIN THE MEANING OF SECTION 9(1)(VI)

a. As per section 9(1)(vi), any income payable by way of royalty in respect of any right, property or information is deemed to accrue or arise in India.

The term "royalty**" means** consideration for transfer of all or any right in respect of certain rights, property or information.

As per **Explanation 4 to section 9(1)(vi)**, the consideration for use or right to use of computer software would be royalty.

This Explanation clarifies that transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Consequently, the provisions of tax deduction at source under section 194J would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty as per the provisions of the Income-tax Act, 1961.

Note - The Central Government has, vide **Notification** No.21/2012 dated 13.6.2012, effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J.

Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if-

(1) The software is acquired in a **subsequent transfer without any modification** by the transferor.
(2) Tax has been deducted under section 194J on payment for any previous transfer of such software; and
(3) The transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

T. INCOME IN RESPECT OF UNITS [Section 194K]

1. APPLICABILITY AND RATE OF TAX

Section 194K provides for deduction of tax at source **@10%** by any person responsible for paying to a resident any income in respect of –

- **a.** Units of a Mutual Fund
- **b.** Units from Administrator of the specified undertaking
- **c.** Units from the specified company

2. TIME OF DEDUCTION

Such deduction should be made at the EARLIEST of the following

- At the time of credit of such income to the account of the payee OR
- At the time of payment by any other mode

Where any income in respect of units of a mutual fund, Administrator of the specified undertaking or the specified company is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and tax has to be deducted at source. The account to which such income is credited may be called "Suspense account" or by any other name.

3. NON-APPLICABILITY OF SECTION 194K

No tax is required to be deducted if:

- **a.** the amount of such income or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during a financial year **does not exceed Rs. 5,000**. or
- **b.** the income is of the **nature of capital gains**.

U. PAYMENT OF COMPENSATION ON ACQUISITION OF CERTAIN IMMOVABLE PROPERTY [Section 194LA]

1. APPLICABILITY & RATE OF TDS

a. Section 194LA provides for deduction of tax at source by a person responsible for paying to a resident any sum in the nature of:

- **a.** Compensation or the enhanced compensation or
- **b.** The consideration or the enhanced consideration

on account of compulsory acquisition, under any law for the time being in force, of any immovable property (**other than agricultural land**).

"Agricultural land" for the purpose of this section means any land situated in India including urban agricultural land AND Rural Agricultural Land.

b. The amount of tax to be deducted is **10%**

2. TIME OF DEDUCTION

The tax should be deducted at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is EARLIER.

3. THRESHOLD LIMIT

No tax is required to be deducted where the amount of such payment or, as the case may be, the aggregate amount of such payments **to a resident** during the financial year **does not exceed Rs. 2,50,000.**

V. PAYMENT MADE BY AN INDIVIDUAL OR A HUF FOR CONTRACT WORK OR BY WAY OF COMMISSION OR BROKERAGE OR FEES FOR PROFESSIONAL SERVICES [Section 194M]

1. APPLICABILITY AND RATE OF TDS

Section 194M provides for deduction of tax at source **@5% by an individual or a HUF** responsible for paying any sum during the financial year to any resident –

a. for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract; or
b. by way of commission (not being insurance commission referred to in section 194D) or brokerage; or
c. by way of fees for professional services.

It may be noted that only individuals and HUFs (other than those who are required to deduct income-tax as per the provisions of section 194C or 194H or 194J) are required to deduct tax in respect of the above sums payable during the financial year to a **resident.**

2. TIME OF DEDUCTION

Such deduction should be made at the earliest of the following

- At the time of credit of such or
- At the time of payment of such sum

3. THRESHOLD LIMIT

No tax is required to be deducted where such sum or, as the case may be, aggregate amount of such sums credited or paid to a resident during the financial year **does not exceed Rs. 50,00,000**

4. NON-APPLICABILITY OF TDS UNDER SECTION 194M

An individual or a Hindu undivided family is not liable to deduct tax at source u/s 194M if –

a. They are required to deduct tax at source u/s 194C for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract
(Means an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession during the immediately preceding financial year and such amount is not exclusively credited or paid for personal purposes of such individual or HUF).

b. They are required to deduct tax at source u/s 194H on commission (not being insurance commission referred to in section 194D) or brokerage

(Means an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession during the immediately preceding financial year).

c. They are required to deduct tax at source u/s 194J **on fees for professional services**.

(Means an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession during the immediately preceding financial year and such amount is not exclusively credited or paid for personal purposes of such individual or HUF).

5. NO REQUIREMENT TO OBTAIN TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194M.

6. COMMON NOTE FOR 194 IA, 194 IB, 194M:

Time And Mode of Payment of Tax Deducted at Source to the Credit of Central Government, Furnishing Challan-Cum-Statement and TDS CERTIFICATE [Rules 30, 31a & 31]

a. Such sum deducted u/s 194-IA, 194-IB and 194M 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, 26QC and 26QD, respectively [Rule 30].

b. The amount so deducted must be deposited to the credit of the Central Government by electronic remittance within the above-mentioned time limit, into RBI, SBI or any authorized bank [Rule 30].

c. Every person responsible for deduction of tax u/s 194-IA, 194-IB and 194M shall also **furnish** to the PDGIT (Systems) (in case of section 194- IB and 194M), DGIT (Systems) or any person authorized by them, **a challan-cum-statement** in Form No.26QB, 26QC and 26QD, respectively, electronically within 30 days from the end of the month in which the deduction is made [Rule 31A].

d. Every person responsible for deduction of tax u/s 194-IA, 194-IB and 194M shall furnish the TDS certificate in Form No.16B, 16C and 16D, respectively**, to the payee within 15 days** from the due date for furnishing the challan-cum-statement in Form No.26QB, 26QC and 26QD, respectively, under Rule 31A, after generating and downloading the same from the web portal specified by the PDGIT (Systems) (in case of section 194-IB and 194M) or DGIT (Systems) or the person authorized by him [Rule 31]

Note: For the meaning of the terms "Work", "Professional services" and "Commission or brokerage" refer [Section 194C], [Section 194J] ,[Section 194H], respectively.

(REFER ILLUSTRATION 10)

W. TDS ON CASH WITHDRAWAL [Section 194N]

1. APPLICABILITY AND RATE OF TDS

Section 194N provides that every person, being

- a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred under section 51 of that Act)
- a co-operative society engaged in carrying on the business of banking or
- a post office

who is responsible for paying **any sum**, being the amount or aggregate of amounts, as the case may be, **in CASH exceeding Rs. 1 crore during the previous year,** to any person from one or more accounts maintained by such recipient-person with it, shall deduct tax at source **@ 2% of such sum**

2. TIME OF DEDUCTION

This deduction is to be made **AT THE TIME OF PAYMENT** of such sum.

3. MODIFICATION IN RATE OF TDS AND THRESHOLD LIMIT OF WITHDRAWAL FOR RECIPIENT WHO HAS NOT FURNISHED RETURN OF INCOME FOR LAST 3 YEARS

If the recipient has **not furnished the returns of income** for all the 3 assessment years relevant to the 3 previous years, for which the time limit of file return of income under section 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made, The sum shall mean the amount or the aggregate of amounts, as the case may be, in cash > Rs. 20 lakhs during the previous year, and the tax shall be deducted at the rate of –

- **2%** of the sum, where the amount or aggregate of amounts, as the case may be, being paid in cash **> Rs. 20 lakhs but ≤ Rs. 1 crore**
- **5%** of the sum, where the amount or aggregate of amounts, as the case may be, being paid in cash **> Rs. 1 crore.**

However, the Central Government is empowered to specify, with the consultation of RBI, by notification, the recipient in whose case this provision shall not apply or apply at reduced rate, subject to the satisfaction of the conditions specified in such notification.

4. NON-APPLICABILITY OF TDS UNDER SECTION 194N

Liability to deduct tax at source under section 194N shall not be applicable to any payment made **to**:

- the Government
- any banking company or co-operative society engaged in carrying on the business of banking or a post-office
- any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the RBI guidelines
- any white label ATM operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the RBI under the Payment and Settlement Systems Act, 2007

The Central Government may specify, with the consultation of RBI, by notification, the recipient in whose case section 194N shall not apply or apply at reduced rate, subject to the satisfaction of the conditions specified in such notification. Accordingly, the Central Government has, after consultation with the Reserve Bank of India (RBI), specified –

1. **Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's)** maintaining a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATM's) operated by such WLATMO's and the WLATMO have furnished a certificate every month to the bank certifying that the bank account of the CRA's and the franchise agents of the WLATMO's have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's.

2. **Commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any Law relating to Agriculture Produce Market** of the concerned State, who has intimated to the banking company or co-operative society or post office his account number through which he wishes to withdraw cash in excess of Rs. 1 crore in the previous year along with his Permanent Account Number (PAN) and the details of the previous year and has certified to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of Rs. 1 crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce and the banking company or co-operative society or post office has ensured that the PAN quoted is correct and the commission agent or trader is registered with the APMC, and for this purpose necessary evidences have been collected and placed on record.

3. The authorised dealer and its franchise agent and sub-agent and Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent.
   Such persons should maintain a separate bank account from which withdrawal is made only for the purposes of –
   (i) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or
   (ii) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI;

   The exemption from the requirement to deduct tax u/s 194N would be available only if a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the RBI have been adhered to.

X. TDS ON CERTAIN PAYMENT BY E-COMMERCE OPERATOR TO E-COMMERCE PARTICIPANT [Section 194-O]

1. APPLICABILITY AND RATE OF TDS

Section 194-O provides that where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform, such e-commerce operator is liable to deduct tax at source **@1%** of the gross amount of such sales or services or both

2. TIME OF DEDUCTION

Such deduction should be made at the earliest of the following

- At the time of credit of amount of such sale or services or both to the account an e-commerce participant OR
- At the time of payment thereof to such e-commerce participant by any mode

3. DEEMED CREDIT

Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, would be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant.

Accordingly, such payment would be included in the gross amount of such sales or services for the purpose of deduction of income-tax under this section [Explanation to section 194-O(1)].

4. NON-APPLICABILITY OF TDS UNDER SECTION 194-O

No tax is required to be deducted under section 194-O in case of any sum credited or paid to an e-commerce participant, **being an individual or HUF,** where the gross amount of such sale or services or both during the previous year **does not exceed Rs. 5 lakh**

AND such e-commerce participant has furnished his PAN/ Aadhaar number to e-commerce operator [Section 194-O(2)].

5. NON-APPLICABILITY OF TDS UNDER ANY OTHER SECTION

A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to tax deduction under this section on account of the exemption discussed in point (4) above, would not be liable to tax deduction at source under any other provision of this Chapter.

However, this exemption from TDS under this Chapter would not apply to any amount or aggregate of amounts received or receivable by an ecommerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in point (1) above [Section 194-O(3)].

6. POWER OF CBDT TO ISSUE GUIDELINES

In case any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty with the approval of the Central Government.

Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the e-commerce operator [Section 194-O(4) and (5)].

Applicability on payment gateway (GUIDELINES)

In exercise of the power to issue guidelines, CBDT has, with the approval of Central Government, vide **Circular no. 17/2020 dated 29.9.2020,** issued the guideline for removing certain difficulties. One such difficulty is the applicability of section 194-O twice, in cases where in e-commerce transactions, the payments are generally facilitated by payment gateways. Consequently, it is possible that there may be applicability of section 194-O twice i.e., once on the main ecommerce operator who is facilitating sale of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate, a buyer buys goods worth Rs. 1 lakh on e-commerce website "XYZ". He makes payment of Rs. 1 lakh through digital platform of "ABC".

On these facts, liability to deduct tax under section 194-O may fall on both "XYZ" and "ABC".

In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O on a transaction, if the tax has been deducted by the e commerce operator under section 194- O, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-O on Rs. 1 lakh, "ABC" will not be required to deduct tax under section 194-O on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from XYZ" regarding deduction of tax.

7. PERSON RESPONSIBLE FOR PAYING

For the purpose of this section, **e-commerce operator shall be deemed** to be the person responsible for paying to e-commerce participant [Section 194-O(6)].

8. MEANING OF CERTAIN TERMS

S. No.	Term	Meaning
(i)	Electronic commerce	The supply of goods or service or both, including digital products, over digital or electronic network.
(ii)	E-commerce operator	A person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

(iii)	E-commerce participant	A person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.
(iv)	Services	It includes fees for technical services and fees for professional services as defined in section 194J.

Y. DEDUCTION OF TAX BY A SPECIFIED BANK IN CASE OF SPECIFIED SENIOR CITIZEN [Section 194P]

1. APPLICABILITY AND RATE OF TDS

Section 194P requires deduction of tax at source on the basis of **rates in force by a specified bank,** being a banking company as notified by the Central Government, **on the total income of specified senior citizen** for the relevant assessment year, computed **after giving effect to –**

- deduction allowable under Chapter VI-A; **and**
- rebate allowable under section 87A

Accordingly, the CBDT has, vide Notification No. 98/2021 dated 2.9.2021, notified specified bank to mean a banking company which is a scheduled bank and has been appointed as agents of RBI under section 45 of the RBI Act, 1934.

2. EXEMPTION FROM FILING RETURN OF INCOME

The specified senior citizen is exempted from filing his return of income for the assessment year relevant to the previous year in which the tax has been deducted under this section.

3. MEANING OF CERTAIN TERMS

S. No.	Term	Meaning
(i)	Specified bank	A banking company as notified by the Central Government
(ii)	Specified senior citizen	An individual, being a resident in India, who a. is of the age of 75 years or more at any time during the previous year; b. is having pension income [Also, he should have no other income except interest income received or receivable from any account maintained by such individual in the **same** specified bank in which he is receiving his pension income]; and c. has furnished a declaration to the specified bank containing such particulars, in the prescribed form and verified in the prescribed manner.

The CBDT has, vide Notification No. 99/2021 dated 2.9.2021, provided that on furnishing of such declaration in the prescribed form by the specified senior citizen, the specified bank has to compute the total income of such specified senior citizen for the relevant assessment year and deduct income-tax on such total income on the basis of the rates in force,

- After giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A.
- The effect to the deduction allowable under Chapter VI-A has to be given based on the evidence furnished by the specified senior citizen during the previous year.

(REFER ILLUSTRATION 11)

Z. DEDUCTION OF TAX AT SOURCE ON PURCHASE OF GOODS [Section 194Q]

1. APPLICABILITY AND RATE OF TDS

Section 194Q requires any person, being a **BUYER** who is responsible for paying any sum to any **resident-seller** for purchase of goods of the value or aggregate of such value exceeding Rs. 50 lakhs in a previous year, to deduct tax at source at **0.1% of such sum EXCEEDING Rs. 50 lakhs** [Section 194Q(1)].

2. TIME OF DEDUCTION

Such deduction should be made at the earliest of the following

- At the time of credit of such sum to the account of the resident-seller OR
- At the time of payment thereof by any mode

Where such sum is credited to any account in the books of account of the person liable to pay such income, such credit of income is deemed to be credit of such income to the account of the payee and tax has to be deducted at source. The account to which such sum is credited may be called "Suspense account" or by any other name.

3. POWER OF THE CBDT TO ISSUE GUIDELINES

In case of any difficulty arises in giving effect to the provisions of this section, the CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty.

Every guideline issued by the CBDT shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to deduct tax. [Section 194Q(3) and (4)].

4. NON-APPLICABILITY OF TDS UNDER SECTION 194Q

Tax is **not** required to be deducted under this section in respect of a transaction on which –

a. tax is deductible under any of the provisions of this Act.

b. tax is collectible under the provisions of section 206C, other than section 206C(1H)

In case of a transaction to which both section 206C(1H) and section 194Q applies, tax is required to be deducted under section 194Q.

5. MEANING OF BUYER

Buyer means a person whose **total sales, gross receipts or turnover** from the business carried on by him **exceed Rs. 10 crores** during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

However, buyer does not include a person as notified by the Central Government for this purpose, subject to fulfillment of the stipulated conditions.

6. GUIDELINES

In exercise of the power to issue guidelines, the CBDT has, with the approval of the Central Government, vide circular no. 13/2021 dated 30.6.2021 and circular no. 20/2021 dated 25.11.2021, issued the following guidelines. These guidelines at some places also removes difficulties in implementing the provisions of section 194-O and section 206C(1H).

GUIDELINES

1. ADJUSTMENT FOR GST, VARIOUS STATE LEVIES AND TAXES OTHER THAN GST, PURCHASE RETURNS

Vide Circular No. 17/2020 dated 29.9.2020, it was clarified that no adjustment on account of GST is required to be made for collection of tax under section 206C(1H), since the collection is made with reference to receipt of amount of sale consideration.

However, the situation is different so far as TDS is concerned. It has been clarified in Circular No.23/2017 dated 19th July 2017 as under –

"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 under Chapter XVII-B on the amount paid or payable without including such 'GST on services' component. GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax."

Accordingly, with respect to TDS u/s 194Q, when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted u/s 194Q on the amount credited **without including such GST.**

However, if the tax is deducted on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future.

Similarly, in case of purchase of goods which are not covered within the purview of GST, when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of VAT/ Sales tax/ Excise duty/ CST, as the case may be, has been indicated separately in the invoice, then the tax is to be deducted under section 194Q on the amount credited without including such VAT/ Sales tax/ Excise duty/ CST, as the case may be. However, if the tax is deducted on payment basis, if it is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify the payment with VAT/ Sales tax/ Excise duty/ CST component to be invoiced in future.

Further, with respect to **Purchase Return** relating to GST products or non GST products, tax is required to be deducted at the time of payment or credit, whichever is earlier. Thus, before purchase return happens, the tax must have already been deducted u/s 194Q on that purchase. If that is the case and against this purchase return, the money is refunded by the seller, then, this tax deducted may be adjusted against the next purchase against the same seller.

No adjustment is required if the purchase return is replaced by the goods by the seller as in that case the purchase on which tax was deducted under section 194Q has been completed with goods replaced.

2. CAN NON-RESIDENT BE A BUYER UNDER SECTION 194Q?

The provisions of section 194Q shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India.

3. SHOULD TAX BE DEDUCTED WHEN THE SELLER IS A PERSON WHOSE INCOME IS EXEMPT?

The provisions of section 194Q would **not** apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

Similarly, with respect to section 206C(1H), it is clarified that the provisions thereof would not apply to sale of goods to a person, being a buyer, who as a person is exempt from income-tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (like RBI Act, ADB Act etc.).

The above clarifications would not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt.

4. SHOULD TAX BE DEDUCTED ON ADVANCE PAYMENT?

Since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q shall apply to advance payment made by the buyer to the seller.

5. WOULD PROVISIONS OF SECTION 194Q APPLY TO BUYER IN THE YEAR OF INCORPORATION?

Under section 194Q, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding Rs. 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall **not** apply in the year of incorporation.

6. WOULD PROVISIONS OF SECTION 194Q APPLY TO BUYER IF THE TURNOVER FROM BUSINESS IS RS. 10 CRORE OR LESS?

As regards whether the provisions of section 194Q would apply to a buyer who has turnover or gross receipts exceeding Rs. 10 crore but total sales or gross receipts or turnover from

business is Rs. 10 crore or less, it is clarified that, for the purposes of section 194Q, a buyer is required to have total sales or gross receipts or turnover **from the business carried on by him** exceeding Rs. 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. **Hence, the sales or gross receipts or turnover from business carried on by him must exceed Rs. 10 crore. His turnover or receipts from non-business activity is not to be counted for this purpose.**

7. APPLICABILITY OF SECTION 194Q IN CASES WHERE EXEMPTION HAS BEEN PROVIDED UNDER SECTION 206C(1A)

Section 206C(1A) provides that notwithstanding anything contained in section 206C(1), no tax is to be collected in case of a buyer, who is a resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration to the effect that the goods referred to in section 206C(1) are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

As per the provisions of section 206C(1H), tax is to be collected in respect of sale of goods other than the goods which have not been covered under section 206C(1) or section 206C(1F) or section 206C(1G). In case of goods which are covered under the provisions of section 206C(1) but exempted under section 206C(1A), tax will not be collectible under either section 206C(1) or section 206C(1H) as the provisions of section 206C(1H) categorically exclude the goods which are covered under section 206C(1).

The provisions of section 194Q does not apply in respect to those transactions where tax is collectible under section 206C [except sub-section (1H) thereof].

Since by virtue of section 206C(1A), the tax is not required to be collected for goods covered under section 206C(1), in such cases, the provisions of section 194Q will apply and the buyer shall be liable to deduct tax under the said section if the conditions specified therein are fulfilled.

8. APPLICABILITY OF THE PROVISIONS OF SECTION 194Q IN CASE OF DEPARTMENT OF GOVERNMENT NOT BEING A PUBLIC SECTOR UNDERTAKING OR CORPORATION

As per the provisions of section 194Q, for a person to be considered as a buyer, following conditions are required to be fulfilled:

(a) Such person shall be carrying out a business/ commercial activity;
(b) The total sales, gross receipts or turnover from such business/ commercial activity shall be more than Rs. 10 crore during the financial year immediately preceding the financial year in which goods are being purchased by such person.

In case of any Department of the Government which is not carrying out any business or commercial activity,
the primary requirement for being considered as a 'buyer' would not be fulfilled.
Accordingly, such an organisation would not be considered as 'buyer' for the purposes of section 194Q and would not be liable to deduct tax on the goods so purchased by them.

However, if the said department is carrying on a business/commercial activity, the provision of section 194Q would apply subject to the fulfillment of other conditions.

As regards whether any department of the Government will be considered as a "seller" for the purpose of deduction of tax under section 194Q,

Central Government or State Government shall not be considered as "seller" and no tax is to be deducted by the buyer, in cases where any Department of Central or State Government are seller of goods.

Any other person, such as a Public sector Undertaking or corporation established under Central or Stale Act or any other such body, authority or entity, shall be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.

9. CROSS APPLICATION OF SECTION 194-O, SECTION 206C(1H) AND SECTION 194Q

Clarification of how section 194-O, section 206C(1H) and section 194Q apply on the same transaction.

Under section 194-O(3), a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall **not** be liable to tax deduction at source under any other provision of Chapter XVII of the Act. Under the second proviso to section 206C(1H), provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provisions of this Act on the goods purchased by him from the seller and has deducted such tax.

Under section 194Q(5), the provisions of this section would **not** apply to a transaction on which-

(i) tax is deductible under any of the provisions of this Act; and
(ii) tax is collectible under the provisions of section 206C, other than a transaction on which section 206C(1H) applies

After conjoint reading of all these provisions, it is clarified that:

(i) If tax has been deducted by the e-commerce operator on a transaction u/s 194-O [including transactions on which tax is not deducted on account of section 194-O(2)], that transaction shall not be subjected to tax deduction u/s 194Q.
(ii) Though section 206C(1H) provides exemption from TCS if the buyer has deducted tax at source on goods purchased by him, to remove difficulties, it is clarified that this exemption would also cover a situation where, instead of the buyer, the e-commerce operator has deducted tax at source on that transaction of sale of goods by seller to buyer through e-commerce operator.
(iii) If a transaction is both within the purview of section 194-O as well as section 194Q, tax is required to be deducted u/s 194-O and not u/s 194Q.
(iv) Similarly, if a transaction is both within the purview of section 194-O as well as section 206C(1H), tax is required to be deducted u/s 194-O. The transaction shall come out of the

purview of section 206C(1H) after tax has been deducted by the e-commerce operator on that transaction.

(v) Once the ecommerce operator has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction.

(vi) It is clarified that here primary responsibility is on e-commerce operator to deduct the tax u/s 194-O and that responsibility cannot be condoned if the seller has collected the tax u/s 206C(1H). This is for the reason that the rate of TDS u/s 194-O is higher than rate of TCS u/s 206C(1H).

(vii) If a transaction is both within the purview of section 194Q as well as section 206C(1H), then, tax is required to be deducted u/s 194Q. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the buyer on that transaction. Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C (1H) on the same transaction. However, if, for any reason, tax has been collected by the seller u/s 206C(1H), before the buyer could deduct tax u/s 194Q on the same transaction, such transaction would not be subjected to tax deduction again by the buyer. This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and section 206C(1H).

(REFER ILLUSTRATION 12)

AA. DEDUCTION OF TAX AT SOURCE ON BENEFIT OR PERQUISITE IN RESPECT OF BUSINESS OR PROFESSION [Section 194R] [w.e.f. 1.7.2022]

1. APPLICABILITY AND RATE OF TDS

Section 194R requires **any person** who is responsible for providing, **to a resident**, any benefit or perquisite whether convertible into money or not, **arising from business** or the exercise of a **profession**, by such resident, to ensure before providing such benefit or perquisite, as the case may be, to such resident, that tax has been deducted in respect of such benefit or perquisite **at 10% of the value or aggregate of value of such benefit.**

2. CASES WHERE BENEFIT OR PERQUISITE IS WHOLLY IN KIND OR PARTLY IN KIND AND PARTLY IN CASH

In a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite.

3. NON-APPLICABILITY OF TDS UNDER SECTION 194R

No tax is required to be deducted under section 194R in the following cases-

- In case of a resident where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year **does not exceed Rs. 20,000**. or
- In case of an individual or HUF, whose total sales, gross receipts or turnover from business or profession does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by such person.

4. POWER OF CBDT TO ISSUE GUIDELINES

a. In case any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty with the previous approval of the Central Government.
b. Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person providing any such benefit or perquisite.

5. MEANING OF "PERSON RESPONSIBLE FOR PROVIDING"

Person responsible for providing means the person providing such benefit or perquisite.
In case of a company, it means the company itself including the principal officer thereof.

Guidelines under section 194R of the Income-tax Act, 1961 [Circular no. 12/2022 dated 16.6.2022 and Circular no. 18/2022 dated 13.9.2022]:

Question 1: Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under section 28(iv), before deducting tax under section 194R?

Answer No. The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under section 28(iv). The amount could be taxable under any other section like section 41(1) etc. Section 194R casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source @10%. There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.

Question 2: Is it necessary that the benefit or perquisite must be in kind for section 194R to operate?

Answer Tax under section 194R is required to be deducted whether the benefit or perquisite is in cash or in kind.

First proviso to section 194R(1) clearly indicates the intent of legislature that there could also be situations where benefit or perquisite is in cash or the benefit or perquisite is in kind or partly in cash and partly in kind. Thus, section 194R clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.

Question 3: Is there any requirement to deduct tax under section 194R, when the benefit or perquisite is in the form of capital asset?

Answer As has been stated in answer to question no 1, there is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable.

The asset given as benefit or perquisite may be capital asset in general sense of the term like car, land etc. but in the hands of the recipient it is benefit or perquisite and has accordingly been held to be taxable. In any case, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient. Thus, the deductor is required to deduct tax under section 194R in all cases where benefit or perquisite (of whatever nature) is provided.

If loan settlement/ waiver by a bank is to be treated as benefit/ perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R apply in such a situation?

The amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 28(iv) relating to value of any benefit or perquisite, arising from business or exercise of profession.1

However, it has been clarified, vide Circular No. 18/2022 dated 13.9.2022, that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by the following would not be subjected to tax deduction at source under section 194R:

(i) Public Financial Institution

(ii) Scheduled Bank

(iii) Cooperative bank (other than a primary agricultural credit society)

(iv) Primary co-operative Agricultural and Rural Development Bank

(v) State Financial Corporation

(vi) State Industrial Investment Corporation being a Government company, engaged in the business of providing long-term finance for industrial projects;

(vii) Deposit taking Non-Banking Financial Company

(viii) Systemically Important Non-deposit Taking Non-Banking Financial Company

(ix) Public company engaged in providing long term finance for construction or purchase of houses in India for residential purpose and which is registered in accordance with the guidelines/ direction issued by the National Housing Bank formed under National Housing Bank Act 1987;

(x) Registered Asset Reconstruction Companies

This clarification is only for the purposes of section 194R. The treatment of such settlement/ waiver in the hands of the person who had got benefitted by such waiver would not be impacted by this clarification. Taxability of such settlement/ waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act.

Question 5: How is the valuation of benefit/perquisite required to be carried out?

Answer: The valuation would be based on fair market value of the benefit or perquisite except in following cases:

	Situation	**Value for such benefit/perquisite**
(i)	The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient	Purchase price
(ii)	The benefit/perquisite provider manufactures such items given as benefit/perquisite	The price that it charges to its customers for such items

It has been further clarified that GST would not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R.

Question 6: Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?

Answer: Whether this is benefit or perquisite will depend upon the facts of the case.

In case of benefit or perquisite being a product like car, mobile, outfit, cosmetics etc. and if the product is returned to the manufacturing company after using for the purpose of rendering service, then it will not be treated as a benefit/perquisite for the purposes of section 194R.

However, if the product is retained then it would be in the nature of benefit/perquisite and tax is required to be deducted accordingly under section 194R.

Question 9: Section 194R provides that if the benefit/ perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?

Answer: The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax. The tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. This would be then required to be reported in TDS return along with challan number. This year Form 26Q has included provisions for reporting such transactions.

In the alternative, as an option to remove difficulty if any, the benefit provider may deduct the tax under section 194R and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit under section 194R. In the Form 26Q he will need to show it as tax deducted on benefit provided.

Company "A" gifts a car to its dealer "B" and deducted tax on this benefit under section 194R. Dealer "B" uses this car in his business. Will he get deduction for depreciation in calculating his income under the head "profits and gains of business or profession"?

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that once Company "A" has deducted tax on gifting of car in accordance with section 194R (or released the car after dealer "B" showed him payment of tax on such benefit) and dealer "B" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 shall be the amount of benefit included by dealer "B" as income in his income-tax return. Hence, dealer "B" can get depreciation on fulfilment of other conditions for claiming depreciation.

Question 10: Section 194R would come into effect from 1st July 2022. It provides that the provision of this section does not apply where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to a resident during the financial year does not exceed Rs. **20,000. It is not clear how this limit of** Rs. **20,000 is to be computed for the Financial Year 2022-23?**

Answer: It has been clarified that,-

(i) Since the threshold of Rs. 20,000 is with respect to the financial year, calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R has to be

counted from 1st April, 2022. Hence, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds Rs. 20,000 during the financial year 2022-23 (including the period up to 30th June 2022), the provision of section 194R shall apply on any benefit or perquisite provided on or after 1st July 2022.

(ii) The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to tax deduction under section 194R.

Question 12: Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested and whether tax is required to be deducted under section 194R?

Answer: In case of bonus shares which are issued to all shareholders by a company in which the public are substantially interested, it has been represented that this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change. Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold. Similar representations have been received seeking clarity on issuance of right shares.

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that the tax under section 194R is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

PART 3 – GENERAL POINTS OF TDS PROVISIONS

A. INCOME PAYABLE "NET OF TAX" [SECTION 195A]

1. Where, under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon, be equal to the net amount payable under such agreement or arrangement.

2. However, no grossing up is required in the case of tax paid under section 192(1A) by an employer on the non-monetary perquisites provided to the employee.

B. INTEREST OR DIVIDEND OR OTHER SUMS PAYABLE TO GOVERNMENT, RESERVE BANK OR CERTAIN CORPORATIONS [Section 196]

1. No deduction of tax shall be made by any person from any sums payable to:

a. the Government, or
b. the Reserve Bank of India, or
c. a corporation established by or under a Central Act, which is, under any law for the time being in force, exempt from income-tax on its income; or
d. a Mutual Fund.

2. This provision for non-deduction is applicable when such sum is payable to the above entities by way of –
   a. interest or dividend in respect of securities or shares –
      i. owned by the above entities; or
      ii. in which they have full beneficial interest or
   b. any income accruing or arising to them.

C. CERTIFICATE FOR DEDUCTION OF TAX AT A LOWER RATE [SECTION 197]

1. This section applies where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or payment, as the case may be, at the rates in force as per the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194M and 194-O.

2. In such cases, the assessee can make an application to the Assessing Officer for deduction of tax at a lower rate or for non-deduction of tax.

3. If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or no deduction of income-tax, he may give to the assessee such certificate, as may be appropriate.

4. Where the Assessing Officer issues such a certificate, then the person responsible for paying the income shall deduct income-tax at such lower rates specified in the certificate or deduct no tax, as the case may be, until such certificate is cancelled by the Assessing Officer.

5. Enabling powers have been conferred upon the CBDT to make rules for prescribing the procedure in this regard.

D. NO DEDUCTION IN CERTAIN CASES [SECTION 197A]

1. ENABLING PROVISION FOR FILING OF DECLARATION FOR RECEIPT OF NSS PAYMENT AND DIVIDEND WITHOUT DEDUCTION OF TAX [SUB-SECTION (1)]

- This section enables an individual, who is **resident in India** and whose estimated total income of the previous year is less than the basic exemption limit,
  To receive dividend [194] or
  any sum out of National Savings Scheme Account [194EE],
  Without deduction of tax at source under section 194 or 194EE, respectively, on furnishing a declaration in duplicate in the prescribed form and verified in the prescribed manner.

- The declaration in the above form is to be furnished in writing in duplicate by the declarant to the person responsible for paying any income of the nature referred to in section 194 or 194EE. The declaration will have to be to the effect that the tax on the estimated total income of the declarant of the previous year in which such income is to be included in computing his total income will be **Nil.**

2. ENABLING PROVISION FOR FILING OF DECLARATION FOR NON-DEDUCTION OF TAX UNDER SECTION 192A OR 193 OR 194A OR 194D OR 194DA OR 194-I OR 194K BY PERSONS, OTHER THAN COMPANIES AND FIRMS [Sub-section (1A)]

- No deduction of tax shall be made under the above provisions of the Act, where a person, who is not a company or a firm, furnishes to the person responsible for paying any income of the nature referred to in these sections, a declaration in writing in duplicate in the prescribed form to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be **Nil.**

3. FILING DECLARATION NOT PERMISSIBLE IF INCOME/AGGREGATE OF INCOMES EXCEED BASIC EXEMPTION LIMIT [Sub-section (1B)]

Declaration cannot be furnished as per the above provisions, where –

- payments of dividend; or
- payments in respect of deposits under National Savings Schemes, etc.; or
- payment of premature withdrawal from Employee Provident Fund; or
- income from interest on securities or
- interest other than "interest on securities" or units; or
- insurance commission; or
- payment in respect of life insurance policy; or
- rent; or
- income from units; or
- the aggregate of the amounts of such incomes in (i) to (ix) above

credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the basic exemption limit.

4. ENABLING PROVISION FOR FILING OF DECLARATION BY RESIDENT SENIOR CITIZENS FOR NON-DEDUCTION OF TAX AT SOURCE [Sub-section (1C)]

- For a resident individual, who is of the age of 60 years or more at any time during the previous year, **no deduction** of tax shall be made under section 192A or section 193 or section 194 or section 194A or section 194D or section 194DA or section 194EE or section 194-I or section 194K, if such individual furnishes a declaration in writing in duplicate to the payer, that tax on his estimated total income of the previous year in which such income is to be included in computing his total income is Nil. The restriction contained in sub-section (1B) will not apply to resident senior citizens.

5. NON-DEDUCTION OF TAX IN CERTAIN CASES

a. INTEREST PAYMENTS BY AN OFFSHORE BANKING UNIT TO A NONRESIDENT/NOT ORDINARILY RESIDENT IN INDIA [Sub-section (1D)]:

No deduction of tax shall be made by an Offshore Banking Unit from the interest paid on -

i. deposit made by a non-resident/not-ordinarily resident on or after 1.4.2005. or

ii. borrowing from a non-resident/not-ordinarily resident on or after 1.4.2005.

Applicability of section 197A(1D) and section 10(15)(viii) to interest paid by IFSC Banking Units (IBUs) [Circular No 26/2016 dated 4.7.2016]

The CBDT Circular clarifies that in accordance with the provisions of Section 197A(1D), tax is not required to be deducted on interest paid by IFSC Banking Units, on deposit made on or after 1.4.2005 by a non-resident or a person who is not ordinarily resident in India, or on borrowings made on or after 1.4.2005 from such persons.

b. PAYMENT TO ANY PERSON FOR, OR ON BEHALF OF, THE NPS TRUST [SUB-SECTION (1E)]:

No deduction of tax at source shall be made from any payment to any person for, or on behalf of, the New Pension System Trust[6].

c. PAYMENTS TO NOTIFIED PERSON OR CLASS OF PERSONS INCLUDING INSTITUTIONS/ CLASS OF INSTITUTIONS ETC. [Sub-section (1F)]:

No deduction of tax shall be made or deduction of tax shall be made at such lower rate, from such payment to such person or class of persons, including institution, association or body or class of institutions or associations or bodies as may be notified by the Central Government in the Official Gazette in this behalf.

Therefore, in respect of such payments made to notified person or class of persons, no tax is to be deducted at source or tax is to be deducted at lower rate.

d. TIME LIMIT FOR DELIVERY OF ONE COPY OF DECLARATION [Sub-Section (2)]:

On receipt of the declaration referred to in sub-sections (1), (1A) or (1C), the person responsible for making the payment will be required to deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, one copy of the declaration on or before the 7th of the month following the month in which the declaration is furnished to him.

PART 4 MISCELLANEOUS PROVISIONS

A. TAX DEDUCTED IS INCOME RECEIVED [SECTION 198]

1. All sums deducted in accordance with the foregoing provisions shall, for the purpose of computing the income of an assessee, be deemed to be income received.

2. However, the following tax paid or deducted would not be deemed to be income received by the assessee for the purpose of computing the total income –

   a. the tax paid by an employer under section 192(1A) on non-monetary perquisites provided to the employees
   b. tax deducted under section 194N [TDS ON CASH WITHDRAWAL].

B. CREDIT FOR TAX DEDUCTED AT SOURCE [SECTION 199]

1. Tax deducted at source in accordance with the above provisions and paid to the credit of the Central Government shall be treated as payment of tax on behalf of the-
   a. person from whose income the deduction was made; or
   b. owner of the security; or
   c. depositor; or
   d. owner of property; or
   e. unit-holder; or
   f. Shareholder.

2. Any sum referred to in section 192(1A) and paid to the Central Government, shall be treated as the tax paid on behalf of the person in respect of whose income, such payment of tax has been made.

3. The CBDT is empowered to frame rules for the purpose of giving credit in respect of tax deducted or tax paid under Chapter XVII. The CBDT also has the power to make rules for giving credit to a person other than the persons mentioned in (1) and (2) above. Further, the CBDT can specify the assessment year for which such credit may be given.

Rule 37BA – Credit for tax deducted at source for the purposes of section 199

Rule 37BA(1), provides that credit for tax deducted at source and paid to the Central Government would be given to the person to whom the payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

Rule 37BA(2)(i), provides that where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee.

However, the deductee should file a declaration with the deductor and the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in Rule 37BA(1).

Rule 37BA(3), provides that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

Rule 37BA(3A), provides that, for the **purposes of section 194N**, credit for tax deducted at source shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made.

C. DUTY OF PERSON DEDUCTING TAX [Section 200]

1. The persons responsible for deducting the tax at source should deposit the sum so deducted to the credit of the Central Government or as the Board directs, within the prescribed time.
2. Further, an employer paying tax on non-monetary perquisites provided to employees in accordance with section 192(1A), should deposit within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

RULE 30 – PRESCRIBED TIME AND MODE OF PAYMENT TO GOVERNMENT ACCOUNT OF TDS OR TAX PAID U/S 192(1A)

a. All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on
   - the same day where the tax is paid without production of an income-tax challan and
   - on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A), where tax is paid accompanied by an income-tax challan.

b. All sums deducted in accordance with Chapter XVII-B by deductors other than a Government office shall be paid to the credit of the Central Government

- on or before 30th April, where the income or amount is credited or paid in the month of March.
- In any other case, the tax deducted should be paid on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A).

Note: In special cases, the Assessing Officer(AO) may, with the prior approval of the Joint Commissioner(JC), permit quarterly payment of the tax deducted under section **192/194A/194D or 194H**

- on or before 7th of the month following the quarter, in respect of first three quarters in the financial year
- 30th April in respect of the quarter ending on 31st March.

The dates for quarterly payment would, therefore, be 7th July, 7th October, 7th January and 30th April, for the quarters ended 30th June, 30th September, 31st December and 31st March, respectively.

c. Tax deducted under sections **194-IA, 194-IB and 194M** have to be remitted within 30 days from the end of the month of deduction. A challan-cum-statement in Form **26QB/26QC/26QD** has to be furnished within 30 days from the end of the month of deduction.

3. For the purpose of improving the reporting of payment of TDS made through book entry and to make existing mechanism enforceable, it is provided that where the tax deducted or tax referred to in section 192(1A) has been paid without the production of a challan, the PAO/TO/CDDO or any other person, by whatever name called, who is responsible for crediting such sum to the credit of the Central Government, shall deliver or cause to be delivered within the prescribed time a statement in the prescribed form, verified in the prescribed manner and setting forth prescribed particulars to the prescribed income-tax authority or the person authorized by such authority.

4. The following persons are responsible for preparing such statements for such periods as may be prescribed, after paying the tax deducted to the credit of the Central Government within the prescribed time:

a. any person deducting any sum on or after 1st April, 2005 in accordance with the foregoing provisions of this chapter; or,

b. any person being an employer referred to in section 192(1A).

5. Such statements have to be delivered or caused to be delivered to the prescribed income-tax authority or the person authorized by such authority.

6. Such statements should be in the prescribed form and verified in the prescribed manner.

7. It should set forth such particulars and should be delivered within such time as may be prescribed.

8. The deductor may also deliver to the prescribed authority, a correction statement –
   a. for rectification of any mistake; or
   b. to add, delete or update the information furnished in the statement delivered under section 200(3).

Rule 31A – SUBMISSION OF QUARTERLY STATEMENTS

Every person responsible for deduction of tax under Chapter XVII-B shall deliver, or cause to be delivered, the following quarterly statements to the DGIT (Systems) or any person authorized by him, in accordance with section 200(3):

- **a.** Statement of TDS under section 192 in **Form No.24Q.**
- **b.** Statement of TDS under other sections from section 193 to section 196D in **Form No.26Q** in respect of all deductees
- **c.** other deductees being a non-corporate non-resident or a foreign company or resident but not ordinarily resident in which case the relevant form would be Form No.27Q.

Such statements have to be furnished within the due date for each quarter specified in Rule 31A(2). Accordingly, quarterly statements of TDS have to be furnished by the due dates specified in column (3) against the corresponding quarter

Sl. No.	Date of ending of the quarter of the financial year	Due date
1.	30th June	**31st July** of the financial year
2.	30th September	**31st October** of the financial year
3.	31st December	**31st January** of the financial year
4.	31st March	**31st May** of the financial year immediately following the financial year in which the deduction is made.

However, every person responsible for deduction of tax under section **194-IA, 194-IB or 194M** have to furnish to the Principal Director General of Income-tax (Systems) (in case of sections 194-IB and 194M) or Director General of Income-tax (System) or the person authorised by them, a challan-cum-statement in Form No.26QB, 26QC or 26QD respectively, **within thirty days from the end of the month** of deduction of tax.

D. CORRECTION OF ARITHMETIC MISTAKES AND ADJUSTMENT OF INCORRECT CLAIM DURING COMPUTERIZED PROCESSING OF TDS STATEMENTS [Section 200A]

1. At present, all statements of tax deducted at source are filed in an electronic mode, thereby facilitating computerised processing of these statements. Therefore, in order to process TDS statements on computer, electronic processing on the same lines as processing of income-tax returns has been provided in section 200A.
2. The following adjustments can be made during the computerized processing of statement of tax deducted at source or a correction statement :
    - **a.** any arithmetical error in the statement; or
    - **b.** an incorrect claim, if such incorrect claim is apparent from any information in the statement.
3. The term "an incorrect claim apparent from any information in the statement" shall mean such claim on the basis of an entry, in the statement, :
    - **a.** of an item, which is inconsistent with another entry of the same or some other item in such statement;
    - **b.** in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of the Act.
4. The interest, if any, has to be computed on the basis of the sums deductible as computed in the statement;
5. The fee, if any, has to be computed in accordance with the provision of section 234E. A fee of Rs. 200 for every day would be levied under section 234E for late furnishing of TDS statement from the due date of furnishing of TDS statement to the date of furnishing of TDS/ statement. However, the total amount of fee shall not exceed the total amount of tax deductible/collectible and such fee has to be paid before delivering the TDS statement.
6. The sum payable by, or the amount of refund due to, the deductor has to be determined after adjustment of interest and fee against the amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee.
7. An intimation will be prepared and generated and sent to the deductor, specifying his tax liability or the refund due, within one year from the end of the financial year in which the statement is filed. The refund due shall be granted to the deductor.
8. For this purpose, the CBDT is empowered to make a scheme for centralized processing of statements of TDS to determine the tax payable by, or refund due to, the deductor.

E. CONSEQUENCES OF FAILURE TO DEDUCT OR PAY [Section 201]

1. Deemed assessee-in-default

Any person including the principal officer of a company –

- **a.** who is required to deduct any sum in accordance with the provisions of the Act; or
- **b.** an employer paying tax on non-monetary perquisites under section 192(1A).

shall be deemed to be an assessee-in-default, if he does not deduct, or does not pay or after deducting, fails to pay, the whole or any part of the tax, as required by or under the provisions of the Income-tax Act, 1961.

2. **Non-applicability of deeming provision**

Any person (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or paid to a payee shall not be deemed to be an assessee-in-default in respect of such tax if **such payee:**

a. has furnished his return of income under section 139;

b. has taken into account such sum for computing income in such return of income; and

c. has paid the tax due on the income declared by him in such return of income,

and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

3. **Interest Liability**

- A person deemed to be an assessee-in-default under section 201(1), for failure to deduct tax or to pay the tax after deduction, is liable to pay **simple interest @ 1% for every month or part of month** on the amount of such tax from the date on which tax was deductible to the date on which such tax was actually deducted
- And **simple interest @ 1.5% for every month or part of month** from the date on which tax was deducted to the date on which such tax is actually paid [Section 201(1A)].

(Refer ILLUSTRATION 13)

4. **Time limit for deeming a person to be an assessee-in-default for failure to deduct tax at source**

No order under section 201(1), deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India, shall be passed at any time after the expiry of

- **seven years from the end of the financial year** in which the payment is made or credit is given or
- **two years from the end of the financial year** in which the correction statement is delivered under the proviso to section 200(3)

whichever is later

5. **NON-SPECIFICATION OF TIME LIMIT WHERE TAX HAS BEEN DEDUCTED BUT NOT PAID**

Section 201(1) deems a person to be an assessee-in-default if he –

a. does not deduct tax; or

b. does not pay; or

c. after so deducting fails to pay the whole or any part of the tax, as required by or under this Act.

Thus, section 201(1) contemplates three types of defaults. The default contemplated in (b) is covered by the default contemplated in (c). However, the time limit has been specified only for passing of orders relating to default contemplated in (a) above. There is no time limit specified in respect of the other defaults.

Therefore, **no time-limits** have been prescribed for the order under section 201(1) where:

a. The deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,
b. The employer has failed to pay the tax wholly or partly, under section 192(1A), as the employee would not have paid tax on such perquisites,
c. The deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

F. DEDUCTION ONLY ONE MODE OF RECOVERY [SECTION 202]

a. Recovery of tax through deduction at source is only one method of recovery.
b. The Assessing Officer (AO) can use any other prescribed methods of recovery in addition to tax deducted at source.

G. CERTIFICATE FOR TAX DEDUCTED [Section 203]

a. Every person deducting tax at source have to issue a certificate to the effect that tax has been deducted and specify the amount so deducted, the rate at which tax has been deducted and such other particulars as may be prescribed.

b. Every person, being an employer, referred to in section 192(1A) shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.

Rule 31 Certificate u/s 203

The certificate of deduction of tax at source to be furnished under section 203 shall be in **Form No.16** in respect of tax deducted or paid under **section 192** and in any other case, Form No.16A.

Form No.16 shall be issued to the **employee annually by 15th June of the financial year** immediately following the financial year in which the income was paid and tax deducted.

Form No.16A shall be **issued quarterly within 15 days** from the due date for furnishing the statement of TDS under Rule 31A.

Form No. 16B, 16C or 16D shall be issued by every person responsible for deduction of tax under section **194-IA, 194-IB or 194M** to the payee **within fifteen days from the due date** for furnishing the challan-cum-statement in Form No. 26QB, 26QC or 26QD, respectively, under rule 31A.

H. PERSON RESPONSIBLE FOR PAYING TAXES DEDUCTED AT SOURCE [SECTION 204]

For purposes of deduction of tax at source the expression "person responsible for paying" means:

	Nature of income/payment	Person responsible for paying tax
(1)	Salary (other than payment of salaries by the Central or State Government)	i. the employer himself; or ii. if the employer is a company, the company itself, including the principal officer thereof.
(2)	Interest on securities (other than payments by or on behalf of the Central or State Government)	the local authority, corporation or company, including the principal officer thereof.
(3)	Any sum payable to a non-resident Indian, representing consideration for the transfer by him of any foreign exchange asset, which is not a short term capital asset	the "Authorised Person" responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Management Act, 1999 and any rules made thereunder.
(4)	furnishing of information relating to payment to a non-corporate non-resident, or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act	i. the payer himself; or ii. if the payer is a company, the company itself including the principal officer thereof.
(5)	Credit/payment of any other sum chargeable under the provisions of the Act	i. the payer himself; or ii. if the payer is a company, the company itself including the principal officer thereof.
(6)	Credit/payment of any sum chargeable under the provisions of the Act made by or on behalf of the Central Government or the Government of a State.	i. the drawing and disbursing officer; or ii. any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum.
(7)	In case of a person not resident in India (irrespective of the nature of payment or income)	i. the person himself; or ii. any person authorized by such person; or iii. the agent of such person in India including any person treated as an agent under section 163.

I. BAR AGAINST DIRECT DEMAND ON ASSESSEE [Section 205]

Where tax is deductible at source under any of the aforesaid sections, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

J. FURNISHING OF STATEMENTS IN RESPECT OF PAYMENT OF ANY INCOME TO RESIDENTS WITHOUT DEDUCTION OF TAX [Section 206A]

1. This section casts responsibility on every banking company or cooperative society or public company referred to in the proviso to section 194A(3)(i) [A public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of residential houses in India and which is eligible for deduction under section 36(1)(viii)] to prepare such statement, for such period as may be prescribed :
    a. if they are responsible for paying to a resident,
    b. the payment should be of any income not exceeding Rs. 40,000, where the payer is a banking company or a co-operative society, and Rs. 5,000 in any other case.
    c. such income should be by way of interest (other than interest on securities)
2. The statements have to be delivered or caused to be delivered to the prescribed income-tax authority or the person authorised by such authority.
3. The statements have to be in the prescribed form, containing such particulars verified in the prescribed manner. The statement has to be filed within the prescribed time.
4. The CBDT may cast responsibility on any person other than a person mentioned in (1) above, who is responsible for paying to a resident any income liable for deduction of tax at source.
5. Such persons may be required to prepare statement for such period as may be prescribed in the prescribed form and deliver or cause to be delivered such statement within the prescribed time to the prescribed income-tax authority or the person authorized by such authority.
6. Such statements should be in the prescribed form, containing such particulars and verified in the prescribed manner.
7. Such person referred to in (1) and (4) above may also deliver to the prescribed authority, a correction statement –
    a. for rectification of any mistake; or
    b. to add, delete or update the information furnished in the statement delivered referred in (2) & (5) above.

K. MANDATORY REQUIREMENT OF FURNISHING PAN IN ALL TDS STATEMENTS, BILLS, VOUCHERS AND CORRESPONDENCE BETWEEN DEDUCTOR AND DEDUCTEE [Section 206AA]

1. The non-furnishing of PAN by deductees in many cases have led to delay in issue of refund on account of problems in the processing of returns of income and in granting credit for tax deducted at source.

2. With a view to strengthening the PAN mechanism, **section 206AA** provides that any person whose receipts are subject to deduction of tax at source (the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:

    a. the rate prescribed in the Act;

b. at the rate in force (the rate mentioned in the Finance Act) or

c. at the rate of **20%**. [**5%** in case tax is required to be deducted at source u/s **194-O and 194Q**]

For instance, in case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194-I. However, non-furnishing of PAN by the deductee in case of income by way of winnings from lotteries, card games etc., would result in tax being deducted at the existing rate of 30% under section 194B. Therefore, wherever tax is deductible at a rate higher than 20%, this provision would not have any impact.

3. Tax would be deductible at the rates mentioned above also in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.
4. Further, "no certificate under section 197 will be granted by the Assessing Officer" unless the application contains the PAN of the applicant.
5. Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.
6. If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the rate specified in (2) above.

L. HIGHER RATE OF TDS FOR NON-FILERS OF INCOME-TAX RETURN [Section 206AB]

1. Section 206AB requires tax to be deducted at source under the provisions of this Chapter on any sum or income or amount paid, or payable or credited, by a person to a **specified person,** at **higher** of the following rates:
   - at **twice the rate** prescribed in the relevant provisions of the Act;
   - at **twice the rate or rates in force** (the rate mentioned in the Finance Act). or
   - **at 5%**

   However, section 206AB is not applicable in case of tax deductible at source under sections 192, 192A, 194B, 194BB, 194-IA, 194-IB, 194M or 194N.

2. In case the provisions of section 206AA are also applicable to the specified person, in addition to the provisions of this section, then, tax is required to be deducted at higher of the two rates provided in section 206AA and section 206AB.

3. **MEANING OF "SPECIFIED PERSON"** – A person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under section 139(1) has expired, and the **aggregate of tax deducted** at source **and tax collected** at source in his case is Rs. **50,000 or more** in the said previous year. However, the specified person **does not include a non-resident** who does not have a permanent establishment in India.

PART 5 – ADVANCE PAYMENT OF TAX [SECTIONS 207 TO 219]

A. LIABILITY FOR PAYMENT OF ADVANCE TAX:

1. Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219, in respect of an assessee's current income (the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year) [**Section 207**].
2. Under **section 208**, obligation to pay advance tax arises in every case where the advance tax payable is Rs. 10,000 or more.

Note: An assessee who is liable to pay advance tax of less than Rs. 10,000 will not be saddled with interest under sections 234B and 234C for defaults in payment of advance tax.

However, the consequences under section 234A regarding interest for belated filing of return would be attracted.

3. In case of senior citizens who have passive source of income like interest, rent, etc., the requirement of payment of advance tax causes genuine compliance hardship. Therefore, in order to reduce the compliance burden on such senior citizens, exemption from payment of advance tax has been provided to a resident individual
   - **not** having any income chargeable under the head "**Profits and gains of business or profession**" AND
   - of the age of 60 years or more.

   Such senior citizens need not pay advance tax and are allowed to discharge their tax liability (other than TDS) by payment of self-assessment tax.

B. COMPUTATION OF ADVANCE TAX:

1. An assessee has to estimate his current income and pay advance tax thereon. He need not submit any estimate or statement of income to the Assessing Officer, except where he has been served with notice by the Assessing Officer.
2. Where an obligation to pay advance tax has arisen, the assessee shall himself compute the advance tax payable on his current income at the rates in force in the financial year and deposit the same, whether or not he has been earlier assessed to tax.
3. In the case of a person who has been already assessed by way of a regular assessment in respect of the total income of any previous year, the Assessing Officer,is of the opinion that such person is liable to pay advance tax, AO may serve an order under section 210(3) requiring the assessee to pay advance tax.

4. For this purpose of above,

   - The total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment **or**
   - The total income returned by the assessee in any return of income for any subsequent previous year, **whichever is higher**,

   Shall be taken as the basis for computation of advance tax payable.

5. The above order can be served by the Assessing Officer at any time during the financial year but not later than the LAST DATE OF FEBRUARY.

6. If, after sending the above notice, but before 1st March of the financial year, the assessee furnishes a return relating to any later previous year or an assessment is completed in respect of a later return of income, the Assessing Officer may amend the order for payment of advance tax on the basis of the computation of the income so returned or assessed.

7. If the assessee feels that his own estimate of advance tax payable would be less than the one sent by the Assessing Officer, he can file estimate of his current income and advance tax payable thereon.

8. Where the advance tax payable on assessee's estimation is higher than the tax computed by the Assessing Officer, then, the advance tax shall be paid based upon such higher amount.

9. In all cases, the tax calculated shall be **reduced by the amount of TDS**.

No reduction of 'tax deductible but not deducted' while computing advance tax liability

a. As per the provisions of section 209, the amount of advance tax payable by a person is computed by reducing the amount of income-tax which would be deductible at source during the financial year from any income which has been taken into account in computing the total income.

b. Some courts have opined that in case where the payer pays any amount (on which tax is deductible at source) without deduction of tax at source, the payee shall not be liable to pay advance tax to the extent tax is deductible from such amount.

c. With a view to make such a person (payee) liable to pay advance tax, the proviso to section 209(1)(d) provides that the amount of tax deductible at source but not so deducted by the payer shall not be reduced from the income tax liability of the payee for determining his liability to pay advance tax.

d. In effect, only if tax has actually been deducted at source, the same can be reduced for computing advance tax liability of the payee. Tax deductible but not so deducted cannot be reduced for computing advance tax liability of the payee.

10. The amount of advance tax payable by an assessee in the financial year calculated by:

- **a.** the assessee himself based on his estimation of current income; or
- **b.** the Assessing Officer as a result of an order under section 210(3) or amended order under section 210(4)

is subject to the provisions of section 209(2), as per which the net agricultural income has to be considered for the purpose of computing advance tax.

C. INSTALMENTS OF ADVANCE TAX AND DUE DATES

1. COMMON SCHEDULE FOR BOTH CORPORATES AND NON-CORPORATES: (Other Than Assessees Computing Profits on Presumptive Basis Under section 44AD (1) or section 44ADA (1))

Due date of instalment	Amount payable
On or before 15th June	Not less than **15%** of advance tax liability
On or before 15th September	Not less than **45%** of advance tax liability, as reduced by the amount, if any, paid in the earlier instalment.
On or before 15th December	Not less than **75%** of advance tax liability, as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.
On or before 15th March	The **whole amount** of advance tax liability as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.

Note: Any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during each financial year ending on 31st March.

2. ADVANCE TAX PAYMENT BY ASSESSEES COMPUTING PROFITS ON PRESUMPTIVE BASIS under section 44AD (1) or section 44ADA (1)

An eligible assessee, opting for computation of profits or gains of business on presumptive basis in respect of eligible business referred to in section 44AD (1) or for computation of profits or gains of profession on presumptive basis in respect of eligible profession referred to in section 44ADA (1), shall be required to pay advance tax of the whole amount in **one instalment on or before 15th March** of the financial year.

However, any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during each financial year ending on 31st March.

3. If the last day for payment of any instalment of advance tax is a day on which the receiving bank is closed, the assessee can make the payment on the next immediately following working day, and in such cases, the interest leviable under sections 234B and 234C would not be charged.

4. Where advance tax is payable by virtue of the notice of demand issued by the Assessing Officer, the whole or the appropriate part of the advance tax specified in such notice shall be payable on or before each of such due dates as fall after the date of service of notice of demand.

5. Where the assessee does not pay any instalment by the due date, he shall be deemed to be an assessee in default in respect of such instalment.

6. **Credit for advance tax [Section 219]**

Any sum, other than interest or penalty, paid by or recovered from an assessee as advance tax, is treated as a payment of tax in respect of the income of the previous year and credit thereof shall be given in the regular assessment.

D. INTEREST FOR NON-PAYMENT OR SHORT-PAYMENT OF ADVANCE TAX [Section 234B]:

1. Interest under section 234B is attracted for non-payment of advance tax or payment of advance tax of an amount less than 90% of assessed tax.

2. The interest liability would be **1% per month or part** of the month **from 1st April** following the financial year up to
   - **a.** The date of determination of income under section 143(1) and
   - **b.** Where a regular assessment is made, up to the date of such regular assessment.

3. Such interest is calculated on the amount of difference between the assessed tax and the advance tax paid.

4. Assessed tax is the tax calculated on total income determined under section 143(1) and where a regular assessment is made, the tax on the total income determined under such regular assessment less:
   a. TDS or TCS.
   b. Any relief of tax allowed under section 89
   c. Any tax credit allowed to be set off in accordance with the provisions of section 115JD

   Tax on the total income determined under section 143(1) would not include the additional income-tax, if any, payable under section 140B or section 143.

   Tax on the total income determined under such regular assessment would not include the additional income-tax, if any, payable under section 140B.

5. However, where self-assessment tax is paid by the assessee under section 140A or otherwise, interest shall be calculated up to the date of payment of such tax and reduced by the interest,

if any, paid under section 140A towards the interest chargeable under this section. Thereafter, interest shall be calculated at 1% on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

E. INTEREST PAYABLE FOR DEFERMENT OF ADVANCE TAX [Section 234C]:

1. **Computation of interest u/s 234C "for deferment of advance tax" by corporate and non-corporate assessees:**
   In case an assessee, "other than **section 44AD(1) or section 44ADA(1)",** who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by such assessee on its current income on or before the dates specified in column (1) is less than the specified percentage of tax due on returned income, then **simple interest at 1% per month** for the period specified in column (4) on the amount of shortfall, as per column (3) is leviable under section 234C.

Specified date	Specified %	Shortfall in advance tax	Period
(1)	(2)	(3)	(4)
15th June	12%	15% of tax due on returned income (-) advance tax paid up to 15th June	3 months
15th September	36%	45% of tax due on returned income (-) advance tax paid up to 15th September	3 months
15th December	75%	75% of tax due on returned income (-) advance tax paid up to 15th December	3 months
15th March	100%	100% of tax due on returned income (-) advance tax paid up to 15th March	1 month

2. **Computation of Interest u/s 234C in case of assessee opts for section 44AD (1)/44ADA (1):**
   In case an assessee who declares profits and gains in accordance with the section 44AD(1) or section 44ADA(1), as the case may be, 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 15th 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.

3. **NON-APPLICABILITY OF INTEREST:**
   Interest under section 234C shall not be leviable in respect of any shortfall in payment of tax due on returned income, where such shortfall is on account of under-estimation of or failure to estimate:
   a. the amount of Capital Gains;
   b. income of nature referred to in section 2(24)(ix) (winnings from lotteries, crossword puzzles etc)
   c. income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the **first time**.
   d. the amount of dividend income u/s 2(22)(a)/(b)/(c)/(d)

However, the assessee should have paid the whole of the amount of tax payable in respect of such income referred above, 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 31st March of the financial year.

4. **MEANING OF TAX DUE ON RETURNED INCOME**

Tax due on returned income means the tax calculated on total income declared in the return furnished by the assessee **LESS**

a. Tax deducted or collected at source
b. Any relief of tax allowed under section 89
c. Any tax credit allowed to be set off in accordance with the provisions of section 115JD.

PART 6 TAX COLLECTION AT SOURCE

A. SALE OF CERTAIN GOODS 206C(1)

Sellers of certain goods are required to collect tax from the buyers at the specified rates. The specified percentage for collection of tax at source is as follows:

	Nature of Goods	Percentage
(a)	Tendu leaves	5%
(b)	Timber	2.5%
(c)	Any other forest produce (Other than (a),(b))	2.5%
(d)	Scrap	1%
(e)	Minerals, being coal or lignite or iron ore	1%
(f)	Alcoholic liquor for human consumption	1%

B. LEASE OR A LICENCE OF PARKING LOT, TOLL PLAZA OR MINE OR A QUARRY [Section 206C(1C)]

Section 206C(1C) provides for collection of tax **by every person** who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any

a. Parking Lot or
b. Toll plaza or
c. a Mine or a Quarry

to another person (**other than a public sector company**) for the use of such parking lot or toll plaza or mine or quarry for the purposes of business. The tax shall be collected as provided, from the licensee or lessee of any such licence, contract or lease of the specified nature, at **the rate of 2%.**

C. SALE OF MOTOR VEHICLE [Section 206C(1F)]

Section 206C(1F) provides that **every person, being a seller**, who receives any amount as consideration for sale of a motor vehicle of the **value exceeding Rs. 10 lakhs**, shall collect tax from the buyer at a rate of 1% of the sale consideration.

D. OVERSEAS REMITTANCE OR AN OVERSEAS TOUR PACKAGE

Section 206C(1G) provides for collection of tax by every person,

a. being **an authorized dealer,** who receives amount, under the Liberalised Remittance Scheme of the RBI, for overseas remittance from a buyer, being a person remitting such amount out of India;
b. being **a seller of an overseas tour programme package** who receives any amount from the buyer who purchases the package

at the rate of **5%** of such amount.

Tax has to be collected 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.

Rate of TCS in case of collection by an authorized dealer:

S. No.	Amount and purpose of remittance	Rate of TCS
(i)	(a) Where the amount is remitted for a purpose other than purchase of overseas tour programme package; and (b) the amount or aggregate of the amounts being remitted by a buyer is less than Rs. 7 lakhs in a financial year	Nil
(ii)	(a) where the amount is remitted for a purpose other than purchase of overseas tour programme package; and (b) the amount or aggregate of the amounts in excess of Rs. 7 lakhs is remitted by the buyer in a financial year	5% of the amount or aggregate of amts in excess of Rs. 7 Lakh
(iii)	(a) where the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education and (b) the amount or aggregate of the amounts in excess of Rs. 7 lakhs is remitted by the buyer in a financial year	0.5% of the amount or aggregate of amts in excess of Rs. 7 Lakh

Cases where no tax is to be collected

(i)	No TCS by the authorized dealer on an amount in respect of which the sum has been collected by the seller
(ii)	No TCS, if the buyer is liable to deduct tax at source under any other provision of the Act and has deducted such tax

(iii)	No TCS, if the buyer is the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority12 or any other person notified by the Central Government, subject to fulfillment of conditions stipulated thereunder. **Accordingly, the CBDT has, vide notification no. 20/200 dated 30.3.2022, notified that the provisions of section 206C(1G) would not apply to an individual who is not resident in India as per section 6(1) and 6(1A), and who is visiting India.**

Non-applicability of provisions of section 206C(1G) to a non-resident buyer not having permanent establishment in India [Notification no. 99/2022 dated 17.8.2022]

1. Tax is collectible u/s 206C(1G) by:
    a. 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**
    b. a seller of an overseas tour package who receives any amount from the buyer who purchases the package.

2. However, fifth proviso to section 206C(1G), *inter alia,* provides that tax under section 206C(1G) would not be collectible if the buyer is the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority2 or any other person notified by the Central Government, subject to fulfillment of conditions stipulated thereunder.

3. Accordingly, the Central Government has, vide ***Notification No. 99/2022, dated 17.08.2022***, notified that the provisions of section 206C(1G) would **not** be applicable to **a person (being a buyer)** who –
    a. **is a non-resident** in terms of section 6; **and**
    b. does **not have a permanent establishment in India**.

E. SALE OF GOODS OF VALUE EXCEEDING RS. 50 LAKH [Section 206C(1H)]

1. As per section 206C(1H), tax is also required to be collected by a seller, who receives any amount as consideration for sale of goods of the value or aggregate of such value exceeding Rs. 50 lakhs in a previous year [other than exported goods or goods covered under sub-sections (1)/(1F)/(1G)].

2. Tax is to be collected at source @0.1% u/s 206C(1H) of the sale consideration exceeding Rs. 50 lakhs, at the time of receipt of consideration.

3. Tax is, however, not required to be collected if the buyer is liable to deduct tax at source under any other provision of the Act on the goods purchased by him from the seller and has deducted such tax.

F. GENERAL PROVISIONS

In case of any difficulty arises in giving effect to the provisions of section 206C(1G)/(1H), the CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty.

Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to collect tax.

Meaning of certain terms:

	Term	Meaning
(i)	**Overseas tour program package**	**For section 206C(1G)** Any tour package which offers visit to a country/(ies) or territory/(ies) outside India. It includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto. [Clause (ii) of Explanation to section 206C(1G)]
(ii)	**Buyer**	**For section 206C(1H):** A person who purchases any goods but does not include – (A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State, or (B) a local authority[7]; or (C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to stipulated conditions. **For section 206C(1):** A person who obtains in any sale, by way of auction, tender, or any other mode, goods of the nature specified in the Table in point (1) or the right to receive any such goods but does not include –

		(A) a public sector company, the Central Government, a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State and a club, or (B) a buyer in the retail sale of such goods purchased by him for personal consumption [Explanation to section 206C] **For section 206C(1F):** A person who obtains in any sale, goods of the nature specified therein, but does not include – (A) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or (B) a local authority; or (C) a public sector company which is engaged in the business of carrying passengers. [Explanation to section 206C]
(ii)	**Seller**	**For section 206C(1H):** A person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs. 10 crores during the financial year immediately preceding the financial year in which sale of goods is carried out. However, seller does not include a person as notified by the Central Government for this purpose, subject to fulfillment of the stipulated conditions [Clause (b) of Explanation to section 206C(1H)] **For section 206C(1) and section 206C(1F):** (i) The Central Government, (ii) a State Government or (iii) any local authority or (iv) corporation or (v) authority established by or under a Central, State or Provincial Act, or (vi) any company or (vii) firm or (viii) co-operative society Seller also includes an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table in point (1) are sold. [Explanation to section 206C]
(iii)	**Scrap**	Waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons. [Explanation to section 206C]

G. HIGHER RATE OF TCS FOR NON-FURNISHERS OF PAN [Section 206CC]

1. The provisions of section 206CC require tax collection at the HIGHER of the following 2 rates, in case of failure by the person paying any sum or amount on which tax is collectible at source (collectee) to furnish PAN [PAN or Aadhar number in case of section 206C(1H)] to the person responsible for collecting tax at source (collector):

a. At twice the rate specified in the relevant provision of the Act
b. At 5% [1%, in case tax is required to be collected at source u/s 206C(1H)]

2. Tax would be collectible at the rates mentioned above also in case where the person furnishes a declaration under section 206C(1A) but does not provide his PAN.

3. Both the collectee and the collector have to compulsorily quote the PAN of the collectee in all correspondence, bills, vouchers and other documents exchanged between them.

4. If the PAN provided to the collector is invalid or it does not belong to the collectee, it shall be deemed that the collectee has not furnished his PAN to the collector. Accordingly, tax would be collectible at the rate specified in (i) above.

5. The provisions of section 206CC does not apply to a non-resident who does not have a permanent establishment in India.

H. HIGHER RATE OF TCS FOR NON-FILERS OF INCOME-TAX RETURN [Section 206CCA]

1. Section 206CCA requires tax to be collected at source under the provisions of this Chapter on any sum or amount received by a person from a specified person, at HIGHER of the following rates –
    a. At twice the rate specified in the relevant provision of the Act;
    b. At 5%

2. In case the provisions of section 206CC are also applicable to the specified person, in addition to the provisions of section 206CCA, then, tax is required to be collected at higher of the 2 rates provided in section 206CC and section 206CCA.

Meaning of "specified person": A person who has not furnished the return of income for assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be collected, for which the time limit for furnishing the return of income under section 139(1) has expired, and the aggregate of tax deducted at source and tax collected at source in his case is Rs. 50,000 or more in the said previous year.

However, the specified person does **not** include a non-resident who does not have a permanent establishment in India.

CBDT CLARIFICATION RELATING TO CERTAIN ISSUES WITH RESPECT TO SECTION 206C(1F): These amendments in section 206C have given rise to certain issues relating to the scope and applicability of the provisions. Accordingly, the CBDT has, vide Circular No. 22/2016 dated 8.6.2016, clarified the following issues in "Question & Answer (Q&A)" format.

Q.NO.1.

Whether TCS@1% is on sale of motor vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/ distributors?

ANSWER:

To bring high value transactions within the tax net, section 206C has been amended to provide that the seller shall collect the tax @ 1% from the purchaser on sale of motor vehicle of the value exceeding Rs. 10 lakhs. This is brought to cover all transactions of retail sales and accordingly, it **will not apply on sale of motor vehicles by manufacturers to dealers/distributors.**

Q.NO.2.

Whether TCS@1% on sale of motor vehicle is applicable only to luxury cars?

ANSWER:

No, as per section 206C(1F), the seller shall collect tax@1% from the purchaser on sale of any motor vehicle of the value exceeding Rs. 10 lakhs.

Q.NO.3.

Whether TCS@1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions, of motor vehicle or any other goods or provision of services?

ANSWER:

Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State shall not be liable to levy of TCS@1% under section 206C(1F).

Q.NO.4.

Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

ANSWER:

Tax is to be collected at source@1% on sale consideration of a motor vehicle exceeding Rs. 10 lakhs. It is applicable to each sale and not to aggregate value of sale made during the year.

Q.NO.5.

Whether TCS@1% on sale of motor vehicle is applicable in case of an individual?

ANSWER:

The definition of "Seller" as given in clause (c) of the Explanation below sub-section (11) of section 206C shall be applicable in the case of sale of motor vehicles also.

Q.NO.6.

How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

ANSWER:

The provisions of TCS on sale of motor vehicle exceeding Rs. 10 lakhs is not dependent on mode of payment. Any sale of motor vehicle exceeding Rs. 10 lakhs would attract TCS@1%.

CBDT CLARIFICATION RELATING TO CERTAIN ISSUES WITH RESPECT TO SECTION 206C(1H): In exercise of the power to issue guidelines, the CBDT has, with the approval of Central Government, vide **Circular no. 17/2020 dated 29.9.2020,** issued the following guidelines for removing certain difficulties-

1. **Applicability on sale of Motor vehicle:**
   The provisions of section 206C(1F) apply to sale of motor vehicle of the value exceeding Rs. 10 lakhs. Section 206C(1H) excludes from its applicability goods covered under section 206C(1F). It may be noted that the scope of sections 206C(1H) and (1F) are different. While section 206C(1F) is based on single sale of motor vehicle, section 206C(1H) is for receipt above Rs. 50 lakhs. Hence, in order to remove difficulty that whether all motor vehicles are excluded from the applicability of section 206C(1H), it is clarified that,-
   a. Receipt of sale consideration from a dealer would be subjected to TCS under section 206C(1H), if such sales are not subjected to TCS under section 206C(1F)
   b. In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of Rs. 10 lakhs or less to a buyer would be subjected to TCS under section 206C(1H), if the receipt of sale consideration for such vehicles during the previous year exceeds Rs. 50 lakhs during the previous year.
   c. In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding Rs. 10 lakhs would not be subjected to TCS under section 206C(1H) if such sales are subjected to TCS under section 206C(1F).

2. **Adjustment for sale return, discount or indirect taxes:** It is been clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under section 206C(1H) since the collection is made with reference to receipt of amount of sale consideration.

I. TIME OF COLLECTION OF TAX

The tax should be collected at the time of debiting of the amount payable by the buyer or licensee or lessee, as the case may be, to his account or at the time of receipt of such amount from the buyer or licensee or lessee, as the case may be, by any mode, whichever is EARLIER.

In case of sale of a motor vehicle of the value exceeding Rs. 10 lakhs or sale of goods exceeding Rs. 50 lakhs [other than exported goods and goods mentioned in section 206C(1)], tax shall be collected at the time of receipt of such amount under section 206C(1F) and 206C(1H), respectively.

J. NON-APPLICABILITY OF TCS [Section 206C(1A)]

No collection of tax shall be made under section 206C(1), in the case of a resident buyer, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that goods referred to in section 206C(1) above are to be utilised for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

K. FURNISHING OF COPY OF DECLARATION WITHIN SPECIFIED TIME [Section 206C(1B)]

The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Chief Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before 7th of the month next following the month in which the declaration is furnished to him.

L. TCS TO BE PAID WITHIN PRESCRIBED TIME [Section 206C(3)]

Any amount collected under this section shall be paid within the prescribed time to the credit of the Central Government or as the Board directs.

Time limit for paying tax collected to the credit of the Central Government [Rule 37CA]

	Person collecting sums in accordance with section 206C	**Circumstance**	**Period with in which such sum should be paid to the credit of the Central Government**
(1)	An office of the Government	(i) where the tax is paid without production of an income-tax challan	on the same day

		(ii) where tax is paid accompanied by an income-tax challan	on or before 7 days from the end of the month in which the collection is made.
(2)	Collectors other than an office of the Government		within one week from the last day of the month in which the collection is made

Main differences between TDS and TCS

	TDS	TCS
(1)	TDS is tax deduction at source	TCS is tax collection at source.
(2)	Person responsible for paying is required to deduct tax at source at the prescribed rate.	(i) Seller of certain goods is responsible for collecting tax at source at the prescribed rate from the buyer. (ii) Person who grants licence or lease (in respect of any parking lot, toll plaza, mine or quarry) is responsible for collecting tax at source at the prescribed rate from the licensee or lessee, as the case may be. (iii) Authorised dealer receiving amount for remittance out of India under the LRS of the RBI or seller of an overseas tour program package is responsible for collecting tax at source at the prescribed rate from the buyer.
(3)	Generally, tax is required to be deducted at the time of credit to the account of the payee or at the time of payment, whichever is earlier. However in case of payment of salary, payment in respect of life insurance policy etc. tax is required to be deducted at the time of payment.	Generally, tax is required to be collected at source at the time of debiting of the amount payable by the buyer of certain goods to the account of the buyer or at the time of receipt of such amount from the said buyer, whichever is earlier. However, in case of sale of motor vehicle of the value exceeding Rs. 10 lakhs and sale of goods exceeding Rs. 50 lakhs other than exported goods and goods mentioned in section 206C(1), tax collection at source is required at the time of receipt of sale consideration.

M. COMMON NUMBER FOR TDS AND TCS [Section 203A]

1. Persons responsible for deducting tax or collecting tax at source should apply to the Assessing Officer for the allotment of a "tax-deduction and collection-account number".

2. Section 203A(2) enlists the documents/certificates/returns/challans in which the "tax deduction account number" or "tax collection account number" or "tax deduction and collection account number" has to be compulsorily quoted. They are:
   a. Challans for payment of any sum in accordance with the provisions of section 200 or section 206C(3).
   b. Certificates furnished under section 203 or section 206C(5).
   c. Statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3) or section 206C(3).
   d. Returns delivered in accordance with the provisions of section 206 or section 206C(5B) and
   e. In all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

3. The requirement of obtaining and quoting of TAN under section 203A shall not apply to such person, as may be notified by the Central Government in this behalf.

Rs.

14. PROVISIONS FOR FILING RETURN OF INCOME AND SELF ASSESSMENT

INTRODUCTION: Return of income is the format in which the assessee furnishes information as to his total income and tax payable. The format for filing of returns by different assessees is notified by the CBDT.

In short, a return of income is the declaration of income and the resultant tax by the assessee in the prescribed format.

Part 1	**Filing of Returns within Due date and Consequences for Failure [Section 139]**
Part 2	**Belated Return, Revised Return, Updated Return & Defective Return [Section 139]**
Part 3	**PAN & AADHAR [Section 139A & 139AA]**
Part 4	**Verification of Returns & Self-Assessment Tax [Section 140 & 140A]**
Part 5	**Miscellaneous Topics [Tax on updated Returns (140B), TRP's (139B)]**

PART 1 – FILING OF RETURNS WITHIN DUE DATE

COMPULSORY FILING OF RETURN OF INCOME [Section 139(1) to (3)]

A. PERSONS REQUIRED TO FILE U/S 139(1):

1. **COMPANES / FIRMS:** As per section 139(1), it is compulsory for companies and firms to file a return of income or loss for every previous year on or before the due date in the prescribed form.

2. **ANY OTHER PERSON:** In case of a person other than a company or a firm, filing of return of income on or before the due date is mandatory, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeds the basic exemption limit.

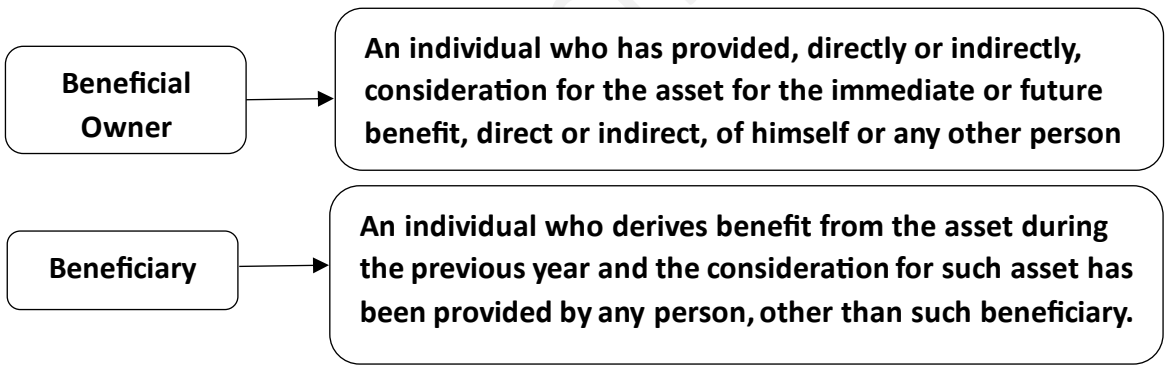
3. **INDIVIDUAL / HUF / AOP / BOI [Proviso 6 to 139(1):** Further, every person, being an individual or a HUF or an AOP/BOI, whether incorporated or not, or an artificial juridical person –
   - whose total income or the total income of any other person in respect of which he is assessable under this Act during the previous year
   - without giving effect to the provisions of Chapter VI-A or section 54/54B/54D/54EC/54F
   - exceeded the basic exemption limit

is required to file a return of his income or income of such other person on or before the due date in the prescribed form and manner and setting forth the prescribed particulars.

B. ADDITIONAL CASES OF FILING:

1. **RESIDENT BUT NOT ORDINARILY RESIDENTS [Proviso 4]:** Every person, being a resident other than not ordinarily resident in India within the meaning of section 6(6), who is not required to furnish a return under section 139(1), would be required to file a return of income or loss for the previous year in the prescribed form and verified in the prescribed manner on or before the due date, if such person, at any time during the previous year:
   a. holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has a signing authority in any account located outside India; or
   b. is a beneficiary of any asset (including any financial interest in any entity) located outside India.

However, an individual being a beneficiary of any asset (including any financial interest in any entity) located outside India would not be required to file return of income under this clause, where, income, if any, arising from such asset is includible in the income of the person referred to in (a) above in accordance with the provisions of the Income-tax Act, 1961. **[Proviso 5]**



2. **Proviso 7:** Any person other than a company or a firm, who is not required to furnish a return under section 139(1), is required to file income-tax return in the prescribed form and manner on or before the due date if, during the previous year, such person:
   a. Has deposited an amount or aggregate of the amounts exceeding ₹ 1 crore in one or more current accounts maintained with a banking company or a co-operative bank or
   b. Has incurred expenditure of an amount or aggregate of the amounts exceeding ₹ 2 lakh for himself or any other person for travel to a foreign country or
   c. Has incurred expenditure of an amount or aggregate of the amounts exceeding ₹ 1 lakh towards consumption of electricity or
   d. **Fulfils such other prescribed conditions:** Accordingly, the CBDT has, vide notification no. 37/2022 dated 21.4.2022, inserted Rule 12AA to provide that a person, other than a company or a firm, who is not required to furnish a return under section 139(1), and who

fulfils any of the following conditions during the previous year has to file their return of income on or before the due date in the prescribed form and manner:

i. if his total sales, turnover or gross receipts, as the case may be, in the business > ₹ 60 lakhs during the previous year; or

ii. if his total gross receipts in profession > ₹ 10 lakhs during the previous year; or

iii. if the aggregate of TDS and TCS during the previous year, in the case of the person, is ₹ 25,000 or more or

However, a resident individual who is of the age of 60 years or more, at any time during the relevant previous year would be required to file return of income only, if the aggregate of TDS and TCS during the previous year, in his case, is ₹ 50,000 or more

iv. The deposit in one or more savings bank account of the person, in aggregate, is ₹ 50 lakhs or more during the previous year.

C. SPECIFIED CLASS OR CLASSES OF PERSONS TO BE EXEMPTED FROM FILING RETURN OF INCOME [Section 139(1C)]:

1. Every person who falls within the ambit of the conditions mentioned under section 139 has to furnish a return of his income on or before the due date specified under section 139(1).

2. For reducing the compliance burden of small taxpayers, the Central Government has been empowered to notify the class or classes of persons who will be exempted from the requirement of filing of return of income, subject to satisfying the prescribed conditions.

D. RETURN OF LOSS [Section 139(3)]:

1. This section requires the assessee to file a return of loss in the same manner as in the case of return of income within the time allowed u/s 139(1).

2. 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 the following losses –
   a. Business loss u/s 72(1)
   b. Speculation business loss u/s 73(2)
   c. Loss from specified business u/s 73A(2)
   d. Loss under the head "Capital Gains" u/s 74(1)
   e. Loss from the activity of owning and maintaining race horses u/s 74A(3)

3. Consequently, section 139(3) requires filing of return of loss mandatorily within the time allowed u/s 139(1) for claiming carry forward of losses mentioned in (2) above.

4. However, loss under the head "Income from house property" u/s 71B and unabsorbed depreciation u/s 32 can be carried forward for set-off even though return of loss has not been filed before the due date.

5. A return of loss has to be filed by the assessee in his own interest and the non-receipt of a notice from the Assessing Officer requiring him to file the return cannot be a valid excuse under any circumstances for the non-filing of such return.

(REFER ILLUSTRATION 1)

Meaning of due date [Explanation 2]:

'Due date' means:

1. **31st October** of the assessment year, where the assessee, other than an assessee referred to in (2) below, is –
   a. a company,
   b. a person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force; or
   c. a partner of a firm whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force.

2. **30th November** of the assessment year, in the case of an assessee including the partners of the firm2 being such assessee who is required to furnish a report referred to in section 92E.

3. **31st July** of the assessment year, in the case of any other assessee.

INTEREST FOR DEFAULT IN FURNISHING RETURN OF INCOME [Section 234A]

1. Interest under section 234A is attracted for failure to file a return of income on or before the due date under section 139(1) i.e., interest is payable where an assessee furnishes the return of income after the due date or does not furnish the return of income.

2. Simple interest @1% per month or part of the month is payable for the period commencing from the date immediately following the due date and ending on the following dates:

Circumstances	Ending on the following dates
Where the return is furnished after due date	The date of furnishing of the return
Where no return is furnished	The date of completion of assessment

3. The interest has to be calculated on the amount of tax on total income as determined under section 143(1) and where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the advance tax paid and any tax

deducted or collected at source, any relief of tax allowed under section 89 and any tax credit allowed to be set-off in accordance with section 115JD.

4. No interest under section 234A shall be charged on self-assessment tax paid by the assessee on or before the due date of filing of return.

5. The interest payable under section 234A shall be reduced by the interest, if any, paid on self-assessment under section 140A towards interest chargeable under section 234A.

6. **Tax on total income as determined under section 143(1) would not include the additional income-tax, if any, payable under section 140B or section 143.**

7. **Tax on total income determined under regular assessment would not include the additional income-tax payable under section 140B.**

Note – Section 143(1) provides that if any sum is found due on the basis of a return of income after adjustment of advance tax, relief of tax allowed under section 89, tax deducted at source, tax collection at source and self-assessment tax, an intimation would be sent to the assessee and such intimation is deemed to be a notice of demand issued under section 156.

If any refund is due on the basis of the return, it shall be granted to the assessee and an intimation to this effect would be sent to the assessee. Where no tax or refund is due, the acknowledgement of the return is deemed to be an intimation under section 156.

FEE FOR DEFAULT IN FURNISHING RETURN OF INCOME [Section 234F]

Where a person, who is required to furnish a return of income under section 139, fails to do so within the prescribed time limit under section 139(1), he shall pay, by way of fee, a sum of ₹ 5,000.

However, if the total income of the person does not exceed ₹ 5 lakhs, the fees payable shall not exceed ₹ 1,000.

PART 2 – BELATED RETURN, REVISED RETURN, UPDATED RETURN AND DEFECTIVE RETURN

BELATED RETURN [Section 139(4)]

Any person who has not furnished a return within the time allowed to him under section 139(1) may furnish the return for any previous year at any time:

(i) Before 3 months prior to the end of the relevant assessment year (i.e., 31.12.2023 for P.Y. 2022-23); or
(ii) Before the completion of the assessment,

whichever is EARLIER.

REVISED RETURN [Section 139(5)]

If any person having furnished a return under section 139(1) or a belated return under section 139(4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time:

(i) Before 3 months prior to the end of the relevant assessment year (i.e., 31.12.2023 for P.Y. 2022-23); or
(ii) Before completion of assessment,

whichever is EARLIER.

UPDATED RETURN OF INCOME [Section 139(8A)]

1. **Option to file updated return of income**: Any person may furnish an updated return of his income or the income of any other person in respect of which he is assessable, for the previous year relevant to the assessment year at any time within 24 months from the end of the relevant assessment year.

   This is irrespective of whether or not he has furnished a return under section 139(1) or belated return under section 139(4) or revised return under section 139(5) for that assessment year.

   For example, an updated return for A.Y. 2023-24 can be filed till 31.3.2026.

2. **NON-APPLICABILITY OF THE PROVISIONS OF UPDATED RETURN**: The provisions of updated return would not apply, if the updated return of such person for that assessment year:
   a. is a Loss return or
   b. has the effect of decreasing the total tax liability determined on the basis of return furnished under section 139(1) or section 139(4) or section 139(5) or

c. results in refund or increases the refund due on the basis of return furnished under section 139(1) or section 139(4) or section 139(5)

3. **Circumstances in which updated return cannot be furnished:** No updated return can be furnished by any person for the relevant assessment year, where:
   a. an updated return has been furnished by him under this sub-section for the relevant assessment year or
   b. any proceeding for assessment or reassessment or recomputation or revision of income is pending or has been completed for the relevant assessment year in his case or
   c. he is such person or belongs to such class of persons, as may be notified by the CBDT.

   [Even in case when prosecution is initiated, an updated return cannot be filed]

4. **Updated return can be filed if original return is a loss return and updated return is a return of income:** If any person has a loss in any previous year and has furnished a return of loss on or before the due date of filing return of income under section 139(1), he shall be allowed to furnish an updated return if such updated return is a return of income.

   For example, if Mr. X has furnished his return of loss for A.Y. 2022-23 on 31.5.2022 consisting of ₹ 5,00,000 as business loss, he can furnish an updated return for A.Y. 2022-23 up to 31.3.2025 if such updated return is a return of income.

5. **Updated return to be furnished for subsequent previous years in case (4) above**: If the loss or any part thereof carried forward under Chapter VI or unabsorbed depreciation carried forward under section 32(2) or tax credit carried forward under section 115JD is to be reduced for any subsequent previous year as a result of furnishing of updated return of income for a previous year, an updated return is required to be furnished for each such subsequent previous year.

DEFECTIVE RETURN [Section 139(9)]

1. Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation. The Assessing Officer has the discretion to extend the time period beyond 15 days, on an application made by the assessee.
2. If the defect is not rectified within the period of 15 days or such further extended period, then the return would be treated as an invalid return. The consequential effect would be the same as if the assessee had failed to furnish the return.
3. Where, however, the assessee rectifies the defect after the expiry of the period of 15 days or the further extended period, but before assessment is made, the Assessing Officer can condone the delay and treat the return as a valid return.
4. A return of income shall be regarded as defective unless all the following conditions are fulfilled, namely:

a. The annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computations of gross total income and total income have been duly filled in.

b. The return of income is accompanied by the following, namely:
   (i) a statement showing the computation of the tax payable on the basis of the return.
   (ii) the report of the audit obtained under section 44AB (If such report has been furnished prior to furnishing the return of income, a copy of such report and the proof of furnishing the report should be attached).
   (iii) the proof regarding the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid. (However, the return will not be regarded as defective if (a) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income, (b) such certificate is produced within a period of 2 years).
   (iv) the proof of the amount of compulsory deposit, if any, claimed to have been paid under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974;
   (v) the proof of payment the tax as required under section 140B, if the return of income is a updated return furnished under section 139(8A).

c. Where regular books of account are maintained by an assessee, the return of income is accompanied by the following:
   (i) copies of manufacturing account, trading account, profit and loss account or income and expenditure account, or any other similar account and balance sheet.

   (ii) the personal accounts as detailed below:

(1)	Proprietary business or profession	The personal account of the proprietor
(2)	Firm, association of persons or body of individuals	personal accounts of partners or members
(3)	Partner or member of a firm, association of persons or body of individuals	partner's personal account in firm member's personal account in the association of persons or body of individuals

d. Where the accounts of the assessee have been audited, the return should be accompanied by copies of the audited profit and loss account and balance sheet and the auditor's report.

e. Where the cost accounts of an assessee have been audited under section 148 of Companies Act, 2013, the return should be accompanied by such report.

f. Where regular books of account are not maintained by the assessee, the return should be accompanied by:
   (i) a statement indicating:
      1. the amount of turnover or gross receipts,
      2. gross profit,
      3. expenses; and
      4. net profit
   (ii) the basis on which such amounts mentioned in (i) above have been computed,
   (iii) the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

However, the CBDT may, by notification, specify that any of the conditions specified in (a) to (f) above would not apply to such class of assessees or apply with such modifications as may be specified.

PARTICULARS TO BE FURNISHED WITH THE RETURN [Section 139(6)]

The prescribed form of the return shall, in certain specified cases, require the assessee to furnish the particulars of:

a. Incomes exempt from tax.
b. Assets of the prescribed nature and value, held by him as a beneficial owner or otherwise or in which he is a beneficiary.
c. His bank account and credit card held by him.
d. Expenditure exceeding the prescribed limits incurred by him under prescribed heads and
e. Such other outgoings as may be prescribed.

PARTICULARS TO BE FURNISHED WITH RETURN OF INCOME IN THE CASE OF AN ASSESSEE ENGAGED IN BUSINESS OR PROFESSION [Section 139(6A)]

The prescribed form of the return shall, in the case of an assessee engaged in any business or profession, also require him to furnish:

1. The report of any audit referred to in section 44AB.
2. The particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof.
3. The names and addresses of his partners, if any, in such business or profession.
4. If he is a member of an association or body of individuals,
   a. The names of the other members of the association or the body of individuals; and
   b. The extent of the share of the assessee and the shares of all such partners or members, as the case may be, in the profits of the business or profession and any branches thereof.

PART 3 – PAN & AADHAR

PERMANENT ACCOUNT NUMBER (PAN) [Section 139A]

1. The following persons mentioned who have not been allotted a permanent account number (PAN), to apply to the Assessing Officer within the time specified for the allotment of a PAN:

	Persons required to apply for PAN	**Time limit for making such application (Rule 114)**
(i)	Every person, if his total income or the total income of any other person in respect of which he is assessable under the Act during any previous year exceeds the maximum amount which is not chargeable to income-tax	On or before 31st May of the assessment year for which such income is assessable
(ii)	Every person carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹ 5 lakhs in any previous year	Before the end of that financial year.
(iii)	Every person being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year	On or before 31st May of the immediately following financial year
(iv)	Every person who is a managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of any person referred in (iii) above or any person competent to act on behalf of such person referred in (iii) above	On or before 31st May of the immediately following financial year in which the person referred in (iii) enters into financial transaction specified therein.

Further, every person who has not been allotted a PAN and intends to enter into such transaction as prescribed by the CBDT is also required to apply for PAN to the Assessing Officer. Accordingly, Rule 114BA has been inserted w.e.f. expiry of 15 days from 10.5.2022 to prescribe the following transactions:

	Persons required to apply for PAN [Rule 114BA]	**Time limit for making such application (Rule 114)**
(i)	Every person, who intends to deposit cash in his one or more accounts with a banking company, co-operative bank or post office, if the cash deposit or the aggregate amount of cash deposit in such accounts during a financial year is Rs. 20 lakh or more	At least 7 days before the date on which he intends to deposit cash over the specified limit, i.e., Rs. 20 lakh or more.
(ii)	Every person, who intends to withdraw cash from his one or more accounts with a banking company, co-operative bank or post office, if the cash withdrawal or the aggregate amount of cash withdrawal from such accounts during a financial year is Rs. 20 lakh or more	At least 7 days before the date on which he intends to withdraw cash over the specified limit, i.e., Rs. 20 lakh or more.

(iii)	Any person, who intends to open a current account or cash credit account with a banking company or a co-operative bank, or a post Office	At least 7 days before the date on which he intends to open such account.

2. The Central Government is empowered to specify, by notification in the Official Gazette, any class or classes of persons by whom tax is payable under the Act or any tax or duty is payable under any other law for the time being is force. Such persons are required to apply within such time as may be mentioned in that notification to the Assessing Officer for the allotment of a PAN [Sub-section (1A)].

3. For the purpose of collecting any information which may be useful for or relevant to the purposes of the Act, the Central Government may notify any class or classes of persons, and such persons shall within the prescribed time, apply to the Assessing Officer for allotment of a PAN [Sub-section (1B)].

4. The Assessing Officer, having regard to the nature of transactions as may be prescribed, may also allot a PAN to any other person (whether any tax is payable by him or not) in the manner and in accordance with the procedure as may be prescribed [Sub-section (2)].

5. Any person, other than the persons mentioned in (1) or (4) above, may apply to the Assessing Officer for the allotment of a PAN and the Assessing Officer shall allot a PAN to such person immediately.

6. Such PAN comprises of 10 alphanumeric characters.

7. Quoting of PAN is mandatory in all documents pertaining to the following prescribed transactions:
   a. In all returns to, or correspondence with, any income-tax authority;
   b. In all challans for the payment of any sum due under the Act;
   c. In all documents pertaining to such transactions entered into by him, as may be prescribed by the CBDT in the interests of revenue. In this connection, CBDT has notified the following transactions vide Rule 114B, namely:

S. No.	Nature of transaction	Value of transaction
1.	Sale or purchase of a motor vehicle or vehicle, as defined in the Motor Vehicles Act, 1988 which requires registration by a registering authority under that Act, other than two wheeled vehicles.	All such transactions
2.	Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any	All such transactions

	bank or banking institution referred to in section 51 of that Act).	
3.	Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.	All such transactions
4.	Opening of a demat account with a depository, participant, custodian of securities or any other person registered under section 12(1A) of the SEBI Act, 1992. All such transactions	All such transactions
5.	Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash of an amount exceeding ₹ 50,000.
6.	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	Payment in cash of an amount exceeding ₹ 50,000.
7.	Payment to a Mutual Fund for purchase of its units	Amount exceeding ₹ 50,000.
8.	Payment to a company or an institution for acquiring debentures or bonds issued by it.	Amount exceeding ₹ 50,000.
9.	Payment to the Reserve Bank of India for acquiring bonds issued by it.	Amount exceeding ₹ 50,000.
10.	Deposit with a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act); or post office	Cash deposits exceeding ₹ 50,000 during any **one day**.
11.	Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	Payment in cash of an amount exceeding ₹ 50,000 during any **one day.**
12.	A time deposit with, - (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) (ii) a Post Office (iii) a Nidhi referred to in section 406 of the Companies Act, 2013 or (iv) a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.	Amount exceeding ₹ 50,000 or aggregating to more than ₹ 5 lakh during a financial year.

13.	Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007, to a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution.	Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than ₹ 50,000 in a financial year.
14.	Payment as life insurance premium to an insurer as defined in the Insurance Act, 1938.	Amount aggregating to more than ₹ 50,000 in a financial year.
15.	A contract for sale or purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.	Amount exceeding ₹ 1 lakh per transaction
16.	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.	Amount exceeding ₹ 1 lakh per transaction.
17.	Sale or purchase of any immovable property.	Amount exceeding ₹ 10 lakh or valued by stamp valuation authority referred to in section 50C at an amount exceeding ₹ 10 lakh
18.	Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any.	Amount exceeding ₹ 2 lakh per transaction.

Rule 114BB has been inserted (w.e.f. expiry of 60 days from 10.5.2022) to prescribe that every person has to, at the time of entering into a transaction specified in column (2) of the Table below, quote his permanent account number or Aadhaar number, as the case may be, in documents pertaining to such transaction, and every person specified in column (3) of the said Table, who receives such document, has to ensure that the said number has been duly quoted and authenticated:

(1)	(2)	(3)
	Nature of transaction	**Person**
1.	Cash deposit or deposits aggregating to Rs. 20 lakhs or more in a financial year, in one or more account of a person with a bank or a co-operative bank or Post Office	A bank or a co-operative bank or Post Master General of a Post Office.
2.	Cash withdrawal or withdrawals aggregating to Rs. 20 lakhs or more in a financial year, in one or more account of a person with a bank or a co-operative bank or Post Office	A bank or a co-operative bank or Post Master General of a Post Office.

3.	Opening of a current account or cash credit account by a person with a bank or a co-operative bank or Post Office	A bank or a co-operative bank or Post Master General of a Post Office.

Note – Quoting of PAN or Aadhaar number is, however, not required in case where the person depositing money as per Sl. No.1 or withdrawing money as per Sl. No.2 or opening a current account or cash credit account as per Sl. No.3 is the Central Government, the State Government or the Consular Office [Notification No. 105/2022 dated 1.9.2022]

8. **Minor to quote PAN of parent or guardian**: Where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.

9. **Declaration by a person not having PAN**: Further, any person who does not have a PAN and who enters into any transaction specified in this rule, shall make a declaration in Form No.60 giving therein the particulars of such transaction either in paper form or electronically under the electronic verification code in accordance with the procedures, data structures, and standards specified by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems).

10. **Non-applicability of Rule 114B**: The provisions of this rule shall not apply to the following class or classes of persons, namely:
    a. The Central Government, the State Governments and the Consular Offices.
    b. The non-residents referred to in section 2(30) in respect of the transactions other than a transaction referred to at Sl. No. 1, 2, 4, 7, 8, 10, 12, 14, 15, 16, or 17 of the Table.

Meaning of certain phrases:

	Phrase	Inclusion
(1)	Payment in connection with travel	Payment towards fare, or to a travel agent or a tour operator, or to an authorized person as defined in section 2(c) of the Foreign Exchange Management Act, 1999
(2)	Travel agent or tour operator	A person who makes arrangements for air, surface or maritime travel or provides services relating to accommodation, tours, entertainment, passport, visa, foreign exchange, travel related insurance or other travel related services either severally or in package
(3)	Time deposit	Any deposit which is repayable on the expiry of a fixed period.

11. **Change in Details – Intimate:** If there is a change in the address or in the name and nature of the business of a person, on the basis of which PAN was allotted to him, he should intimate such change to the Assessing Officer.

12. Every person who receives any document relating to any transaction cited above shall ensure that the PAN or the Aadhar number is duly quoted in the document.

13. **Intimation of PAN to person deducting or collecting tax at source:** Every person who receives any amount from which tax has been deducted at source shall intimate his PAN to the person responsible for deducting such tax [Sub-section (5A)]. Similarly, every buyer or licensee or lessee referred to in section 206C shall intimate his PAN to the person responsible for collecting such tax [Sub-section (5C)]

14. **Quoting of PAN in certain documents**:
    1. Where any amount has been paid after deducting tax at source, the person deducting tax shall quote the PAN of the person to whom the amount was paid in the following documents:
        a. in the statement furnished under section 192(2C) giving particulars of perquisites or profits in lieu of salary provided to any employee.
        b. in all certificates for tax deducted issued to the person to whom payment is made;
        c. in all returns prepared and delivered or caused to be delivered to any income-tax authority in accordance with the provisions of section 206.
        d. in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3) [Sub-section (5B)].

    2. Also, every person collecting tax in accordance with the provisions of section 206C shall quote PAN of every buyer or licensee or lessee in the following documents:
        a. in all certificates issued for tax collected in accordance with the provisions of section 206C(5);
        b. in all returns prepared and delivered or caused to be delivered to any income-tax authority in accordance with the provisions of section 206C(5A)/(5B);
        c. in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 206C(3) [Sub-section (5D)].

15. **Requirement to intimate PAN and quote PAN not to apply to certain persons:**

The above sub-sections (5A) and (5B) shall not apply to a person who –

a. Does not have taxable income or
b. Who is not required to obtain PAN

if such person furnishes a declaration under section 197A in the prescribed form and manner that the tax on his estimated total income for that previous year will be NIL.

16. **Inter-changeability of PAN with the Aadhaar number:** Every person who is required to furnish or intimate or quote his PAN may furnish or intimate or quote his Aadhar Number in lieu of the PAN, if he:
    a. has not been allotted a PAN but possesses the Aadhar number

b. has been allotted a PAN and has intimated his Aadhar number to prescribed authority in accordance with the requirement contained in section 139AA(2).

PAN would be allotted in prescribed manner to a person who has not been allotted a PAN but possesses Aadhar number.

Accordingly, the CBDT has, vide Notification No. 59/2019, dated 30.8.2019, provide that any person, who has not been allotted a PAN but possesses the Aadhaar number and has furnished or intimated or quoted his Aadhaar number in lieu of the PAN, shall be deemed to have applied for allotment of PAN and he shall not be required to apply or submit any documents.

Further, any person, who has not been allotted a PAN but possesses the Aadhaar number may apply for allotment of the PAN under section 139A(1)/(1A)/(3) by intimating his Aadhaar number and he shall not be required to apply or submit any documents.

17. **Quoting and authentication of PAN or Aadhar number**:
    a. Every person entering into such prescribed transactions is required to quote his PAN or Aadhar number, as the case may be, in the documents pertaining to such transactions and also authenticate such PAN or Aadhar number in the prescribed manner.
    b. Every person receiving such document relating to transactions referred to in (a) has to ensure that PAN or Aadhar number has been duly quoted in such document and also ensure that such PAN or Aadhar number is so authenticated.

18. **Power to make rules**: The CBDT is empowered to make rules with regard to the following:
    a. The form and manner in which an application for PAN may be made and the particulars to be given therein.
    b. The categories of transactions in relation to which PAN or the Aadhar number, as the case may be, is required to be quoted on the related documents.
    c. The categories of documents pertaining to business or profession in which PAN or the Aadhar number, as the case may be, shall be quoted by every person.
    d. The class or classes of persons to whom the provisions of this section shall not apply.
    e. The form and manner in which a person who has not been allotted a PAN shall make a declaration.
    f. The manner in which PAN or the Aadhar number, as the case may be, shall be quoted for transactions cited in (b) above.
    g. The time and manner in which such transactions cited in (b) above shall be intimated to the prescribed authority.

Meaning of certain terms:

	Term	Meaning
(i)	**Aadhar number**	An identification number issued to an individual by the Authority on receipt of the demographic information and biometric information after verifying the information by the authority. It includes any alternative virtual identity generated by the Authority in the prescribed manner.

(ii)	**Authentication**	The process by which the PAN or Aadhar number along with demographic information or biometric information of an individual is submitted to the income-tax authority or such other prescribed authority or agency for its verification and such authority or agency verifies the correctness, or the lack thereof, on the basis of information available with it.

QUOTING OF AADHAR NUMBER [Section 139AA]

1. **Mandatory quoting of Aadhar Number:** Every person who is eligible to obtain Aadhar Number is required to mandatorily quote Aadhar Number:
   a. in the application form for allotment of Permanent Account Number (PAN)
   b. in the return of income

Quoting of Aadhaar Number mandatory in returns filed on or after 1.4.2019 [Circular No. 6/2019 dated 31.03.2019]

As per section 139AA(1)(ii), with effect from 01.07.2017, every person who is eligible to obtain Aadhaar number has to quote Aadhaar number in the return of income. The Apex Court in a series of judgments has upheld the validity of section 139AA. Consequently, with effect from 01.04.2019, the CBDT has clarified that it is mandatory to quote Aadhaar number while filing the return of income unless specifically exempted as per any notification issued under section 139AA(3) [detailed in point no. (5) in the next page]. Thus, returns being filed either electronically or manually on or after 1.4.2019 cannot be filed without quoting the Aadhaar number.

2. **Mandatory quoting of Enrolment Id, where person does not have Aadhar Number:** If a person does not have Aadhar Number, he is required to quote Enrolment ID of Aadhar application form issued to him at the time of enrolment in the application form for allotment of Permanent Account Number (PAN) or in the return of income furnished by him.

   Enrolment ID means a 28-digit Enrolment Identification Number issued to a resident at the time of enrolment

3. **Intimation of Aadhar Number to prescribed Authority:** Every person who has been allotted Permanent Account Number (PAN) as on 1st July, 2017, and who is eligible to obtain Aadhar Number, shall intimate his Aadhar Number to prescribed authority on or before **31st March, 2022.**

   Notwithstanding the last date of intimating/linking of Aadhaar Number with PAN being **31.03.2022,** it is clarified that w.e.f. 01.04.2019, it is mandatory to quote and link Aadhaar number while filing the return of income, either manually or electronically, unless specifically exempted.

4. **Consequences of failure to intimate Aadhar Number**: If a person fails to intimate the Aadhar Number, the permanent account Number (PAN) allotted to such person shall be made inoperative after the date so notified in the prescribed manner. Accordingly, Rule 114AAA specifies the manner of making permanent account number inoperative.

Sub- Rule	Provision
(1)	If a person, who has been allotted PAN as on 1st July, 2017 and is required to intimate his Aadhaar number under section 139AA(2), has failed to intimate the same on or **before 31st March, 2022**, the PAN of such person would become inoperative immediately after the said date (i.e., after 31st March, 2022) for the purposes of furnishing, intimating or quoting under the Income-tax Act, 1961.
(2)	Accordingly, where a person, whose PAN has become inoperative, is required to furnish, intimate or quote his PAN under the Act, it shall 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. **However, the consequences shall have effect from the date specified by the CBDT i.e., 1st April, 2023.**
(3)	Where such person who has not intimated his Aadhaar number on or before **31st March, 2022**, intimates his Aadhar number under section 139AA(2) after **31st March, 2022 after payment of fee specified in section 234H read with Rule 114(5A),** his PAN would become operative from the date of intimation of Aadhaar number for the purposes of furnishing, intimating or quoting under the Act. Accordingly, the consequences in sub-rule (2) would not be applicable from such date of intimation.
(4)	The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) has to specify the formats and standards along with the procedure for verifying the operational status of PAN under sub-rules (1) and (2).

5. **Clarification with respect to relaxation of provisions of rule 114AAA prescribing the manner of making Permanent Account Number (PAN) inoperative:**
   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 ₹ 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 for a like banks and other financial portals, as PAN is one of the important KYC criteria for all kinds of financial transactions.

f. 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; and the period beginning from 1st April, 2022 and ending with 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).

6. **Provision not to apply to certain persons or class of persons**: The provisions of section 139AA relating to quoting of Aadhar Number would, however, not apply to such person or class or classes of persons or any State or part of any State as may be notified by the Central Government. Accordingly, the Central Government has, vide Notification No. 37/2017 dated 11.05.2017 effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhar Number would not apply to an individual who does not possess the Aadhar number or Enrolment ID and is:
   a. Residing in Assam, Jammu & Kashmir and Meghalaya.
   b. A non-resident as per Income-tax Act, 1961.
   c. of the age of 80 years or more at any time during the previous year.
   d. Not a citizen of India.

7. **FEE FOR DEFAULT RELATING TO INTIMATION OF AADHAR NUMBER [SECTION 234H]:**
   a. Where a person, who is required to intimate his Aadhar Number under section 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 ₹ 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. ₹ 500, in a case where such intimation is made within 3 months from the date referred in section 139AA(2) i.e., by 30.06.2022 and
    ii. ₹ 1,000, in all other cases.

PART 4 – VERIFICATION OF RETURNS & SELF ASSESSMENT TAX

PERSONS AUTHORISED TO VERIFY RETURN OF INCOME [Section 140]

This section specifies the persons who are authorized to verify the return of income under section 139.

	Assessee	Circumstance	Authorised Persons
1.	Individual	**(i)** In circumstances not covered under (ii), (iii) & (iv) below	The individual himself
		(ii) where he is absent from India	a. The individual himself or b. Any person duly authorised by him in this behalf holding a valid power of attorney from the individual (such power of attorney should be attached to the return of income)
		(iii) where he is mentally incapacitated from attending to his affairs	a. His guardian or b. Any other person competent to act on his behalf
		(iv) where, for any other reason, it is not possible for the individual to verify the return	Any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)
2.	Hindu Undivided Family	**(i)** in circumstances not covered under (ii) and (iii) below	The karta
		(ii) where the karta is absent from India	Any other adult member of the HUF
		(iii) where the karta is mentally incapacitated from attending to his affairs	Any other adult member of the HUF
3.	Company	**(i)** in circumstances not covered under (ii) to (vi) below	The managing director of the company
		(ii) (a) where for any unavoidable reason such managing director is not able to verify the return; or	Any director of the company or
		(b) where there is no managing director	Any other person* as may be prescribed for this purpose

		(iii) where the company is not resident in India	A person who holds a valid power of attorney from such company to do so (such power of attorney should be attached to the return).
		(iv) (a) Where the company is being wound up (whether under the orders of a court or otherwise) or (b) where any person has been appointed as the receiver of any assets of the company	Liquidator Liquidator
		(v) Where the management of the company has been taken over by the Central Government or any State Government under any law	The principal officer of the company
		(vi) Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.	Insolvency professional appointed by such Adjudicating Authority
4.	Firm	**(i)** in circumstances not covered under (ii) below	The managing partner of the firm
		(ii) (a) where for any unavoidable reason such managing partner is not able to verify the return; or (b) where there is no managing partner.	Any partner of the firm, not being a minor Any partner of the firm, not being a minor
5.	LLP	**(i)** in circumstances not covered under (ii) below	Designated partner
		(ii) (a) where for any unavoidable reason such designated partner is not able to verify the return; or (b) where there is no designated partner.	Any partner of the LLP or Any other person as may be prescribed for this purpose
6.	Local authority	-	The principal officer

7.	Political party	-	The chief executive officer of such party (whether he is known as secretary or by any other designation)
8.	Any other association	-	Any member of the association or the principal officer of such association
9.	Any other person	-	That person or some other person competent to act on his behalf.

***Any other person in case of company and LLP** - The CBDT has, vide Notification No. 93/2021 dated 18.8.2021, specified that "any other person" referred to in section 140(c) and 140(cd) for company and LLP, respectively, shall be the person, appointed by the Adjudicating Authority (i.e., National Company Law Tribunal constituted under section 408 of the Companies Act, 2013) 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.

SELF-ASSESSMENT [Section 140A]

1. **Payment of tax, interest and fee before furnishing return of income [Section 140A(1)]**: Where any tax is payable on the basis of any return required to be furnished under, inter alia, section 139, after taking into account:
   a. The amount of tax, already paid, under any provision of the Income-tax Act, 1961
   b. The tax deducted or collected at source
   c. Any relief of tax claimed under section 89
   d. Any tax credit claimed to set-off in accordance with the provisions of section 115JD and
   e. Any tax or interest payable as per the provisions of section 191(2).

   The assessee shall be liable to pay such tax together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax before furnishing the return.

   The return shall be accompanied by the proof of payment of such tax, interest and fee.

2. **Order of adjustment of amount paid by the assessee:** Where the amount paid by the assessee under section 140A(1) falls short of the aggregate of the tax, interest and fee as aforesaid, the amount so paid shall first be adjusted towards the fee payable and thereafter towards interest and the balance, if any, shall be adjusted towards the tax payable.

3. **Interest under section 234A [Section 140A(1A)]:** For the above purpose, interest payable under section 234A shall be computed on the amount of tax on the total income as declared in the return, as reduced by the amount of-
   a. Advance tax paid, if any;
   b. Any tax deducted or collected at source;
   c. Any relief of tax claimed under section 89
   d. Any tax credit claimed to be set-off in accordance with the provisions of section 115JD.

4. **Interest under section 234B [Section 140A(1B)]**:
   a. Interest payable under section 234B shall be computed on the assessed tax or on the amount by which the advance tax paid falls short of the assessed tax.
   b. For this purpose "assessed tax" means the tax on total income declared in the return as reduced by the amount of
      i. Tax deducted or collected at source on any income which forms part of the total income.
      ii. Any relief of tax claimed under section 89.
      iii. Any tax credit claimed to be set-off in accordance with the provisions of section 115JD.

5. **Consequence of failure to pay tax, interest or fee [Section 140A(3)]**: If any assessee fails to pay the whole or any part of such of tax or interest or fee, he shall be deemed to be an assessee in default in respect of such tax or interest or fee remaining unpaid and all the provisions of this Act shall apply accordingly.

PART 5 – MISCELLANEOUS TOPICS

TAX ON UPDATED RETURN [Section 140B]

1. **Payment of tax, additional tax, interest and fee before furnishing updated return of income:**

   a. **If NO return is furnished earlier [Section 140B(1)]**: Where NO return of income under section 139(1) or 139(4) has been furnished by an assessee and tax is payable, on the basis of updated return to be furnished by such assessee under section 139(8A), the assessee would be liable to pay such tax together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax computed under section 140B(3), before furnishing the return. The tax payable is to be computed after taking into account the following:

   (i) The amount of tax, if any, already paid, as advance tax

   (ii) The tax deducted or collected at source

   (iii) Any relief of tax claimed under section 89 and

   (iv) Any tax credit claimed to set-off in accordance with the provisions of section 115JD.

   The return has to be accompanied by the proof of payment of such tax, additional tax, interest and fee.

   b. **If return is furnished earlier [Section 140B(2)]:**

   Where, return of income under section 139(1) or 139(4) or 139(5) has been furnished by an assessee and tax is payable, on the basis of updated return to be furnished by such assessee under section 139(8A), the assessee would be liable to pay such tax together with interest payable under any provision of this Act for any default or delay in payment of advance tax, along with the payment of additional tax computed under section 140B(3) (as reduced by the amount of interest paid under the provisions of this Act in the earlier return) before furnishing the return.

   The tax payable has to be computed after taking into account the following:

   (i) The amount of relief or tax referred to in section 140A(1), the credit for which has been taken in the earlier return

   (ii) The tax deducted or collected at source on any income which is subject to such deduction or collection and which is taken into account in computing total income and which has not been included in the earlier return

   (iii) Any tax credit claimed to set-off in accordance with the provisions of section 115JD, which has not been claimed in the earlier return.

   The aforesaid tax would be increased by the amount of refund, if any, issued in respect of such earlier return.

   The return has to be accompanied by the proof of payment of such tax, additional tax, interest and fee.

2. **Additional income-tax payable at the time of updated return [Section 140B(3)]**: The additional income-tax payable at the time of furnishing the updated return under section 139(8A) would be:
   (i) 25% of aggregate of tax and interest payable, as determined above, if such return is furnished after expiry of the time available under section 139(4) or 139(5) and before completion of the period of 12 months from the end of the relevant assessment year or
   (ii) 50% of aggregate of tax and interest payable, as determined above, if such return is furnished after the expiry of 12 months from the end of the relevant assessment year but before completion of the period of 24 months from the end of the relevant assessment year.

3. **Interest under section 234B where earlier return has been furnished [Section 140B(4)]:** In a case where an earlier return has been furnished, interest payable under section 234B has to be computed on the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.

   "Assessed tax" means the tax on the total income as declared in the updated return to be furnished under section 139(8A), after taking into account the following:

   (i) The amount of relief or tax referred to in section 140A(1), the credit for which has been taken in the earlier return
   (ii) The tax deducted or collected at source on any income which is subject to such deduction or collection and which is taken into account in computing total income and which has not been included in the earlier return
   (iii) Any tax credit claimed to set-off in accordance with the provisions of section 115JD, which has not been claimed in the earlier return

   The aforesaid tax would be increased by the amount of refund, if any, issued in respect of such earlier return.

4. **Power to CBDT to issue guidelines**: In case of any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty, with the approval of the Central Government. Every guideline issued shall be laid before each House of Parliament.

5. **Computation of Additional income-tax:** For the purpose of computation of Additional income-tax",
   i. tax would include surcharge and cess, by whatever name called, on such tax.
   ii. the interest payable would be interest chargeable under any provision of the Act, on the income as per updated return furnished under section 139(8A), as reduced by interest paid in the earlier return, if any.

   However, the interest paid in the earlier return would be considered to be nil, if no earlier return has been furnished.

6. **Interest under section 234A if no earlier return has been furnished:** In a case, where no earlier return has been furnished, the interest payable under section 234A has to be computed on the amount of the tax on the total income as declared in the updated return under section 139(8A), in accordance with the provisions of sub-section (1A) of section 140A.

7. **Interest under section 234 if earlier return has been furnished:** Interest payable under section 234C, where an earlier return has been furnished, has to be computed after taking into account the income furnished in the return under section 139(8A) as the returned income.

SCHEME FOR SUBMISSION OF RETURNS THROUGH TAX RETURN PREPARERS [Section 139B]

1. This section provides that, for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income, the CBDT may notify a scheme to provide that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.

2. The Tax Return Preparer shall assist the persons furnishing the return in a manner that will be specified in the Scheme and shall also affix his signature on such return.

3. **A Tax Return Preparer** means any individual, other than
    a. Any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.
    b. Any legal practitioner who is entitled to practice in any civil court in India.
    c. An accountant
    d. An employee of the 'specified class or classes of persons'.

    who has been authorized to act as a Tax Return Preparer under the Scheme.

4. The "specified class or classes of persons" for this purpose means any person other than a company or a person whose accounts are required to be audited under section 44AB (tax audit) or under any other existing law, who is required to furnish a return of income under the Act.
5. The Scheme notified under the said section may provide for the following:
    a. The manner in which and the period for which the Tax Return Preparers shall be authorised,
    b. The educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer,
    c. The code of conduct for the Tax Return Preparers,
    d. The duties and obligations of the Tax Return Preparers,
    e. The circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn, and
    f. Any other relevant matter as may be specified by the Scheme.

6. Accordingly, the CBDT has, in exercise of the powers conferred by this section, framed the Tax Return Preparer Scheme, 2006, which came into force from 1.12.2006.

Particulars	Contents
Applicability of the scheme	The scheme is applicable to all eligible persons.
Eligible person	Any person being an individual or a Hindu undivided family.
Tax Return Preparer	Any individual who has been issued a "Tax Return Preparer Certificate" and a "unique identification number" under this Scheme by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the Scheme. However, the following person are not entitled to act as Tax Return Preparer: **(i)** any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings. **(ii)** any legal practitioner who is entitled to practice in any civil court in India. **(iii)** an accountant.
Educational qualification for Tax Return Preparers	An individual, who holds a bachelor degree from a recognised Indian University or institution, or has passed the intermediate level examination conducted by the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India or the Institute of Cost Accountants of India, shall be eligible to act as Tax Return Preparer.
Preparation of and furnishing the Return of Income by the	An eligible person may, at his option, furnish his return of income under section 139 for any assessment year after getting it prepared through a Tax Return Preparer
Tax Return Preparer	However, the following eligible person (an individual or a HUF) cannot furnish a return of income for an assessment year through a Tax Return Preparer: **(i)** who is carrying out business or profession during the previous year and accounts of the business or profession for that previous year are required to be audited under section 44AB or under any other law for the time being in force; or **(ii)** who is not a resident in India during the previous year. An eligible person cannot furnish a revised return of income for any assessment year through a Tax Return Preparer unless he has furnished the original return of income for that assessment year through such or any other Tax Return Preparer.

Note - It may be noted that as per section 139B(3), an employee of the "specified class or classes of persons" is not authorized to act as a Tax Return Preparer. Therefore, it follows that employees

of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force (since they are not falling in the category of specified class or classes of persons), are eligible to act as Tax Return Preparers.

(REFER ILLUSTRATION 3)

POWER OF CBDT TO DISPENSE WITH FURNISHING DOCUMENTS ETC. WITH THE RETURN AND FILING OF RETURN IN ELECTRONIC FORM [Sections 139C & 139D]

1. Section 139C provides that the CBDT may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, reports of audit or any other documents, which are otherwise required to be furnished along with the return under any other provisions of this Act.

2. However, on demand, the said documents, statements, receipts, certificate, reports of audit or any other documents have to be produced before the Assessing Officer.

3. Section 139D empowers the CBDT to make rules providing for:
    a. The class or classes of persons who shall be required to furnish the return of income in electronic form;
    b. The form and the manner in which the return of income in electronic form may be furnished;
    c. The documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the assessing officer on demand;
    d. The computer resource or the electronic record to which the return of income in electronic form may be transmitted.