
STUDENT'S NOTES FOR

For CA-IPCC/PCC, CS-Executive, CWA

TAXATION

(With VAT & Service Tax)

Amended by Finance Act, 2011

For A. Y. 2012-13

Applicable for May 2012 & Nov.2012
Exams

J.K. TIWARY

Dedicated to My parents Who are visible Gods for me.

Touching life story.....

A young man was getting ready to graduate college. For many months he had admired a beautiful sports car in dealer's showroom, and knowing his father could well afford it, he told him that was all he wanted.

As graduation day approached, the young man awaited signs that his father had purchased the car. Finally, on the morning of his graduation his father called him into his private study. His father told him how proud he was to have such a fine son, and told him how much he loved him. He handed his son a beautiful wrapped gift box.

Curious ,but somewhat disappointed the young man opened the box and found a lovely, leather-bound Bible.

Agrily,

He raised his voice at his father and said, " with all your money you give me a Bible?" and stormed out of the house, leaving the holy book.

Many years passed and the young man was very successful in business. He had a beautiful home and wonderful family, but realized his father was very old, and thought perhaps he should go to him. He had not seen him since that graduation day. Before he could make arrangements, he received a telegram telling him his father had passed away, and willed all of his possessions to his son. He needed to come home immediately and take care things.

When he arrived at his father's house, sudden sadness and regret filled his heart. He began to search his father's important papers and saw the still new Bible, just as he left it years ago. With tears, he opened the Bible and began to turn the pages. As he read those words, a car key dropped from an envelope tapped behind the Bible. It had a tag with the dealer's name, the same dealer who had the sports car he had desired. On the tag was the date of his graduation,

And the words.....PAID IN FULL.

How many times do we miss God's blessing because they are not packaged as we expected? God and our parents blessing are always with us, but we never recognize this at the right time. Only when the time passes away we recognize how much they love us.

- ***We make our own fortunes and call them fate.***
- ***Ninety-nine percent of the failures come from people who have the habit of making excuses.***
- ***Never blame a day in your life. Good days give you "Happiness". Bad days give you Experience. Both are essential in life. Start everyday with smile.***
- ***Remember failure is not final, until you make it final.***

Keeping Your Axe Sharp

Once upon a time a very strong woodcutter asked for a job with a timber merchant, and he got it. The salary was really good and so were the work conditions. For that reason, the woodcutter was determined to do his best. His boss gave him an axe and showed him the area where he was supposed to work. The first day, the woodcutter brought 18 trees "Congratulations," the boss said. "Go on that way!"

Very motivated by the boss' words, the woodcutter tried harder the next day, but could bring 15 trees only.

The third day he tried even harder, but could bring 10 trees only.

Day after day he was bringing less and less trees. "I must be losing my strength", the woodcutter thought.

He went to the boss and apologized, saying that he could not understand what was going on.

"When was the last time you sharpened your axe?" the boss asked. "Sharpen? I had no time to sharpen my axe. I have been very busy trying to cut trees..."

- Instead of just working *hard* – putting in lots of hours – look for ways to work *smart*.
- Because **smart work means you're more likely to reach your goals.**

Syllabus
Paper -4. Taxation (IPCC)
(one paper- three hours- 100 marks)
Level of knowledge: Working knowledge

Objective :

- a.** To gain knowledge of the provisions of Income Tax, service Tax & VAT law relating to the topics mentioned in the contents below, and
- b.** To gain ability to solve problems concerning Individual, HUF, covering the areas mentioned below.

Contents

Part-I: Income Tax (50 marks)

1. Important definitions in the Income Tax Act, 1961.
2. Basis of charge; rates of taxes applicable for different types of assesses.
3. Concept of previous year and assessment year.
4. Residential status and scope of total income;
5. Income which do not form part of the total income.
6. Heads of the income and provisions governing computation of income under different heads.
7. Income of other persons included in the assessee's total income.
8. Aggregation of income; set-off or carry forward and set-off of losses.
9. Deduction from gross total income.
10. Computation of total income and tax payable; rebates and reliefs.
11. Provisions concerning advance tax and tax deducted at source.
12. Provisions for filling of return of income.

Part-II: Service Tax & VAT

Service Tax (25 marks)

1. Concepts and general principles.
2. Charge of service tax and taxable services
3. Valuation of taxable services
4. Payment of service tax and filling of returns.
Taxable services:
 1. Practicing Chartered Accountant's services.
 2. Mandap keeper's Services.
 3. Commercial training or coaching services.
 4. Information technology software services
 5. Consulting engineer's services.
 6. Business exhibition services
 7. Scientific and technical consultancy services.
 8. Technical testing and analysis services.

VAT(25 Marks)

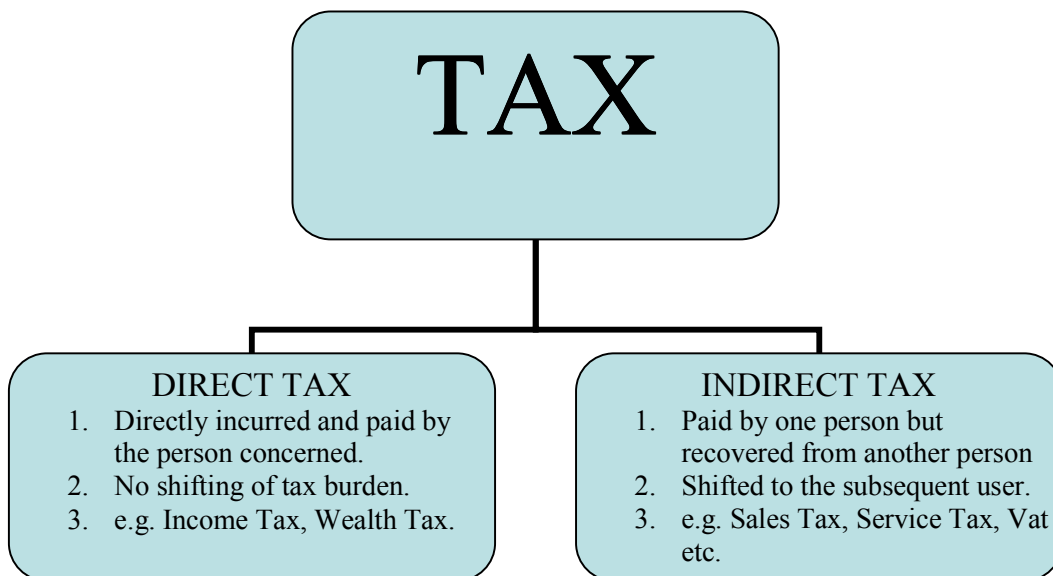
1. Concepts and general principles
2. Calculation of VAT liability including input tax credits
3. Small dealers and composition scheme
4. VAT procedure

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Tax: tax is compulsory payment to government under any law. It can be charged on goods, income or any activity.



BASIC CONCEPTS

Income Tax Law:-

Understanding of the Income Tax Law requires study of the followings:-

1. **The Income tax Act, 1961** (amended up to date) :-
The Act. Contains 298 sections and XIV schedules
2. **The Income Tax Rules, 1962** (amended up to date):-
U/s 295 of IT Act, 1961, CBDT is empowered to frame rules for the proper administration of the Act.
3. **Circulars and clarification by CBDT** :-
U/s 119 of the IT Act, CBDT issues circulars and notifications from time to time.
4. **Finance Act 2011.**
5. **Supreme court and High court decisions** :-
The law laid down by the Supreme Court is the law of the land, while the decisions of the High court will apply in the respective states, within its jurisdiction.

ASSESSEE: [2(7)]

Any person who is liable to pay any tax or any other sum under the Income Tax Act, 1961.

Assessee includes:-

(I) Every person in respect of whom any proceeding has been taken for the assessment of:-

- His income or income of any other person.
- Loss sustained by him or other person
- Amount of refund due to him or such other person.

(II) Every person **deemed*** to be an assessee under the Act.

(III) Every person deemed to be an **assessee in default**** under the Act.

* **Deemed assessee:** - It means a person who is treated as an assessee under the Act. It includes :

- Trustee of a trust
- Legal representative of a deceased person

** **Assessee in Default:** - It includes person who

- Fails to deduct and remit TDS
- Fails to pay tax and any other sum demanded

ASSESSMENT YEAR: [2(9)]

Assessment year means the period of 12 months commencing on the first day of April every year.

PREVIOUS YEAR: [3]

Previous year means financial year immediately preceding the assessment year.
The year in respect of the income of which the tax is levied is called Previous Year.

Note:

Previous year for newly established business is the date of setting-up of the business to the end of the financial year in which business was set up.

PERSON: [2 (31)]

Person includes:-

- An Individual
- A HUF
- A Company
- A Firm
- An AOP or BOI (whether incorporated or not)
- A Local Authority
- Artificial Juridical Person

PRACTICAL QUESTIONS

1. A single letter of enquiry was issued by the Income Tax Departmentt. To Mr. Vinay of Delhi. In this letter there was no specific mention of any provision of Income Tax Act. Can Mr. Vinay be treated as an '**Assessee**' under the IT Act?
2. A person may not have assessable income but may still be an assessee (T/F)
3. Determine the status of the followings:-
 - (i) Jawaharlal Nehru University (JNU)
 - (ii) ABC Ltd.
 - (iii) Delhi Municipal Corporation
 - (iv) Laxmi commercial bank Ltd.
 - (v) X, a director of ABC Ltd.
 - (vi) PQR Group Housing Co-operative society
 - (vii) XY & Co., Firm of X & Y
 - (viii) A joint family of P., Mrs. P and their sons A & B
 - (ix) X and Y who are legal heirs of Z (Z died in 1999 and X and Y carry on his business without entering into partnership

DISTINCTION BETWEEN AOP AND BOI

AOP	BOI
1. Created voluntarily	Created by operation of Law
2. AOP may consist of Individual or Non-Individual	BOI consist of Individual only
3. AOP means two or more persons joining together for a common purpose and to earn income and not an intention to form partnership	BOI may or may not have such common design or will
4. Example- Himanshu, ABC Ltd., Modanwal & Co.	Example- Ravi, Anil & Sunil

INCOME: [2(24)]

1. Profits or gains of business or profession.
2. Dividend.
3. Voluntary Contribution received by a charitable or religious trust or institution or an electoral trust.
4. The value of perquisite or profit in lieu of salary taxable u/s. 17 and special allowance or benefit specifically granted either to meet personal expenses or for the performance of duties of an office or an employment of profit.
5. Export incentives, like Duty Drawback, Cash Compensatory Support, Sale of licences etc.
6. Interest, salary, bonus, commission or remuneration earned by a partner of a firm from such firm.
7. Capital Gains chargeable u/s 45.
8. 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.
9. Deemed income u/s 41 or 59.
10. Sums received by an assessee from his employees towards welfare fund contributions such as provident fund, superannuation fund etc.
11. Amount received under Keyman Insurance Policy including bonus thereon.
12. Amount received under agreement for (a) not carrying out activity in relation to any business or (b) not sharing any know-how, patent, copyright etc.
13. Benefit or perquisite received from a Company, by a Director or a person holding substantial interest or a relative of the Director or such person.
14. Incomes referred in Section 56(2), i.e. gifts in excess of Rs.50,000.
15. Donations received by an Electoral Trusts as the income of the Electoral Trust
16. Any sum of money or value of property referred to in section 56(2)(vii) shall form part of income.

-
17. Value of shares received by a firm or a company for inadequate consideration or without consideration [w.e.f. 1-6-2010].

“Exemption can never exceed the amount of Income, however deduction can be less than or equal to or more than the amount of Income.”

BASIS OF CHARGE: [4]

- As provided in Section 4
- The total income of the previous year
- Of every person shall be charged to income tax
- At applicable to the relevant assessment year
- The Income shall be so charged in accordance with and
- Subject to the provisions of the Income Tax Act.

TAXATION OF P.Y. INCOME DURING THE SAME YEAR

1. Shipping business of non-resident: [172]:

When any ship belongs to a non resident and he earns income **from shipping business by carrying** passengers, livestock or goods shipped at a port in India, tax on such income is charged when the ship leaves India.

2. Person leaving India:[174]:

when the assessee leaves India either during the current year or immediately thereafter and does not have intention to return to India immediately, then his total income from the date of expiry of previous year up to the date of departure shall be assessed as income of the same year.

3. AOP or BOI or Artificial juridical person formed for a particular event or purpose: [174A]:

If it is formed for particular event or purpose and is likely to be dissolved, then the total income of such person up to the date of its dissolution shall be chargeable to tax in the same year.

4. Persons likely to transfer property to avoid tax: [175]:

If in the opinion of assessing officer, an assessee is likely to transfer his property to avoid tax, the total income of such person shall be chargeable to tax in the same year.

5. Discontinued business: [176]:

In case of discontinuance of the business or profession the income of the period up to the date of such discontinuance may be charged to tax in the same year.

DEEMED INCOMES

The following amounts are included in the income of assessee if no satisfactory explanation is offered to the AO about the nature (receipt is not income or it is exempt) and source thereof:

1. **Unexplained Cash Credits: [68]:** Where any sum is found credited in the books of the assessee for any previous year. It shall be chargeable to tax under the head “Income from Other Sources”
2. **Unexplained Investments: [69]:** If the assessee has made investments which are not recorded in the books of account.
3. **Unexplained Money, bullion or jewel or Valuable article: [69A]:** where assessee is found to be the owner of any money, bullion, jewellery or other valuable articles.
4. **Investment not fully disclosed: [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 articles and the AO finds that the amount expended on making such investments or bullion etc. exceed the amount recorded in the books of account.
5. **Unexplained Expenditure: [69 C]:** where an assessee has incurred any expenditure.
6. **Amount borrowed or repaid on hundi, other than by way of account payee cheque: [69D]:**

SLAB RATE

Rates of Income Tax for A.Y. 2012-13

Tax on total income of an assessee is chargeable at the following two types of rates:

1. Normal rates
2. Special rates prescribed under **Chapter XII and XII-A of the Income Tax Act, 1961**

► Rates of Income Tax for Individual/HUF

1. **In the case of every Individual or HUF or AOP/BOI (other than co-operative society) whether incorporated or not, or every artificial judicial person.**

Up to Rs.1,80,000	Nil
Rs.1,80,001 to Rs.5,00,000	10%
Rs.5,00,001 to Rs. 8,00,000	20%
Above Rs. 8,00,000	30%

2. **In the case of every Individual, being a woman resident in India, and below the age of sixty (60) years at any time during the previous year.**

Up to Rs. 1,90,000	Nil
Rs.1,90,001 to Rs5,00,000	10%
Rs.5,00,001 to Rs. 8,00,000	20%
Above 8,00,000	30%

3. **In the case of every Individual, being a resident in India, who is of the age of sixty (60) years or more at any time during the previous year.**

Up to Rs.2,50,000	Nil
Rs.2,50,001 to Rs.5,00,000	10%
Rs.5,00,001 to Rs.8,00,000	20%
Above Rs.8,00,000	30%

4. **In the case of every Individual, being resident in India, who is of the age eighty (80) years or more at any time during the previous year.[very senior citizen.**

Up to Rs.5,00,000	Nil
Rs.5,00,001 to Rs.8,00,000	20%
Above Rs.8,00,000	30%

NOTE:

1. **Education Cess (EC)** plus **Secondary Higher Education Cess (SHEC)** shall be 2% and 1% respectively in all the above cases on the income tax payable.
2. Surcharge is not levied on the above cases hence there is no any **Marginal relief**.

5. In the case of every co-operative society

Where the total income does not exceed Rs. 10,000	10% of the total income
Where the total income exceeds 10,000 but does not exceed Rs.20,000	1000 plus 20% of the amount by which the total income exceeds 10,000;
Where the total income exceeds Rs. 20,000	3000 plus 30% of the amount by which the total income exceeds 20,000

- ✓ No surcharge is payable by co-operative society.
- ✓ Education cess @2% and SHEC @1% on the income-tax shall be chargeable.

6. In case of any firm (including LLP)----- 30%

- ✓ No surcharge is payable by Firm/LLP.
- ✓ Education cess @2% and SHEC @1% on the income-tax shall be chargeable.

7. In case of every local authority-----30%

- ✓ No surcharge is payable by local authority.
- ✓ Education cess @2% and SHEC @1% on the income-tax shall be chargeable.

8. In the case of company

- i. For domestic companies:----- 30%, surcharge @5% on the tax payable shall be levied where total income of the company exceeds one crore rupees.**
 - ii. For foreign companies: - 40%, surcharge @ 2% on the tax payable shall be levied where total income of the foreign company exceeds one crore rupees.**
- Education cess @2% and SHEC @ 1% on the income tax (inclusive of surcharge if applicable) shall be chargeable.

SUMMARY OF THE SLAB RATE

1. For Women, resident in India and below the age of 60 years at any time during the P.Y.

Up to Rs. 1,90,000	Nil
Next Rs. 3,10,000	10%
Next Rs. 3,00,000	20%
Balance Incomes	30%

2. For every individual, being a resident in India, who is of the age of 60 years or more at any time during the previous year [senior Citizen].

Up to Rs. 2,50,000	Nil
Next Rs. 2,50,000	10%
Next Rs. 3,00,000	20%
Balance Incomes	30%

3. For every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year.(very senior citizen)

Up to Rs. 5,00,000	Nil
Next Rs. 3,00,000	20%
Balance Incomes	30%

4. For every other Individual, HUF or AOP/BOI (other than a co-operative society) whether incorporated or not, or every artificial judicial person

Up to Rs. 1,80,000	Nil
Next Rs. 3,20,000	10%
Next Rs. 3,00,000	20%
Balance Incomes	30%

► Rates of Income Tax for Firms, Local Authority, Co-Operative Society and Companies

ASSESSEE	TAX RATE	SURCHARGE
FIRMS/LLP	30%	NIL
LOCAL AUTHORITY	30%	NIL
CO-OPERATIVE SOCIETY	Up to Rs. 10,000 ----- 10% Next Rs. 10,000 ----- 20% Balance Income ----- 30%	NIL
COMPANY	Domestic Company – 30%	5% (Where Total Income exceeds Rs. 1 Crore).
	Foreign Company – 40%	2% (Where Total Income exceeds Rs. 1 Crore).

► Special Rates of Income Tax

- On short term capital gain covered under section 111A—15%
- On long term capital covered under section 112—20% (10% in certain cases)
- On winning of lotteries, crossword puzzles, card games etc. (section 115BB)—30%

► MARGINAL RELIEF

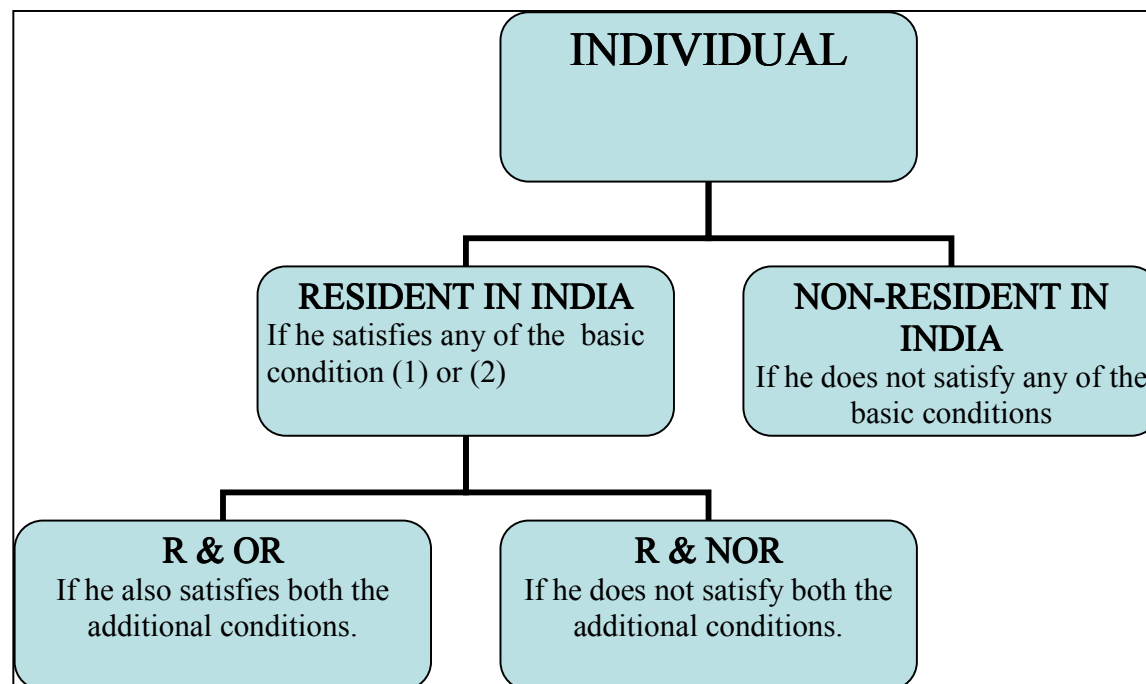
Marginal Relief shall be available and the total amount payable as income tax and surcharge on total income exceeding Rs. 1 crore shall not exceed the total amount payable as income tax on a total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 Crore .

RESIDENTIAL STATUS

INCOME TAX IN INDIA

Income earned/received in India is taxable for all assessee, While income earned/received outside India is taxable only for resident in India.

Residential status of an Individual: [6(1)]



BASIC CONDITION:

If an Individual stay in India

1. For 182 days or more during the P.Y.
2. For 60 days or more during the P.Y. and 365 days or more during 4 years immediately preceding the P.Y.

ADDITIONAL CONDITIONS:

1. If an Individual has been resident in India in at least 2 years out of 10 P.Y. immediately preceding the relevant P.Y.
2. If an Individual has been India for 730 days or more during 7 years immediately preceding the relevant P.Y.

Exceptions:

For the following persons only first basic condition is applied.

1. Individual, Indian citizen or person of **Indian origin***, visiting India or
2. Individual, India citizen, leaving India for **employment** outside India or
3. Indian citizen being a crew member of an Indian ship leaving India.

Key Notes:

- **Residential status** is determined for every year separately.
- ***A** person is said to be of an Indian origin if he , or either of his parents or any of his grand parents was born in undivided India before 15th August 1947.

- **** The term employment is** not defined in the Income Tax Act. A man may employ himself so as to earn profits in many ways. Thus he can set up an independent practice abroad or businessman can shift his business activities to a foreign country.
- Residential status should not be confused with citizenship.
- India includes territorial waters of India.
- Residential status is determined for every previous year separately and can change from one previous year to another previous year.
- When stay in India is about to 182 days then stay in India is calculated on hourly basis and a total of 24 hours is taken to be one day.
- The day of entering in to the India and the day exit from India is counted.
- The residence of an Individual for income tax purpose has nothing to do with citizenship or place of birth. An individual can, therefore, be resident in more than one country although he can have only one citizenship.

Q.1. Determine the status of Mr. P for P.Y. 2011-12 with the following information:

P.Y.	Stay(days)
11-12	182
10-11	100
09-10	150
08-09	70
07-08	80

What will be the answer if his stay in India during P.Y. 11-12 was 100 days ?

Q.2. Determine the status of Mr. P with the following information:-

P.Y.	Stay(days)
11-12	70
10-11	40
09-10	120
08-09	90
07-08	190
06-07	30
05-06	160
04-05	100
03-04	50
02-03	150
01-02	80

Q.3. Mr. Elbert is a foreign citizen, since 1981, he comes to India every year in the month of April for 105 days.

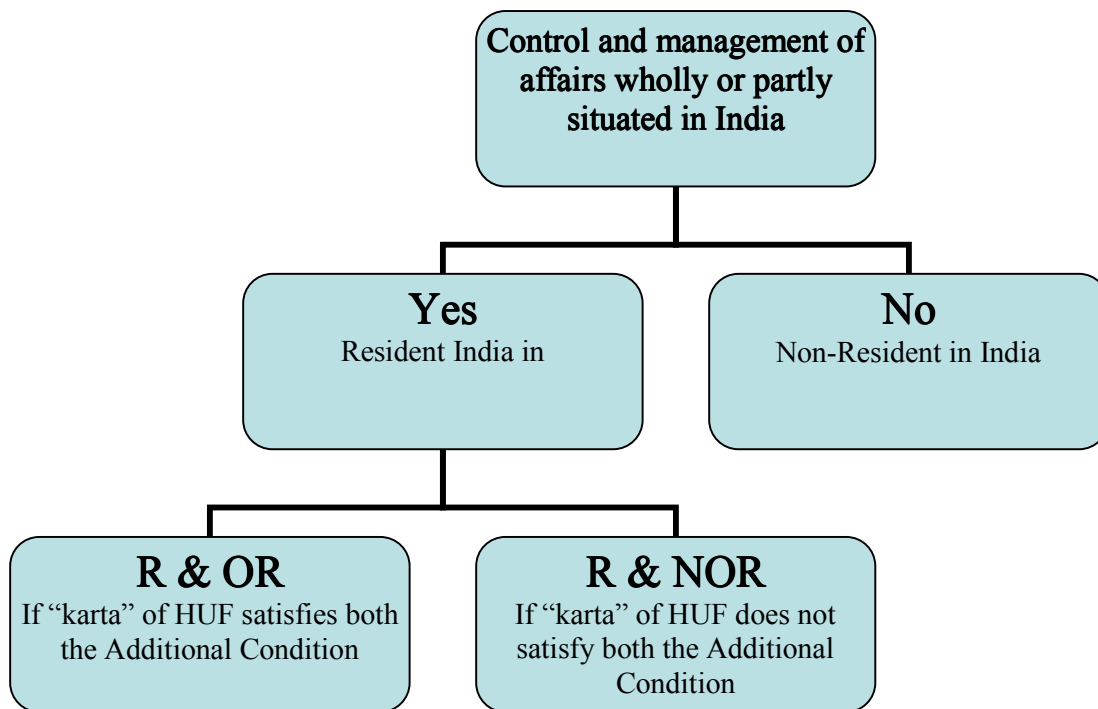
Find out the residential status of Mr. Elbert for the A.Y. 2012-13 if

- a. He is not a person of Indian origin.**
- b. He was born in Lahore on March 8, 1940.**
- c. Grand mother of Elbert was born near Dhaka in 1870, or**
- d. He was born in Poona in 1941**

Q.4. calculate the status of Mr. with the following information:

P.Y.	stay
11-12	75
10-11	40
09-10	120
08-09	90
07-08	190
06-07	30
05-06	160
04-05	100
03-04	50
02-03	150
01-02	80

RESIDENTIAL STATUS OF HUF:

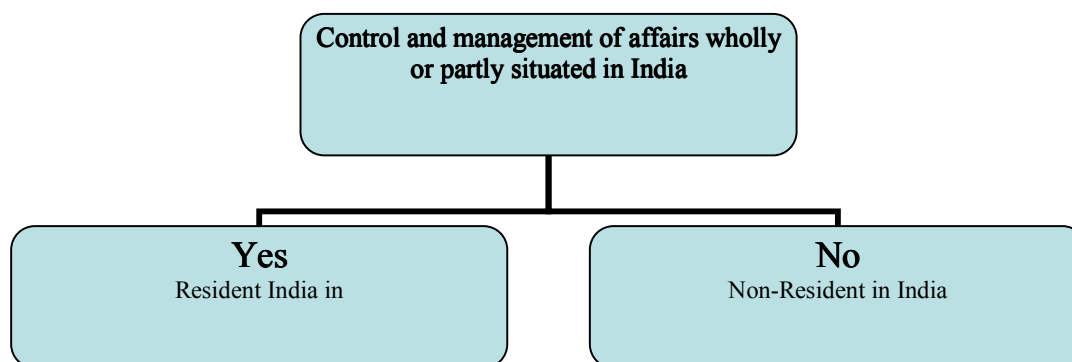


Q. 4. The Head Office of XY, a HUF, is situated in USA. The family is managed by Y (since 1981) who is resident in India in 3 out of 10 years immediately preceding the previous year 2011-12 and who is present in India for more than 729 days during last 7 years.

Determine the status of the family for the A.Y.2012-13 if affairs of family business are:

- (a) Wholly controlled from USA, (b) partly controlled from India.**

RESIDENTIAL STATUS OF FIRM, AOP, BOI AND EVERY OTHER PERSON OTHER THAN COMPANY:



RESIDENTIAL STATUS OF A COMPANY:

1. Indian Company:- Always resident in India.

2. Foreign Company:-

(a) Resident in India:- If control and management of its affairs is situated wholly in India during the relevant P.Y.

(b) Non-Resident in India:- If control and management of its affairs is situated wholly or partly outside India.

Notes: - Control and management means that place where board meeting of directors are held .

INCIDENCE OF TAX: [5]

Conditions	R & OR	R & NOR	NR
1. If Income received or deemed to be received in India, whether earned from anywhere.	Taxable	Taxable	Taxable
2. If Income accrue or arise or deemed to be accrue or arise in India, whether received any where	Taxable	Taxable	Taxable
3. Income earned from outside India from:-			
(a) Business and Profession connected in India	Taxable	Taxable	Not-Taxable
(b) Any other source	Taxable	Not-Taxable	Not-Taxable

Notes:

1. To be treated as received in India the income should be first received first outside India and then sent (remitted) to India then it shall be treated as received outside India.
2. Any past untaxed profits shall not be considered to be the income of the current year in any status i.e. ROR, NOR, NR.
3. Agricultural income in India and Dividend from Indian company are exempt.

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

- a) Income from salary for rendering services in India.
- b) Salary paid by the government to Indian citizen for services rendered outside India, However all allowance and perquisites are exempt.
- c) Income from property, asset or sources of income situated in India.
- d) Income from transfer of assets situated in India.
- e) Dividend paid by an Indian company outside India. (But presently dividend by Indian company is exempt because of CDT)

f) Interest:

(i) If interest is payable by CG/SG (i.e. loan given to Govt.) then it shall be deemed to be earned in India by the receiver of the interest.

(ii) If interest is payable by Resident in India (i.e. loan given to resident) then it shall be deemed to be earned in India by the receiver of the interest if money is used by the borrower for business or profession or earning any income from any source in India, or

(iii) If interest is payable by Non Resident (i.e. loan given to non-resident) then it shall be deemed to be earned in India by the receiver of the interest if money is used by the borrower for a business or profession in India.

g) Royalty payable by:

(i) If royalty is payable by CG/SG (i.e. copy right etc. given to Govt.) then it shall be deemed to be earned in India by the receiver of the royalty.

(ii) If royalty is payable by resident in India (i.e. copyright etc. given to resident) then it shall be deemed to be earned in India by the receiver of the royalty if right/information is used for business or profession or earning any income from any source in India or

(iii) If royalty is payable by non-resident in India (i.e. copyright etc. given to non-resident) then it shall be deemed to be earned in India by the receiver of the royalty if right/information is used for a business or profession in India.

But royalty paid for computer software supplied by non-resident manufacturer along with computer shall not be taxable.

h) Fees for technical services payable by:

(i) If fee is payable by CG/SG (i.e. services given to Govt.) then it shall be deemed to be earned in India by the receiver of the royalty.

(ii) If fee is payable by Resident in India (i.e. services given to resident) then it shall be deemed to be earned in India by the receiver of the fees if services are used for business or profession or earning any income from any source in India or

(iii) If fee is payable by Non-resident in India (i.e. services given to non-resident) then it shall be deemed to be earned in India by the receiver of the fees if services are used for business or profession in India.

Explanation :-

The income of non-resident shall be deemed to accrue or arise in India under 6, 7 & 8 and shall be included in his total income, whether or not,

-
- a. The non-resident has a residence or place of business or profession connection in India or
 - b. The non-resident has rendered service in India (**applicable retrospective from 1st June 1976**)

i) **Income from a business connection in India:**

A business connection means any activity in India in relation to business. In any business many activities are undertaken to earn profit. If any of those activities are undertaken in India then it will be treated as business connection in India. And tax has to be paid on the profit earned due to that activity which is carried out in India. E.g. branch or agent for entering in to contracts, subsidiary in India or factory in India.

However in case of Non-resident the following operations shall not be treated as business connection in India and therefore shall not be taxable:

- (i) **Purchase of goods** in India for purpose of exports.
- (ii) **Collection of news and views** for transmission outside India by Non-resident who is engaged in the business of running news agency or of publishing newspapers, magazines or journals.
- (iii) **Shooting of films** in India if
 - a. Individual- he is not citizen of India
 - b. Firm- no partner is citizen or resident of India
 - c. Company- no shareholder is citizen or resident of India.

Q.5. From the following incomes which incomes are assessable in India if Mr. Roshan is (a) resident ,(b) Not-ordinarily resident and (c) Non-resident:

- i. Income from business in Delhi, managed in U.S.A., Rs. 30,000,
- ii. Income from pension for services rendered in India, received in London, Rs. 20,000,
- iii. Income from assets in Burma, received in India, Rs. 15,000,
- iv. Profit from business in Sri Lanka, deposited in a bank there, Rs. 10,000,
- v. Income from profession in Bhutan received there. The profession was set-up in India, Rs. 20,000,
- vi. Interest on UK Government securities, half of which received in India, Rs. 5,000,
- vii. Interest on England Development Bonds (1/5 received in India), Rs. 50,000,
- viii. Income from agriculture in Pakistan, received there, but later on remitted to India, Rs. 60,000,
- ix. Income from property in Canada, received, received outside India Rs. 40,000,
- x. Income earned from business in Uganda, which is controlled from Delhi (Rs. 30,000 is received in India), Rs. 50,000,
- xi. Profit on sale of a building in India but received in Sri Lanka, Rs. 60,000,
- xii. Salary received in India for services rendered in London, Rs. 20,000,
- xiii. Income earned and received in Bangladesh from bank deposit there, Rs. 10,000,
- xiv. Income accrued in Bhopal but received in Singapore, Rs. 30,000,
- xv. Income from agriculture in England, it is all spent on the education of children in London, Rs. 20,000.

Q. 6. From the following particulars of income furnished by Mr. Khana pertaining to the year ending March 31, 2012, compute the total income for the assessment year 2012-13, if he is (a) resident and ordinary resident; (b) resident but not ordinarily resident and (c) Non-resident:

Particulars	Rs.
a. Short term capital gain on sale of shares in an Indian company(received in Germany)	25,000
b. Dividend from Japanese company (received in Japan)	20,000
c. Rent from property in London deposited in bank in London, later on remitted to India through approved banking channels	1,00,000
d. Dividend from an Indian company	10,000
e. Agricultural income from agricultural land in Haryana	50,000

SALARY

❖ Income under head salary is taxable only if there is employer -employee relationship between payer and payee. It is said to exist if there is Control over the method of doing work of other person.

➤ **Not salary:-**

- ✓ Partner of firm
- ✓ Director who is not an employee
- ✓ M.P.
- ✓ Guest Lecture

❖ **Basis of charge sec-[15]:**

- Salary is taxable on the receipt or due, whichever is earlier.
- Advance salary is salary, however loan against salary is not a salary.
- Loan from employer is not salary. Hence Advance Salary is taxable, while loan against salary is not.
- Any Salary, bonus etc. received by a partner from the firm shall not be regarded as salary.
- “Advance against salary” is treated as Loan against salary

SALARY

Full time or Part time employment

Whether full time or part, charged under salary head (Employer-Employee must be exist)

Forgoing of Salary

Salary given to charitable trust etc. shall be taxable however, entitled to claim deduction u/s 80 G.

Surrender of Salary

Employee surrenders his salary to the central govt. u/s 2 of the *Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961*. The salary so surrendered would be exempt while computing his taxable income.

Salary Paid Tax-free

Employer bears the burden of tax on the salary of employee. Taxable salary for employee consists of salary income and also the tax on the salary paid by the employer.

❖ Retirement Benefits:

➤ **Gratuity [10(10)] :-**

1. Govt. employee- Fully exempt.
2. Other Employee:

➤ **Employee covered by the Gratuity Act, 1972:**

Least of the following are exempt:-

- (a). $15/26 \times$ last drawn salary \times No. of years of completed service or part thereof in excess of 6 months.
- (b). Rs. 10, 00,000
- (C). Gratuity actually received.

Salary means - basic salary + D.A. (Full DA)

➤ **Employee not covered by the Gratuity Act -1972:**

Least of the following are exempt:-

- (a) $\frac{1}{2}$ x Average Salary of 10 months preceding the month of retirement x No. of fully completed years of service.
- (b) Rs. 10,00,000
- (c) Gratuity actually received.

Key Notes:

- ✓ Salary means- Basic Salary +D.A (if forming part of retirement benefits) +Fixed percentage of commission on turnover.
- ✓ Gratuity received during the service is not exempt from tax, though assessee can claim relief u/s 89.
- ✓ If Gratuity becomes due at the time of retirement, it is taxable in the hands of assessee under this head even if it is received by legal heirs after his death.
- ✓ If Gratuity sanctioned after his death then it is not chargeable in the hands of legal heirs of deceased employee.

Q.1 Gratuity [10(10)]

X receives a gratuity of Rs. 10 lacks as on 20th May, 2011 (at retirement) after a service of 15 years 10 months 5 days.

His last drawn emoluments are as follows:-

Basic Salary Rs. 45,000 p.m.

D.A. Rs. 15,000 p.m.

Travelling Allowance Rs. 1,000 p.m.

Actual increment of basic salary is Rs. 1000 falls due on 1st December every year.

Find out:-

1. Exempted amount of Gratuity in the A.Y 2012-13, if X who is covered by the payment of Gratuity Act, 1972.
2. Exempted amount of Gratuity in the A.Y 2012-13 if X who is not covered by the payment of Gratuity Act, 1972.

➤ **Pension: [10(10A)]:**

1. **Uncommuted Pension:** - Taxable for all employees.

2. **Commuted pension :-**

(a) Govt. employees - Fully exempt.

(b) Other employees:-

(i) If in receipt of gratuity:

$\frac{1}{3}$ X full value of pension is exempt.

(ii) If not in receipt in gratuity:

$\frac{1}{2}$ x full value of pension is exempt.

Key Notes:

- ✓ Pension received by a legal heir (family pension) of deceased employee shall be chargeable u/s 56 under the head of Other Source subject to standard deduction u/s 57, which are as follows:-
 - 33.33% of Pension, or
 - Rs. 15,000.Whichever is lower.
- ✓ However family pension received by a widow of a member of the armed force where the death of the member has occurred in the course of the operational duties shall be totally exempt u/s 10 (19).
- ✓ Ex-gratia payment received by a person or legal heir, from the Central/State Govt./L.A./PSU, consequent upon injury to the person /death of a family member, *while on duty*, will not be taxable.

Q.2 Pension [10(10A)]

Y receives a pension of Rs. 5,000 per month. At the end of P.Y. 2011-12 he retires and also receive 2/3 commuted pension of Rs. 500,000. Compute the taxable amount if

Case I – he also receive gratuity

Case II – he did not receive gratuity

➤ **Leave salary: [10(10AA)]**

Leave salary received at the time of retirement or leaving job:

1. Govt. employee - fully exempt.
2. Non Govt. employee – least of the following is exempt :
 - (a) Amount actually received.
 - (b) Rs.300000
 - (c) Last 10 months salary.
 - (d) Cash equivalents of unavailed leave*.

***Calculation of cash equivalents of unavailed leave:-**

Step 1. - Leaves actually allowed or 30 days per year whichever is less.

Step 2. – Leaves actually availed.

Step 3. – (step 1 Less step 2) x Average monthly salary.

Meaning of salary: Basic + D.A. (for retirement benefits) + commission based on turnover.

Key Notes:

- ✓ Average salaries of last 10 months should calculate from the preceding date of retirement.
- ✓ Leave salary received during the continuity of employment is taxable.
- ✓ Sum equivalent of Leave Salary received by the family of a Govt. Servant who died in harness (while in employment) is not taxable in the hands of recipient.

Q.3 Leave Salary [10(10AA)]

Mohan, an employee of Airtel retired from the company on 12.12.2011. Compute the exempted amount on the basis of following information:-

I. Leave encashment	Rs. 2,00,000
II. Leave availed by the employee	18 months
III. Unavailed leave at the time of retirement	22 months
IV. Salary at the time of retirement (p.m.)	Rs. 12,000
V. Period of service	25 years 8 months
VI. Average Salary of Last 10 months	Rs. 10,500

➤ **Retrenchment compensation [10 (10B)] :**

Least of the following are exempt:-

- 15/26 x average salary x no. of years of completed service or part thereof in excess of 6 months(as calculated in accordance with Industrial Disputes Act)
- Amount actually received.
- Rs. 500000

Salary means: it includes all but does not include bonus and employer's PF contribution.

Note: Average salary means salary for preceding 3 months preceding **the date of retirement.**

➤ **Voluntary retirement compensation [10(10C)]:**

Least of the following is exempt:-

- Last drawn salary x 3 months x No. of fully completed years of service.
- Last drawn salary x balance of months of service left.
- Amount actually received.
- 500000.

Key Notes:

- ✓ No relief under sec.89 where exemption has been claimed u/s 10 (10c).
- ✓ If exemption is claimed in one A.Y. then exemption shall not be allowed in another A.Y.
- ✓ Exemption shall be allowed only to employees of central/state Govt. public sector undertakings (PSU), any other company, statutory corporation, local authority, universities, and notified institute of management.
- ✓ It applies to an employee of the company who is completed 10 years of service or completed 40 years of age.
- ✓ *Salary means-* Basic Salary +D.A (if forming part of retirement benefits) +Fixed percentage of commission on turnover.

Q.4 Compensation on Voluntary Retirement: [10(10C)]

Z is an employee of ABC Ltd. terminated during the P.Y. and a sum of Rs. 10 lacs on termination from service after completed 25 years of service. The following information is provided by the employee:-

- I. Basic pay Rs. 15,000
 - II. Dearness Pay Rs. 6,000
 - III. Balance of service 10 years
- What amount shall be exempt.

➤ **Provident Fund:** Tax treatment

Particulars	SPF	RPF	URPF	PPF
Employer's contribution	Not Taxable	Amount exceeding 12% of salary	Not taxable at the time of contribution	N.A.
Employee's contribution	Deduction u/s 80C is available	Deduction u/s 80C is available	No Deduction u/s 80C	Deduction u/s 80C is available.
Interest on P.F. Both contribution	Fully exempt	Exempt up to 9.5%	Not taxable every year but also not exempt	Fully exempt
Payment of lump sum amount on retirement/resignation/termination	Fully exempt u/s 10(11)	Exempt subject to certain conditions*	See the Key Notes 1 to 3.	Fully exempt u/s 10(11)

Key Notes:

- ✓ Accumulated employer's contribution + interest on employer contribution are taxable as profit in lieu of salary.
- ✓ Accumulated employee's contribution is not taxable.
- ✓ Interest on employee's contribution is taxable under the head.

○ **ALLOWANCES:**

Allowance is a fixed monetary amount paid by the employer to the employee for meeting some particular expenses, whether personal or for the performance of his duties.

➤ **Fully taxable allowances:-**

- (i) Dearness allowance
- (ii) Entertainment allowance
- (iii) Fixed medical allowance
- (iv) Non practicing allowance
- (v) Over time allowance
- (vi) Tiffin lunch/dinner allowance
- (vii) Servant allowance
- (viii) Gardener allowance
- (ix) Warden allowance
- (x) City Compensatory allowance
- (xi) Project allowance
- (xii) Interim allowance (to meet increased cost of living in city.)
- (xiii) Any other cash allowances

➤ **House rent allowance-[10(13A)]**

Least of the following shall be exempt:-

- (i) Allowance actually received.
- (ii) Rent paid **less** 10% of salary.
- (iii) 50 or 40% of salary
 - 50% for Delhi, Mumbai, Chennai and Kolkata.
 - 40% for any other places.

Salary = Basic + D.A. (Provided for retirement benefits) + commission as fixed percentage based on turnover

Note: Exemption is only for the period for which house is taken on rent. Therefore, HRA and salary are taken only for that period during which house is taken on rent. However exemption is not available if an employee does not pay rent as lived in his own house.

Q.6 H.R.A: [10(13A)]

Mr. Saurabh Mishra is employed in Subh Laxmi Pvt. Ltd. The particulars of his salary for the P.Y. 2011-12 are as under:-

• Basic Salary	Rs. 37,000 p.m.
• D. A. (50% in terms of employment)	Rs. 10,000 p.m.
• Commission (on turnover @ 1.5% p.a)	Rs. 15,000
• H.R.A actually received	Rs. 10,500 p.m

Actual rent paid by the employee is Rs. 9,000 p.m. Compute the taxable salary.

➤ **SPECIAL ALLOWANCE [10(14)]**

➤ **Following allowances are exempt to the extent of amount received or amount spent whichever is less:-**

1. **Travelling Allowance:** Given to meet the cost of travel on tour or on transfer.
2. **Conveyance Allowance:** Given to meet the expenditure incurred on conveyance official duties.
3. **Daily Allowance:** Given on tour or transfer to meet the ordinary daily charges.
4. **Helper Allowance:** Given to meet the expenditure on helper for official duties.
5. **Academic Allowance:** Given for encouraging academic research & training pursuits (An occupation).
6. **Uniform Allowance:** Given to meet expenditure on purchase or maintenance of uniform.

➤ **Following allowances are exempt to the extent of amount received or the limit specified whichever is less:-**

1. **Children Education Allowance:** Exempt up to actual amount received per children or Rs.100 p/m Per child up to a maximum of two children whichever is less.
2. **Hostel Expenditure Allowance:** Exempt up to actual amount received per child or Rs.300 p/m per child up to maximum of two children whichever is less.
3. **Transport Allowance:** For the purpose of commuting between residence & the place of the duty exempt to the extent of Rs.800 p/m & Rs.1600 p/m for blind & handicapped employees.
4. **Allowance Allowed To Transport Employees:** Given to the employee working in any transport system to meet his personal expenditure during the courses of running of such transport from one place to another amount of exemption shall be:-
 - a. 70% of such allowance or
 - b. Rs.10,000 p.m.
Whichever is less
5. **Tribal Area Allowance:** Exempt up to actual amount received or Rs.200 whichever is less.
6. **Underground Allowance:** - Granted to employees working in unsuited, unnatural climate in underground coal mines shall be exempt up to Rs. 800 p.m.
7. **Hill/Border/Remote area Allowances:** - varying from Rs. 300 to Rs. 7000 p.m.

➤ **FULLY EXEMPTED ALLOWANCES:**

1. Allowances granted to Govt. employees outside India.
2. Allowances paid by UNO.
3. Allowances to High court or Supreme Court judges.
4. Compensatory allowances received by a judge's
5. **Allowances to Chairman and Members of Union Public Service Commission.(AY12-13)**

❖ **PERQUISITES**

Perquisites: - Perquisite includes any amount due to or received in lumpsum or otherwise, by an assessee, from an employer. It is usually attached to position.

Perquisite includes:-

1. Value of Rent-free Accommodation given by the employer.
2. Value of accommodation given at concessional rate.
3. Value of benefit given free of cost or at concessional rate to a "Specified employee"
4. Any sum paid by the employer on behalf of the employees for any obligation payable by the employee.
5. Sum paid or payable by employer towards an assurance on the life of the assessee.
6. Value of any specified security or sweat equity shares allotted or transferred by the employer at free of cost or at concessional rate.
7. Amount contributed by employer to an approved superannuation fund in excess of Rs. 1 Lack.
8. Value of any other fringe benefits as amenities as may be prescribed.

Meaning of "Specified Employee":- [17(2) (iii)]

1. **Director:-** He is a director employee of a company , OR
2. **Voting power:** - He holds 20% or more of voting power (Equity shares) in the company.
3. **Monetary salary is excess of Rs. 50,000:-** His income under the head salary excluding non-monetary payments exceeds Rs. 50,000. Salary should be calculated after making the deductions towards 16(ii) & 16(iii).

➤ **Perquisites in any form Taxable for all Employees**

1. Rent free accommodations

Govt.	Others		Accommodation in hotel
As per govt. rules	1. <u>Owned by employer</u>		<ul style="list-style-type: none"> • 24% of salary or • Actual charges Whichever is lower (whether govt. or others) <p>However nothing shall be taxable if accommodation is</p> <p>(i) provided for not more than 15 days and</p> <p>(ii) on transfer of employee from one place to another</p>
	Population of city in which house provided as per 2001 census	Taxable Amount	
	More than 25 Lakhs	15% of salary	
	More than 10lakhs but upto 25 Lakhs	10% of salary	
	Upto 10 Lakhs	7.5% of salary	
	2. <u>Not owned by employer</u>		
Actual Rent or 15% of salary Whichever is lower			

Key Notes:

- If furniture is also provided then 10% p.a. of cost of furniture or actual hire charges if taken on rent, shall be added in the value above calculation.
- Any maintenance charges or repairs of the building incurred by the employees shall be ignored.

• **Meaning of salary**

SALARY INCLUDES	SALARY EXCLUDES
1. Basic salary	1. Other D.A.
2. DA (if under terms of employment)	2. Employer's contribution to P.F.
3. Bonus	3. Value of Perquisites
4. Commission	4. Exempted Allowances
5. Taxable portion of all allowances	
6. Monetary payment received from one or more employers	

- ✓ Salary from all employers is taken even if house is provided only by one employer and it (salary) is taken only for that period for which house is provided by the employer.

- **2 houses on transfer:** - In the case of transfer from one place to another, if employee is provided house at the new place and also allowed to retain house at the old place.
 - (a) For first 90 days from the transfer the value of one house with lower value will be taxable.
 - (b) After 90 days value of both houses will be taxed for the period in excess of 90 days.

- **Valuation is not applicable hence not taxable:-**
 Nothing shall be taxable if:-
 - (a) House is located at least 8 k.m. away from local limit of municipality or located in remote area (40 k.m. away from city having population not exceeding 20,000 based on latest published all India Census. 'or'
 - (b) It is provided to an employee working at mining site or an onshore oil exploration site or a project execution site.

- If any amount is recovered from the employee, then such amount shall be reduced from the value determined from such house.

Q.7 Rent free Accommodation: [Rule3 (1)]

Khanna, an Employee of IOL, New Delhi, a private Sector Company, received the following for the financial year 2011-12:-

Basic Salary Rs. 1,20,000, H.R.A. Rs. 90,000, Special Allowance Rs. 30,000.

Khanna was residing at New Delhi and was paying a rent of Rs. 10,000 a month.

- a) Compute eligible exemption u/s 10(13A) in respect of H.R.A.
- b) If Khanna opts for Rent Free Accommodation whereby IOL would be paying a rent of Rs. 10,000 p.m. to the Landlord, and recovers a sum of Rs. 2,500 p.m. from Khanna which was in excess of his entitlement, what will be the perquisite value in respect of such Rent Free Accommodation?
- c) Which of the above would be beneficial to Khanna, i.e. H.R.A. or R.F.A.?

➤ SWEAT EQUITY SHARES

- “Sweat equity shares” means equity share issued by a company to its employees or directors at a discount or for a 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.
- Value taxable in the hands of employee: - Fair market value of the shares on the date on which option is exercised as reduced by the amount recovered from the employee.

➤ **Reimbursement for meeting personal expenditure**

If any obligation of employee is met by employer then it is taxable in the hands of all employees.

➤ **Value of Interest Free Loan**

- Interest charged by employer is equal to or higher than SBI rates: - It is not taxable perquisite.
- Interest charged is lower than SBI rates:-
Interest at SBI rate on maximum outstanding balance
Less- interest paid by the employee on that loan

However nothing shall be taxable if:-

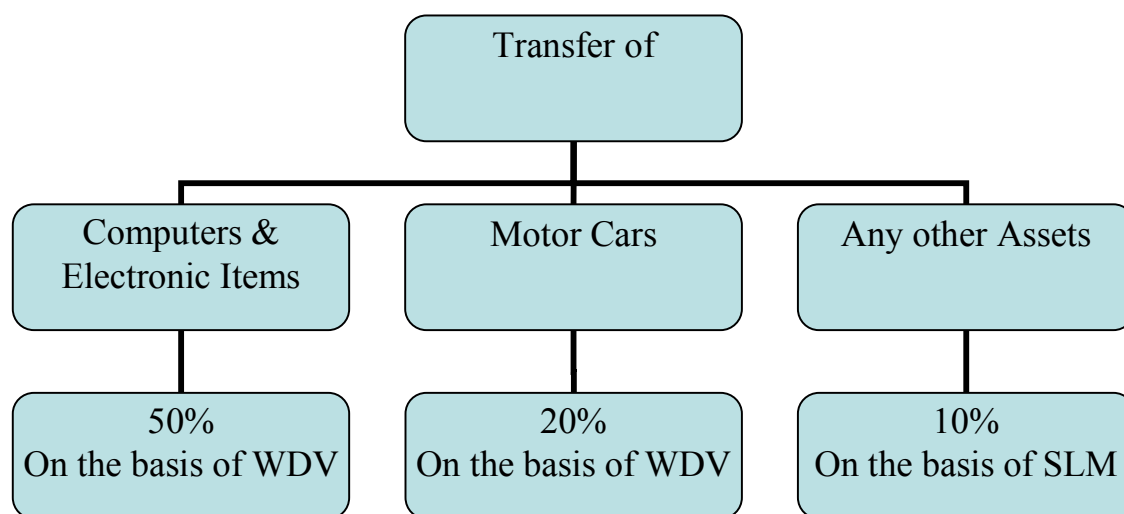
- Loan in aggregate do not exceed Rs. 20,000 or
(If loan is in excess of Rs. 20,000 then interest on total loan shall be taxable)
- Loan is provided for the treatment of Specified Diseases. But if such loan has been reimbursed under any medical insurance scheme and it is not repaid to employer, it shall be taxable.(Specified disease e.g. cancer, TB, AIDS, mental disorder etc)

Key Note: - Maximum outstanding monthly balance means the aggregate outstanding balance for each limit as on the last day of each month.

➤ **USE OF MOVABLE ASSETS**

Conditions	Value of benefit
(a) Use of laptop and computers	Nil
(b) Moveable assets, other than <ul style="list-style-type: none">• laptops and computers, and• assets already specified in the rules	<ul style="list-style-type: none">• 10% p.a. of the actual cost if it is owned by the employer, OR• Actual rental charge paid or payable by the employer Less- Amount recovered from employee.

➤ TRANSFER OF MOVABLE ASSETS



Key Notes: Depreciation shall be allowed only if used for 12 Months.
Any period less than 12 months should be ignored.

Q.8 Interest Free Loan: [Rule3 (7)(i)]/ Transfer of Movable asset: [Rule3 (7)(viii)]

Following benefits have been granted by Ved Software Ltd. to one of its employees Mr. Badri:-

- Housing Loan at 6% p.a. Amount Outstanding on 1.4.2011 is Rs. 6 lacks. Mr. Badri pays Rs. 12,000 per month, on 5th of each month.
The lending rate of S.B.I. as on 1.4.2011 for Housing loan may taken as 11.25%.
- Air Conditions purchased 4 years back for Rs. 2,00,000 have been given to Mr. Badri for Rs. 90,000.

Compute the chargeable perquisite in the hands of Mr. Badri for the A.Y. 2012-13.
(M-08)

❖ **OTHER PERSCRIBED FRINGE BENEFITS**

➤ **Value of traveling, touring, accommodation and any other expenses on holiday**:-Actual expenditure incurred by employer for the following period shall be taxable:-

- If the official tour is extended as vacation: - Only for the extended period.
- If any member of household accompanies the employee on official tour: - expenditure incurred on such member of house hold of total tour.

Where the member of the household includes:

- Spouse(s)
- Children and their spouses
- Parents
- servants and dependants

➤ **Gift, voucher or token**

The amount of such gift shall be taxable as perquisite,

However nothing shall be taxable if the value of such gift in aggregate during the previous year is less than Rs 5,000.

CBDT has clarified that: - (Circular No. 15/2001)

- a) Gifts made into cash and convertible into money (Gift cheque) are not exempt.
- b) The amount only in excess of Rs.5, 000 shall be taxable if the gifts made in kind.

➤ **Free meals**

Actual Expenditure incurred by the employer shall be taxable.

However nothing shall be taxable in the following cases:

- a) Tea or snacks provided during office hours:- The Board has clarified that tea includes coffee, soft drink and other non-alcoholic beverages /
- b) Free meals during hours:-
 - (i) At the office premises, or
 - (ii) Through voucher which are not transferable and usable only at the eating joints (the value in both the above cases should not exceed Rs.50 per meal. The amount only in excess of Rs.50 shall be taxable.
 - (iii) In a remote area or offshore installation:- No Limit

➤ **Credit Card or Club expenditure**

- a) If expenditure is wholly and exclusively for official purpose:- Nothing shall be taxable. If
 - (iii) Complete details of such expenditure including the date, nature and necessity of the expenditure, is maintained.
 - (iv) Employer certifies that such expenditure was exclusively for official purposes.
- b) In other cases: - The actual expenditure incurred by the employer shall be taxable.

Key Notes:

- ✓ If the employer has obtained membership of the club in his name, the fees paid for acquiring such membership shall not be taxable for employees.
- ✓ Expenditure on use of health club, sport facilities provided to all employees, shall not be taxable.

➤ **Any other benefit:**

The value of any other benefit shall be cost to the employer as reduced by the amount recovered from the employee.

❖
❖ **PERQUISITE EXEMPT UP TO LIMIT FOR ALL EMPLOYEES**

➤ **LEAVE TRAVEL CONCESSION: [10(5)]**

Value of travel concession received by an individual from his employee or former in connection with his proceeding:-

- On leave to any place in India.
- To any place in India before retirement from service or after the termination of his service shall be exempt.

A. Exemption can be claimed for two journeys in a block of 4 years.

- (i) 1.1.2002 to 31.12.2005
- (ii) 1.1.2006 to 31.12.2009
- (iii) 1.1.2010 to 31.12.2013

Out of two journeys, exemption for one journey can be claimed in the first calendar year after end of the block

B. Amount of exemption: - The exemption for each trip shall be computed on the following basis but shall be *restricted to actual expenditure incurred* for the purpose of such travel.

Journey performed by	Exemption
1. Air	Amount not exceeding the air economy fare of the national carrier by the shortest route to place of destination.
2. Any other mode:- (a) Rail service is available	Amount not exceeding the air conditioned first class rail fare by the shortest route to the place of destination.
(b) Rail service not available : (i) But recognized public transport system exists	An amount not exceeding the first class or deluxe class fare on such transport by the shortest route to the place of destination.
(ii) And recognized public transport system does not exist	An amount equivalent to the air conditional 1 st class rail fare for the distance by the shortest route as if the journey had been performed by rail.

Notes:-

The exemption shall not be available to more than two surviving children of an individual born on or after 1.10.1998.

This restriction shall not apply in respect of children born before 1.10.1998 and also in case of multiple births after one child.

➤ **MEDICAL PERQUISITES**

In India:-

(i) Expenditure incurred or reimbursement on any medical treatment provided to an employee or any member of his family is fully exempt without limit, for treatment in any hospital, dispensary etc.

- a. Maintained by the employer.
- b. Maintained by the Govt.
- c. Maintained by any local authority, or
- d. Approved by the Govt. for treatment of govt. and other employees
- e. Approved for a specified disease only for the treatment of specified disease

(ii) Health insurance premium incurred or reimbursed for insurance on the health of employee or any member of his family is fully exempt without limit.

(iii) Reimbursement or incurred by the employer of any amount actually spent by the employee for obtaining his or his family member's treatment in any hospital, nursing home or a clinic (other than referred in (i) & (ii) above) up to maximum of Rs 15,000.

Outside India:-

If the employee underwent medical treatment abroad and the expenditure is met by the employer, exemption will be subject to the following:-

- (a) Medical treatment and stay expenses abroad (both for the patient and the attendant) is exempt from subject to the maximum amount permitted by the Reserve Bank of India (RBI).
- (b) Travel Expenditure of the patient and the attendant:-
Gross Total Income before including reimbursement
 - Of foreign travel expenditure.

Up to Rs 2,00,000-----	Fully exempt
Above Rs 2,00,000-----	Fully taxable

Notes:

Meaning of family for LTC and Medical perquisite:

- (a) The spouse and children ; and
- (b) Parents, brothers and sisters of the individual mainly dependent on the individual.

Q.10 Medical Facilities:

The following expenses on treatment of Mr. Modanwal's son were reimbursed by his employer. Treatment was administered, in U.S.A.

- I. Actual medical expenses Rs. 85,000 (permitted by RBI Rs.60,000)
 - II. Expenses on stay at U.S.A. Rs. 65,000 (permitted by RBI Rs.45,000)
 - III. Travelling expenses of Mrs. Modanwal and Mr. Modanwal's son Rs. 1,20,000.
- Compute the taxable medical perquisite in the hands of Mr. Modanwal for the A.Y. 2012-13 assuming his other salary income at:-
- I. Rs. 150,000
 - II. Rs.190,000

➤ PERQUISITE TAXABLE IN THE HANDS OF SPECIFIED EMPLOYEES

- ✓ Service of sweeper, gardener, watchman or personal attendant
Actual cost to the employer
Less: - Amount paid by the employee
- ✓ Supply of gas, electricity or water for household consumption
 - Procured from outside agency
Amount paid to the outside agency.
 - Resources owned by employer himself
Manufacturing cost per unit
Deduction allowed for any amount paid by the employee.
- ✓ Education Facilities to members of his household.
 - Free education to children in the school maintained by the employer or the school sponsored by the employer – if the cost of education per child does not exceed Rs. 1,000 p.m.—not taxable.
 - Other school- cost to the employer less amount recovered from employee
 - For other members of household—the cost of education to employer less amount recovered from employee.
- ✓ Transportation of goods or passengers at free or concessional rate provided by the employer engaged in that business (other than railways/airlines)
Value at which offered to public
Less: - Amount recovered from the employee
- ✓ Any other benefit or amenities or service or right or privilege provided by the employer other than telephone or mobile phone.
Cost to the employer
Less: - Amount recovered from employee

Notes:

- Member of household shall include-
- (a) spouse(s)
 - (b) children and their spouses
 - (c) parents
 - (d) servants and dependant

Q.9 Education Facility:

Dharmendra is the employee of XYZ Pvt. Ltd.

(Education in Lovely Public School sponsored by XYZ Pvt. Ltd.)

	Cost of education in similar institution	Amount charged from Dharmendra
(a) Sunny (son of Dharmendra)	Rs. 9,500 p.m.	Rs. 2,500 p.m.
(b) Jitendra (Dependent brother of Dharmendra)	Rs. 5,500 p.m.	Rs. 2,000 p.m.

➤ **Taxability of motar car benefits:-**

Owner of car	Expenses met by	Purpose	Taxable value of perquisite
(a) Employer	Employer	Fully official use	Not a perquisite provided the documents are maintained.
(b) Employer	Employer	Fully private use	Aggregate of- (a) Actual expenditure on car (b) Remuneration to chauffeur (c) 10% of the cost of car Less- Amount charged from employee
© Employer	Employee	Partly for official and partly for personal	Cubic capacity of car engine up to 1.6 litres Rs. 600 p.m.+Rs 900 p.m. for chauffeur Cubic capacity of car engine above 1.6 litres Rs. 900 p.m.+Rs 900 p.m.
(d) Employer	Employer	Partly for official and partly for personal	Cubic capacity of car engine up to 1.6 litres Rs. 1,800 p.m.+Rs 900 p.m. for chauffeur Cubic capacity of car engine above 1.6 litres Rs. 2,400 p.m.+Rs 900 p.m.
(e) Employee	Employer	Fully official use	Not a perquisite provided documents as per rule are maintained.
(f) Employee	Employer	Partly for official and partly for personal	Actual expenditure incurred Less: Car cubic capacity upto 1.6 liters- Rs 1800 p.m. Car cubic capacity above 1.6 liters- Rs 2400 p.m. Less:

			Rs 900 p.m. for chauffeur
(g) Employee owns other auto- motive but not car	Employer	Fully official use	Not a perquisite provided documents as per rule are maintained.
(h) Employee owns other auto- motive but not car	Employer	Partly for official and partly for personal	Actual expenditure incurred by employer Less:- Rs. 900p.m.

Key Notes:

✓ **Using cars from pool of cars owned or hired by employer:-**

The employee is permitted to use any or all cars for both official and personal use:

For one car ----- valued as per (c)

For more than one car ----- valued as per (b) as if fully used for personal purpose.

✓ **Member of households includes:**

Spouse(s), children & their spouses, parents, servants and dependants.

✓ **Documents to be maintained for claiming not taxable perquisite or higher deduction wherever applicable [Rule 3(2)(b)]**

- Employer should maintain complete details of journey undertaken for official purpose, which includes date of journey, destination, mileage and amount of expenditure incurred thereon.
- Certificate of supervising authority of the employee, wherever applicable, to the effect that the expenditure was incurred for wholly and exclusively for performance of official duties, should be provided.

❖ TAX- FREE PERQUISITES

- Perquisite allowed outside India by the Govt. to an employee who is a citizen of India for rendering service outside India.[10(7)]
- Rent free residence provided to a judge of High court or of the supreme court .
- Rent free furnished residence provided to an official of parliament, a union minister or a leader of opposition in parliament.
- Conveyance facility provided to an employee to cover the journey between office and residence.
- Amount spent on training of employees or fees paid for refresher/management course
- Payment of annual premium by employer on accident policy affected by him on his employee.
- Refreshment provided by an employer to all employees during working hours in office premises.
- Health club facility/sports club facility.
- Telephone facilities provided to the employees.
- Recreational facilities provided to the employees.
- Employer's contribution to staff group insurance scheme.
- Periodicals and journals require for discharge of work.
- Convenience facility provided to High court Judges and Supreme court Judges.

❖ MEANING OF SALARY [17(1)]

Salary includes:-

- (i) wages
- (ii) any annuity or pension
- (iii) any gratuity
- (iv) any fee commission, perquisite in lieu of salary or wages
- (v) leave encashment
- (vi) Interest earned in excess of 9.5% on recognized provident fund.
- (vii) Amount transferred in excess of 12% of salary to recognized provident fund
- (viii) The accumulated transferred balance from recognized provident fund account to a RPF. Account to the extent is chargeable.
- (ix) The contribution made by the central Govt. or any other employer in the P/Y to the account of a employer under a pension scheme u/s 80CCD.

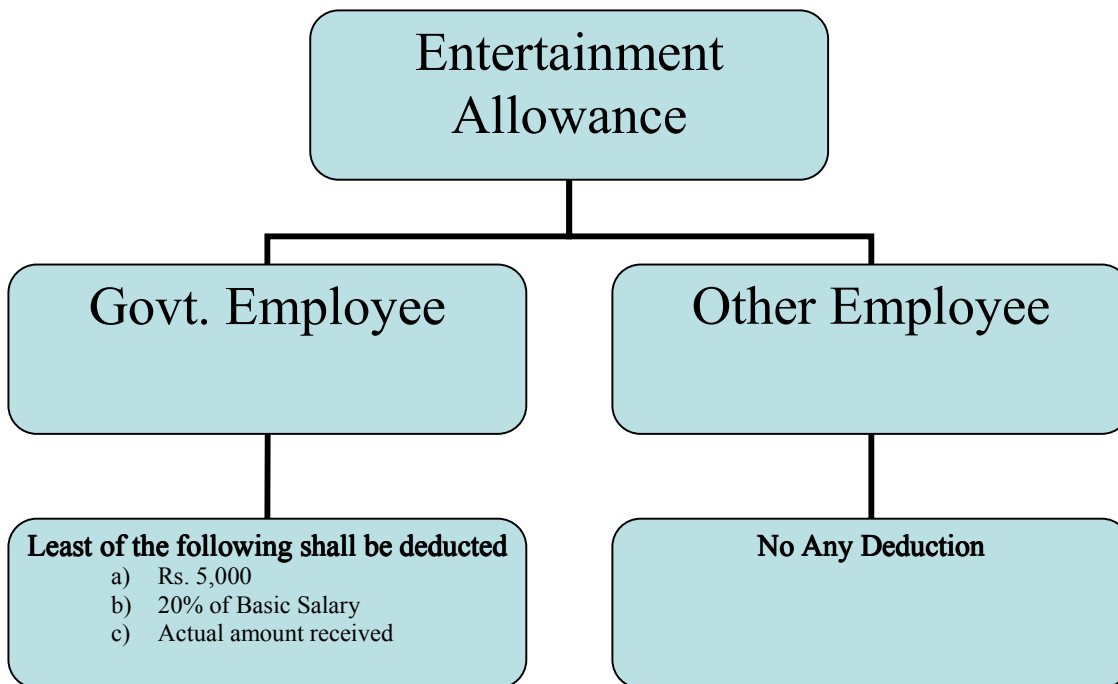
❖ PROFITS IN LIU OF SALARY [17(3)]

Profit in lieu of salary includes:-

- I. the amount of compensation due to or received by an assessee from his employer or former employer at or in connection with—
 - (a) Termination of employment
 - (b) Modification of the terms and conditions of employment.
- II. any payment due to or received by the assessee from his employer or former employer or from provident fund or any other fund or any sum received under key man insurance policy including the sum allocated by way of bonus on such policy.
 - a. Any amount due to or received whether in lump sum or otherwise by any assessee from any person.
 - b. before his joining any employment with the person or,
 - c. After cessation of his employment with that person.

❖ **DEDUCTION FROM SALARIES: [16]**

1. Entertainment Allowance: [16(ii)]

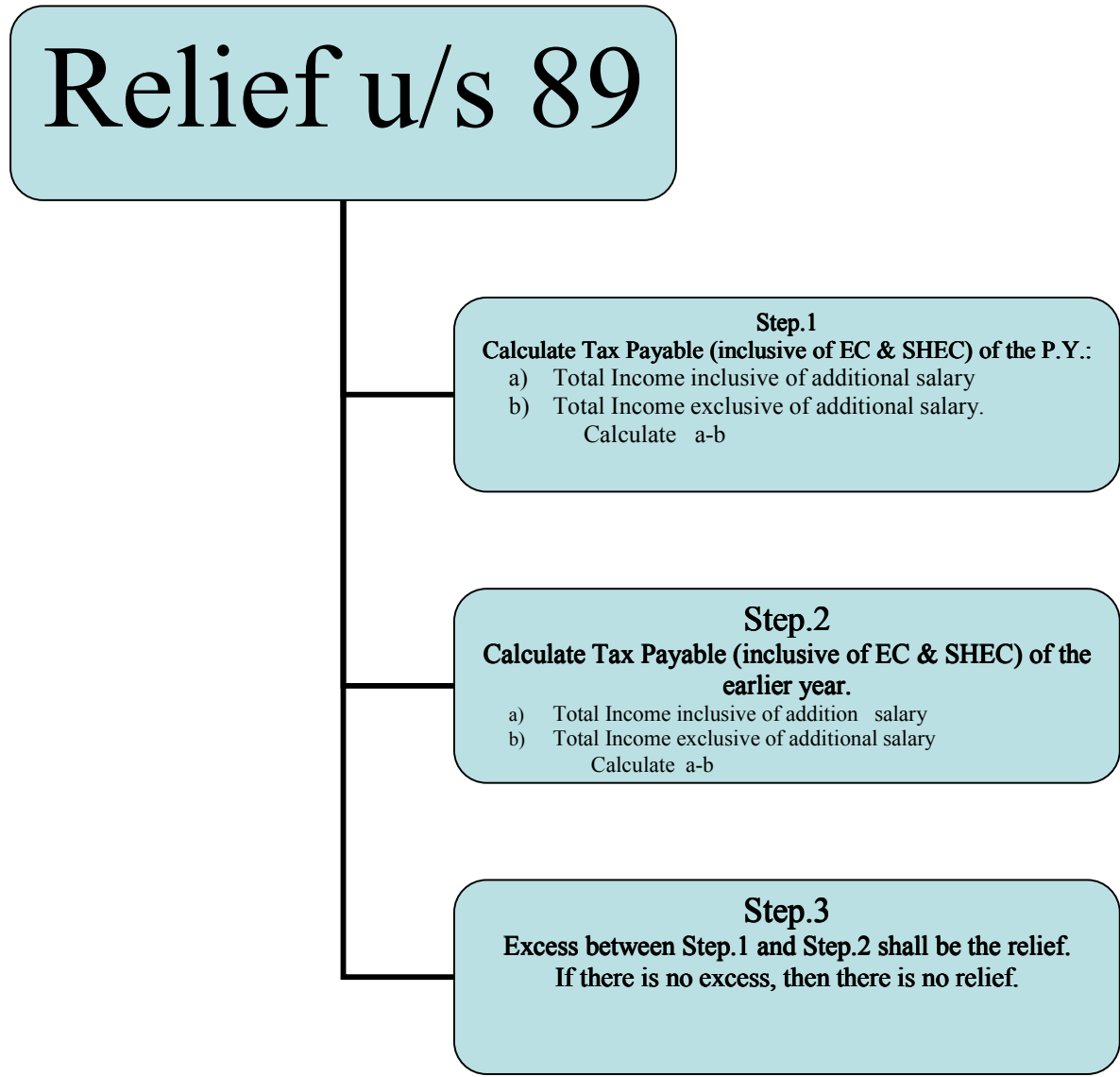


2. Professional Tax (Tax on Employment): [16(iii)]

Any amount paid by the employee shall be allowed as deduction in the year of payment. [As per article 276 of *Constitution*, state govt. or local authorities can impose tax on professional, employments. But for one year professional tax cannot be charged more than Rs. 2500].

Key Point:

If professional tax of the Employee is paid by the Employer then it shall be firstly included in the Gross Salary of the employee and then deduction shall be allowed u/s 16(iii).



Q.11 Relief u/s 89 :

In the case of Mr. Hari, you are informed that the salary for the P.Y. 2010-11 is Rs.8,20,000 and arrears of salary received is Rs. 15,000. Further, you are given the following details relating to the earlier years to which the arrears of salary received is attributable to:

Previous year	Taxable Salary	Arrears now received
2000-2001	75,000	15,000

Compute the relief available u/s 89 and tax payable for A.Y. 2012-13.

Rates of Taxes:

For A.Y. 2001-02:

Up to Rs.50,000	NIL
50,001 to 60,000	10%
60,001 to 1,50,000	20%
Above 1,50,000	30%

Surcharge:- 12% (if Total Income exceeds Rs.60,000)

17% (if Total Income exceeds Rs.1,50,000)

Some important key points:-

1. In case of Retrenchment compensation the limits shall not be applicable if compensation is paid under any scheme approved by the central government for the welfare of the workers.
2. Salaries and emoluments paid by the UNITED NATIONS to its officials are exempt from tax.
3. meaning of salary in gratuity:-
In case of gratuity if employees of a seasonal establishment, in place of 15 days, only 7 days salary will be taken. Salary here means last drawn salary and includes only basic pay and DA.
In the case of piece- rated employee, daily wages shall be computed on the average of the total wages received by him for a period of 3 months preceding the retirement.
Exemption with respect to gratuities would be available even if the gratuity is received by the widow, children or dependents of deceased employee.

If nothing is mentioned clearly in the question then following assumptions should be made:-

Circumstances	Assumption
Govt./ Non Govt.	Non Govt. employee
Gratuity	Not covered under payment of gratuity
Pension	Uncommuted pension
DA	It is not under the terms of employment.
Specified Allowances	If expenditure not given assume that fully expended for official purposes.
HRA, city in which house taken on rent.	40% (for any other place)
Rent free accommodation	If nothing is mentioned or only fair rent value given then assume that owned by employer and if actual rent or lease rent given than not owned by employer.
Dearness pay	It is under the terms of employment
Rent free accommodation	If owned by employer and population are not given then assume that city of more than 25 lakhs.
Interest free loan	If rate of interest of SBI is not given then assume @ 12%
Medical facilities	In any other hospital and exemption up to Rs 15000.

INCOME FROM HOUSE PROPERTY

Condition for taxing the income under the head “Income from House Property”:-

1. **Property:** The Property should consist of any Building or Lands Appurtenant thereto
2. **Owner:** The assessee should be owner of the property.
3. **Annual Value:** The basis of chargeability under the head income from house property is Annual Value.
4. **Purpose:** The property should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income-tax.

Special Points:

- ✓ **“Building”**- Building includes not only residential building, but also factory building, offices, shops, godowns, music halls, dance halls, lecture halls and other public auditorium used for cinema and stage shows, etc.
- ✓ **“Land appurtenant thereto”**- It means land connected to any forming part of building, like garden, garage, stable or coach home, cattle-shed, etc.
- ✓ **“Owner”**- owner includes a legal owner as well as deemed owner.
- ✓ If the property constitutes Stock-in-trade of a business or letting-out is the business of the assessee, the Income is to be charged only under this head.
- ✓ If the property is owned by the assessee, but it is used by the firm in which he is a

partner, and he has not derived any benefit from the firm. In such case it deemed that the partner is using the property for his own business, and hence not taxable under Income from House Property.

- ✓ If the property is owned by HUF but used by the Firm in which all the members of HUF are partners, property income shall be assessable in the hands of HUF.

Exceptions:-

1. Rental income of a vacant land (not appurtenant to building) is not chargeable to tax under this head.
2. In case of **“Composite Rent”** and if it is inseparable.
3. If the building is let-out to carry on the business more efficiently and it is incidental to the main business.
4. Sub-letting is in the ordinary course of business, such Income is taxable under the head “PGBP”. Otherwise, it will be taxable under the head “Income from Other Source”.

❖ Deemed Owner: [27]

1. TRANSFER TO SPOUSE OR MINOR CHILD- The property is transferred to his/her (not being an arrangement to live apart) or to his/her minor child (not being a married daughter).
2. Holder of impartible estate.
3. Property held by a member of Co-Operative Society/Company/AOP.
4. Where the individual is a Holder of a Power of Attorney enabling the right of possession or enjoyment of the property.
5. Where the property has been constructed on a Leased hold Land.
6. Where the ownership of the property is under dispute.
7. Where the property is lease out for not less than 12 years.
8. Where the person who acquired house without registration in part performance of a contract u/s 53A Transfer of property Act, 1882.

❖ In the following cases rental income is not charged to tax

- a) Income from farm house.
- b) Annual value of any one palace of an ex-ruler.
- c) Property income of a local authority.
- d) Property income of an approved scientific research association.
- e) Property income of an educational institution and hospital.
- f) Property income of a trade union.
- g) House property held for charitable purposes.
- h) Property income of a political party.
- i) Property used for own business or profession and
- j) One self-occupied property.

❖ Method of Computation:-

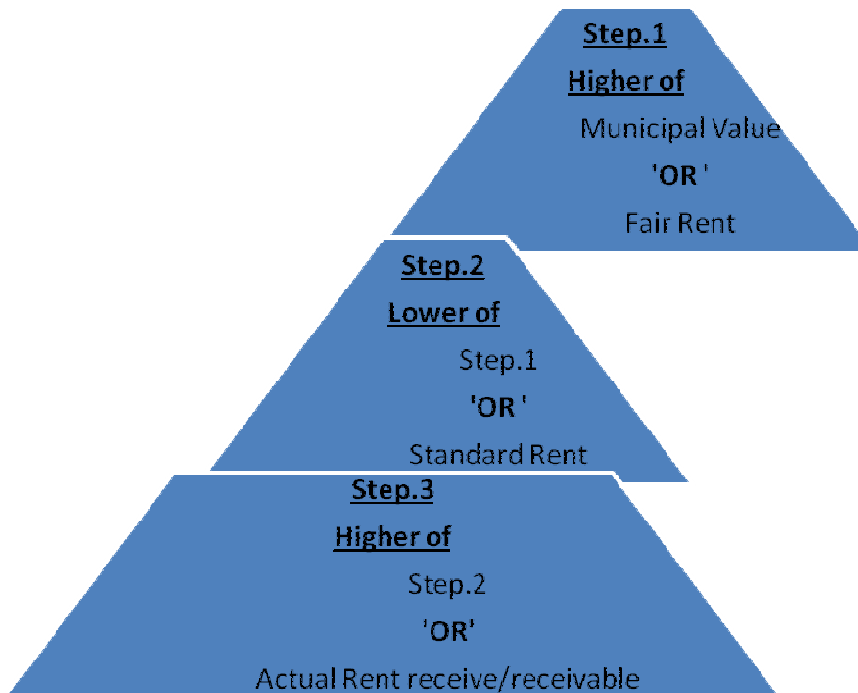
Gross Annual Value (GAV)	xxxxx
Less: <u>Municipal Tax paid by owner</u>	(xx)
Net Annual Value (NAV) u/s 23(2)	xxx
Less: Deduction u/s 24	
(i) Standard Deduction @ 30% of NAV	(xx)
(ii) <u>Interest on borrowed Capital</u>	(xx)
Income from House Property	xxx

❖ **In determining the GAV the following points should be taken into consideration:**

1. Municipal Value: - It is that value that the Municipal Authorities deem as the value of the property for the purpose of assessment of Property Taxes.
2. Fair Rent: - Fair Rent of the property is the rent fetched by a similar property, in same or similar locality, with same facilities.
3. Standard Rent: - It is the maximum rent which a person can recover from the Tenant, under the Rent Control Act.
4. Actual Rent: - It is the rent which is to be received or already received from the Tenant as per agreement.

❖ **Calculation of Gross Annual Value (GAV):**

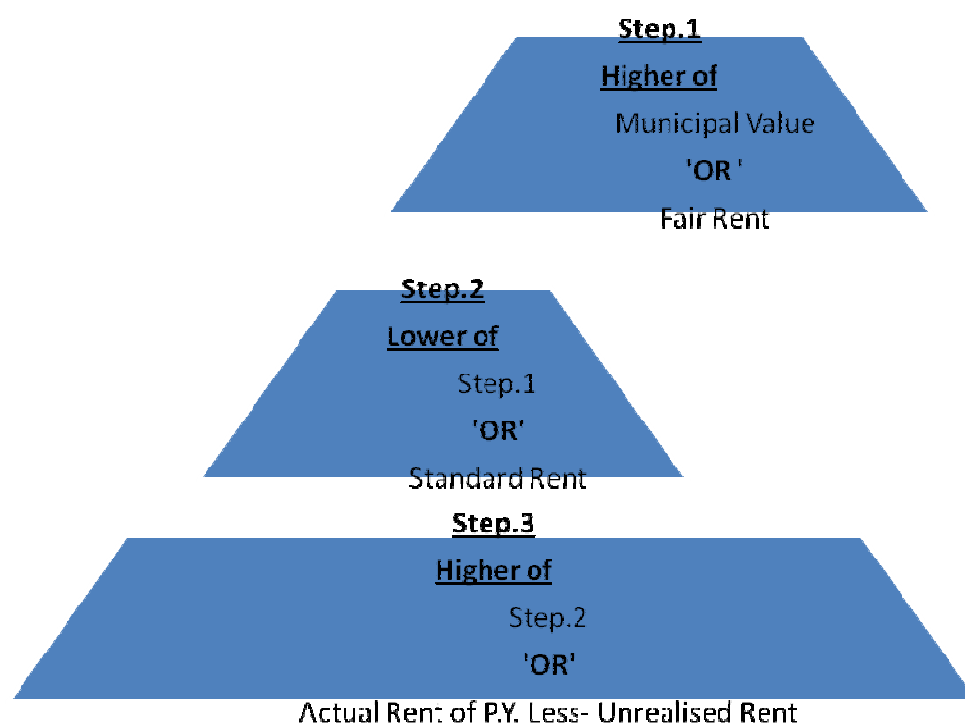
Case I: - Property let out for full year (No vacancy and no unrealized



Q. 1.

	I	II	III	IV	V
Municipal value	30,000	34,000	46,000	58,000	64,000
Fair Rent value	34,000	34,000	50,000	60,000	60,000
Standard Rent	NA	34,000	60,000	NA	58,000
Actual Rent	28,000	46,000	58,000	94,000	50,000
Gross Annual Value					

Case II: - Property let out for full year (No vacancy but there is unrealized rent)



Key Notes: Unrealised Rent means the rent not paid by the Tenant and realized by the Owner. Unrealised Rent shall be deducted from Actual Rent received from the property provided the following conditions are satisfied:-

1. The Tenancy is bonafide.
2. The defaulting Tenant should have vacated the property.
3. The assessee has taken steps to compel the defaulting Tenant to vacate the property.
4. The defaulting Tenant is not in occupation of any other property owned by the assessee.
5. The assessee has taken all reasonable steps for recovery of Unrealised Rent.

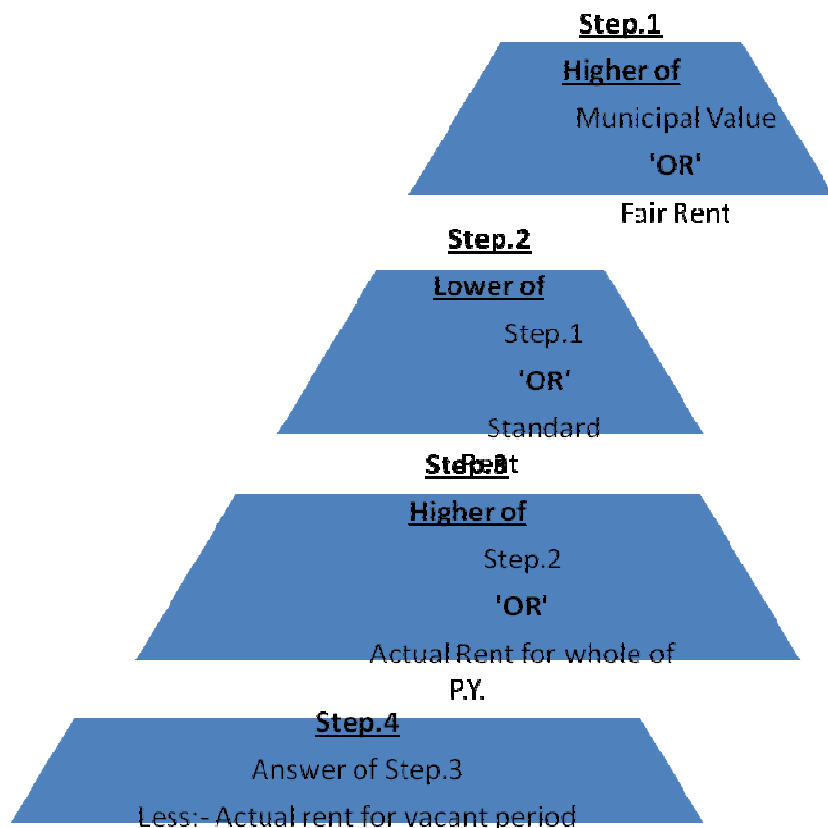
Q. 2, Mr. X furnishes the following particular in respect of a house property owned by him in Delhi

<u>Particulars</u>	<u>Rs.</u>
Municipal value	2,00,000
Fair Rent	2,40,000
Actual Rent (per month)	21,000
Municipal Tax paid during the year	20,000

The tenant vacated the property on 31-10-2-11 and thereafter the property was let out for Rs 25,000 p.m. X could not realize the rent for the months of September and October, 2011 due to the death of the earlier tenant.

1. Compute the annual value of the property for the assessment year 2012-13
2. What will be your answer if the unrealized rent is for one month instead of two months.

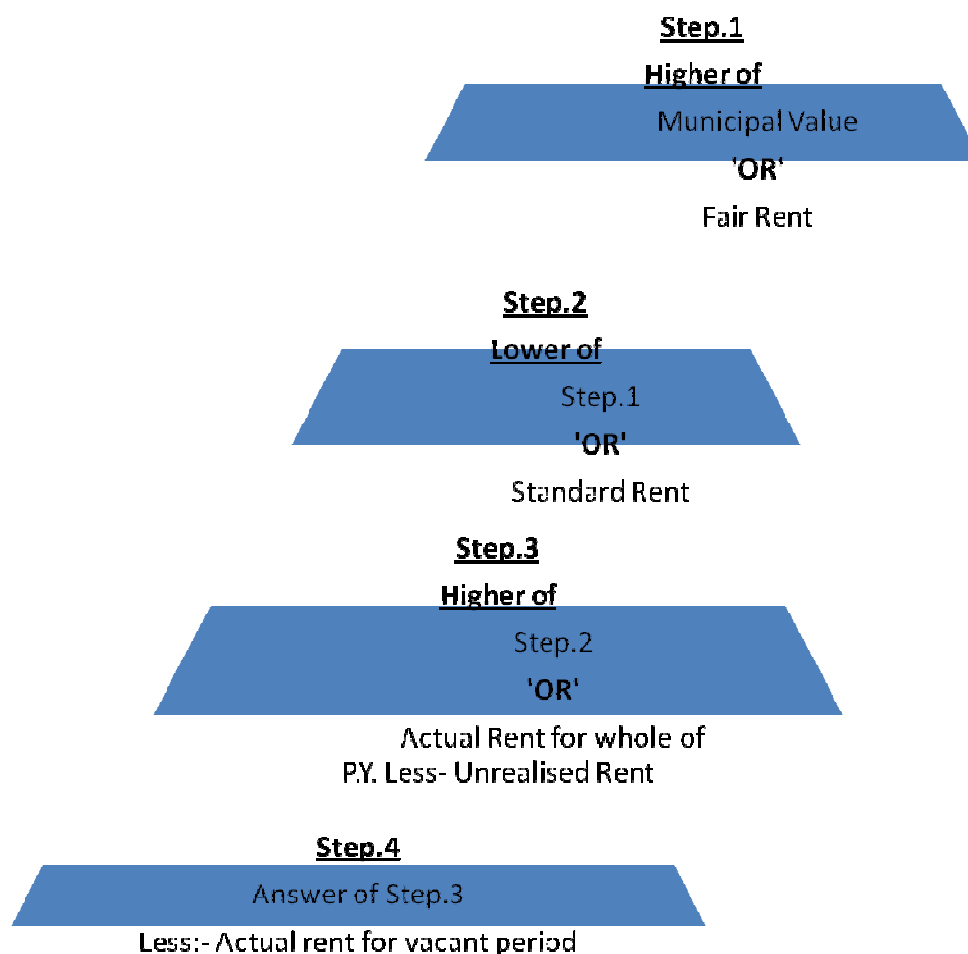
Case III. : - House Property let-out but remained vacant during any part of P.Y. (No unrealized rent).



Q. 3. find out the gross annual value in the case of the following properties for the assessment year 2012-13:

	Ram	Mohan	Ravi	Alam	Monika
Municipal value(per annum)	70,000	71,000	70,000	90,000	90,000
Fair rent (per annum)	75,000	76,000	75,000	88,000	88,000
Standard rent	70,000	69,000	73,000	95,000	86,000
Actual rent	82,000	67,000	82,000	82,000	NA
Property remains vacant (in number of months)	1	1 ½	5	3	12
Loss due to vacancy	6,000	7125	30,000	18,000

CaselV. : - House Property let-out but remained vacant during any part of P.Y. and there is also Unrealised Rent.



Q.4. Find out the gross annual value in respect of the following properties for the assessment year 2012-13:

	Ram	Mohan	Ravi	Alam	Monika
Municipal value(per annum)	140,000	180,000	70,000	180,000	230,000
Fair rent (per annum)	145,000	185,000	185,000	145,000	262,000
Standard rent	142,000	175,000	175,000	142,000	241,000
Actual rent	168,000	168,000	168,000	168,000	252,000
Propertyremains vacant (in number of months)	1	1 ½	1	3	5
Loss due to vacancy	7,000	14,000	14,000	42,000	105,000
Unrealized rent	14,000	42,000	1,000	70,000	42,000

Case.V :- Self-Occupied Property or Self Occupied Property kept Vacant.

Conditions:-

- a. The property was not let out for any part of the P.Y.
- b. No other benefit is derived from the property.

PARTICULARS	Rs.
Annual Value u/s 23(2) i.e., One Self-Occupied Property	NIL
Less: Deductions u/s 24:-	XXX
(A) Int. on Housing Loan upto a maximum of Rs. 1,50,000 subject to the following conditions: ➤ Loan taken for acquisition or construction of House Property, ➤ On or after 01.04.99 ➤ Acquisition or construction should be completed within 3 years from the end of the P.Y. in which capital was borrowed.	XXX
‘OR’	
(B) Otherwise Int. on Housing Loan a maximum of Rs.30,000	
INCOME FROM HOUSE PROPERTY	(XXXX)

Key Notes: -

- ✓ The deduction upto 1,50,000 shall be allowed only if the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of int. payable by the assessee for the purpose of such acquisition or construction of the property.
- ✓ Standard deduction of 30% is not allowed for such property because of the annual value of the property in Nil.
- ✓ If there is more than one self-occupied property then one house property at the option of the assessee, can be treated as self-occupied and remaining shall be deemed as let-out.

Case.VI :- House Property self-occupied for part of P.Y. and let out for the balance of P.Y.**In this case G.A.V. shall be same as given in Case.1 subject to following conditions:-**

1. Actual rent received/receivable shall be taken for let out period only.
2. Municipal Taxes shall be taken for the Full P.Y.

❖ Deduction: [24]

1. **Standard Deduction:** - 30% of the N.A.V. shall be allowed.

If N.A.V. is negative then no standard deduction shall be allowed.

2. **Interest on borrowed capital:** - It is allowed on accrual basis, even if not actually paid.

Key Notes: -

- ✓ Interest of Pre-construction period: -
Interest for the period prior to the P.Y. in which the property has been acquired or construction is completed is deductible in 5 equal installments, starting from the year in which property is acquired or construction is completed.
- ✓ No deduction is allowed for any brokerage or commission for arranging loan.
- ✓ Interest on fresh loan taken to repay the original loan is allowed as deduction.
- ✓ Interest on unpaid interest is not deductible.
- ✓ Section 25- Interest on borrowed capital, payable outside India shall be allowed deduction if
 - tax on the same has been paid or deducted at source or
 - in respect of such income any person in India may be treated as agent.

Q. 5. Mr. Ravi took loan of Rs. 2,00,000 @ 12% per annum for constructing a house on 1.1.2010. He took additional loan of Rs. 3,00,000 on 1-4-10. Construction of the house is completed on 1-6-10.

Compute deduction of interest for the PY 11-12.

❖ Subsequent Recovery of Unrealised Rent

Recovery of unrealized rent already reduced from the annual value for A.Y. 2002-03 and onwards:[25AA]

- i. Recovery of unrealized rent is chargeable to tax as “Income from House Property”
- ii. Unrealised rent recovered is taxable in the P.Y. in which it is recovered.
- iii. It will be taxable in the hands of individuals even if he does not own the property to which such rent pertains.
- iv. No deduction will be allowed against such receipt.

Q. 6. From the following information, find out the income under the head “Income from House Property” for the PY 10-11 and 11-12

Municipal value	190,000
Fair rent	195,000
Standard rent	170,000
Annual rent	175,000
Unrealized rent for the previous 10-11	30,000
Unrealised rent for the previous year 11-12	Nil
Unrealized rent of 10-11 realised during the previous year 11-12	28,000
Interest on borrowed capital	36,000

The above stated property are let out throughout the previous years 10-11 and 11-12. Municipal tax is paid at the rate of 20%

❖ Arrears of Rent received: [25B]

- i. If any assessee has let out any building or land appurtenant thereto and
- ii. Has received any amount, by way of arrears at rent from such property, not charged to income tax for any P.Y.
- iii. Shall be deemed to be income of the P.Y. in which such rent is received.
- iv. After deducting 30% of such amount
- v. Whether assessee is owner of that property or not.

Q.7. Mohan owns a property. It is given on rent (rent being Rs. 11,000 per month) to bank. Municipal value of property is Rs. 1,30,000, fair rent is Rs. 140,000 and standard rent is Rs. 134,000 . Municipal tax paid by Mohan is as follows- Rs 26,000 on March 3, 2012 and Rs 30,000 on May 10, 2012. On April 1, 2012, rent is increased from Rs. 11,000 per month to Rs. 14,000 per month with retrospective effect from April 1, 2008. Arrears of rent 2011-12 are paid on April 1, 2012. Find the income chargeable to tax for the AY 12-13 and 13-14.

❖ Co- ownership: [26]

- i. If property is co-owned by two or more person; and
- ii. The share of co-owner is definite and ascertainable.
- iii. Then the share of each such person shall be included in his income.

Key Notes: -

- ✓ Provision of self occupied property will apply
- ✓ To each co-owner who uses his portion for residence
- ✓ Annual value of each such portion will be Nil
- ✓ Deduction upto Rs.30,000/1,50,000 will be available to each co-owner.

Q. 8. X,Y and Z are having equal share and co-owners of house property consisting of six identical units, the property was constructed on 31st May 2000. Each of them occupies one unit for his residence and the other three units are let out at rent of Rs 10,000 per month per unit. The Municipal value of the house property is Rs 4,00,000 and the Municipal taxes are 40% of such municipal value, which were paid during the year. The other expenses were as follows:

Interest payable on loan taken for construction of house

Rs1,20,000

X could not occupy his unit for six months as he was transferred to Mumbai. He does not own any other house.

Compute the income under the head “ Income from house Property” of X,Y and Z for the AY 12-13.

❖ Composite Rent

Actual rent received less Electricity bill, Water bill, Lift maintenance expenses, Liftman salary, Salary of Gardner, Lighting of stairs.

❖ Taxability of Property situated outside India

- Resident and Ordinarily Resident : Taxable in India.
- R & NOR/Non-Resident : If the Rent is first received in India, then income shall be taxable in India.

Key Points: -

- ✓ Income accruing or received in Foreign Currency should be converted into Indian Rupees in TT Buying Rate on the last day of the P.Y.
- ✓ Any tax or expenditure incurred towards earning such income shall be allowed as a deduction.
- ✓ Municipal Taxes paid outside India shall be allowed as a deduction.

Profits and Gains of Business or Profession (PGBP)

❖ Basis of charge: [28]

- a) Profits and Gains of any business or profession which was carried on by the assessee at any time during the previous year.
- b) The value of any benefit or perquisite, whether convertible into money or not, arising during the course of any business or profession.
- c) Any interest, salary, bonus, commission or remuneration received by a partner from firm in which he is a partner.
- d) Export incentives:
- ✓ Profit on sale of import license.
 - ✓ Cash assistance by whatever name called.
 - ✓ Duty drawback of customs and central excise.
- e) Any compensation or other payment due to or received for:
- ✓ Termination or modification of Managing agent's agreement in relation to an Indian company or any other company in India.
 - ✓ Termination or modification of contract relating to an agency in India.
 - ✓ Vesting of management's property or business Govt./corporation.
- f) Any sum received or receivable in cash or in kind for:
- ✓ Not carrying out any activity in relation to any business or
 - ✓ Not sharing any know-how, patent, copyright, trademark, license, franchise.
But any sum on account of transfer of such rights, shall be chargeable under the head "capital gains"
(Non-compete fee paid by the company shall be deductible while computing business income of payer (**DCIT v McDowell & Co.LTD**))
- EXCEPTION: Any compensation received**
- **From the multilateral fund**
 - **Of the Montreal protocol**
 - **For not producing CFC and HCFC(substances that deplete the ozone Layer)**
 - **Under the United Nations Environment Programme**
 - **Is not taxable.**
- g) Any sum received under key man insurance policy including bonus.
- h) Any sum received or receivable in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction u/s 35AD. (w.e.f. A.Y.2010-11 onwards)
- i) Profits and gains of managing agency; and
- j) Income from speculative transaction.

❖ Business income not taxable under the had “PGBP”

- ✓ Rental income in the case of dealer in Property.
- ✓ Winnings from lotteries, etc.
- ✓ Dividend on shares in the case of a dealer-in-shares.

❖ Basic principles for arriving at business income

➤ Business or profession carried on by the assessee.

U/s 28, it is not necessary that an assessee should physically carry on a business before he becomes liable to pay tax. He must have the right to carry on the business and the business must have been carried on in the exercise of that right by the assessee either personally or through his agent or servant.

Special points to be noted:

- ✓ Power subsidy received by an assessee is revenue in nature, since it goes to reduce the electricity bills and hence taxable u/s 28.
- ✓ Prize money received by a professional photographer in a photography contest is taxable as professional income.
- ✓ Awards won by sportsman is in the nature of benefit received in exercise of profession, and hence taxable as business income. In case of others it will be in the nature of gift and will not be liable to tax as business income.

Q.1. state the income to be included for computation of income under the head Business and Profession for the AY 2012-13 from the following information:

- profit earned by the assessee from the garment business.
- Gifts from a company of which he is auditor.
- salary received from the XYZ associates in which he is partner.
- profit on sale of import of licence.
- rent from land.

Method of Accounting [145]

- Income chargeable under the head “PGBP” shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.
- The Central Govt. has notified two Accounting Standards for assessee following mercantile system:

-
- I. AS-I Disclosure of accounting policies.
 - II. AS-II Prior period and extraordinary items changes in accounting policies.

Method of computation:

Net profit as per profit and loss account	-----	
Add: Items debited to P&L a/c but not deductible	-----	
Items chargeable as business/professional income but not credited to P&L a/c	-----	
Less: Items credited to P&L a/c but not taxable under this head of income.	-----	-----
Items not debited to P&L a/c but allowable As deduction.	-----	
---		-----
Taxable Income from Business/profession		-----

Admissible Deduction

Rent, Rates, Taxes, Repairs and Insurance for Buildings [30]

Deduction allowed to owner or Tenant in respect of premises:

- Rent
- Revenue expenses on repairs
- Land revenues, local rates or municipal taxes (subject to sec. 43B)
- Insurance premium.

Note:

1. Capital expenditure on repairs by tenant is deemed as building and depreciation is allowed to the tenant on deemed building.
2. Capital expenditure on repair by the owner shall be added to the cost of building.

Repairs and Insurance of Machinery, Plant and Furniture [31]

Deduction is allowed in respect of:

1. Revenue expenses on repairs
2. Insurance premium.

On plant & machinery and Furniture used for the purpose of business or profession.

Note:

- i. Capital Expenditure on repair shall be added to the cost of Plant & Machinery.
- ii. As per **Supreme Court in Sri Mangayarkarasi Mills (P) Ltd.** Expenditure on replacement of old machinery by new machinery is not allowable as revenue expenditure and depreciation shall be allowed on the same.

Depreciation [32]

In respect of buildings machinery plant or furniture, being tangible assets and in respect of intangible assets such as know how patents copyrights trademark licenses franchises or any other business or commercial rights of similar nature, depreciation shall be allowed.-

- (i) Assets must be owned by the assessee.
- (ii) The assessee must use the asset for the purpose of carrying on the business or profession.
- (iii) The assets must be use during the relevant previous year.
- (iv) The assets in respect of which deprecation is claimed should fall within the eligible classification of assets.
- (v) Depreciation shall be allowed on the written down value method.

Definition of plant[43(3)]

Plant includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession

But does not include tea bushes or livestock or building or furniture and fittings even if specifically designed.

Block of assets section 2(11)

It means a group of assets falling within a class of assets comprising of –

- (i) Tangible assets mean buildings, plants, & machinery or furniture.
- (ii) Intangible assets being know how patents copyrights, trademark, licenses, franchises or any other business or commercial rights of similar nature.

In respect of which the same percentage of depreciation is prescribed.

Rates of depreciation for various blocks of assets:-

Types of assets	Rates of depreciation
1. Buildings:	
Residential	5%
Non residential	10%
Temporary structure	100%
2. Furniture and fittings	10%
3. Plant and machinery:	
-Plant and machinery (general)	15%
-Books owned by assessee carrying on a profession (annual publication) and books owned by the library.	100%
-Motor car, buses, lorries, used for hire.	30%
-Motor car used for business & profession.	15%
-Computer	60%
-Ships	20%
4. Intangible Assets	25%

Note: Restriction of 50% of depreciation shall apply if the asset is put to use for less than 180 days.

Q. 2.Mr Sharma purchased a machinery eligible for 15% depreciation on 1.4.2011. calculate the depreciation allowed to him if he put to use the machine on the following dates:

Put to use	P/Y
3. 1.4.11	11-12
4. 31.3.12	11-12
5. 1.4.12	11-12
6. 31.3.13	11-12
	12-13

Additional depreciation section 32(1)(ia)

1. **Eligible assets:** - any new machinery or plant (other than ships and aircraft) acquired or installed after 31.3.2005.
2. **Additional depreciation :-**
(20% of the actual cost of machinery or plant)
3. **Condition to be satisfied :-**
 - (a) P &M not used by any person in India or outside India before the date of installation by assessee.
 - (b) P &M not installed in office or resident.
 - (c) P &M should not be an office appliances or road transport vehicle.
 - (d) Actual cost of P&M not allowed as deduction of any one previous year.

Note:

Additional depreciation is allowed in the only in the first year in which the asset is installed and put to use.

Written Down Value (WDV) section 43(6) :-

WDV of block of assets of the beginning of relevant P/Y	-----
Add: actual cost of assets acquired during the P/Y in the Same block of assets	-----
-	
Less: moneys received/ receivable in respect of any assets Which is sold, discarded, destroyed, in that block and scrap value	-----
WDV for the purpose of computation of depreciation	-----
<u>Less: depletion at the rate prescribed for the block</u>	-----
Closing WDV of the block	

Key notes:-

Classification regarding definition of written down value under section 43(6)

The act has amend section 43(6) to provide that—

- (a) The actual cost of an asset shall be adjusted by the amount attributable to the revaluation of such asset, if any in the books of accounts.
- (b) The total amount of depreciation on such asset provided in the books of accounts of the assessee in respect of such previous year or years presiding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under the income tax act for the purposes of section 43(6).
- (c) The depreciation actually allowed as above shall be adjusted by the amount of depreciation attributable to such revaluation.

Proportionate Depreciation :-

Where any previous year, there is

- (i) Succession of a proprietary concern/ partnership firm by a company u/s 47.
- (ii) Succession of any business e.g. transfers by HUF to member.
- (iii) Amalgamation / Demerger.
- (iv) Conversion of private co. / unlisted public co. into limited liability partnership by satisfying conditions of section 47 (xiiib) [w.e.f. A/Y 2011-2012] and,
- (v) Amalgamation or Demerger of co-operative banks.

The deduction shall be apportioned between successor and predecessor **in the ratio of the number of the days** for which were used by them.

The total deduction of depreciation to successor and predecessor shall not exceed the amount of depreciation as if such succession/ amalgamation/ demerger did not take place.

Short term capital gain for Depreciable Assets :-

- (i) When entire block are not transferred

Consideration for transfer

Less : -

- i. Expenses of transfer
- ii. Opening WDV
- iii. Actual cost of asset acquired during the PY

Difference

- If the difference is profit, it is taxable as STCG.
- If the difference is loss, it is claimed depreciation u/s 32.

- (ii) When entire block are not transferred

- If the difference is profit, it is STCG.
- If the difference is loss, it is STCL.

Depreciation for power generating Undertaking 32(1)(i)

- ✓ Option either to claim depreciation
- ✓ On WDV basis on block of asset or
- ✓ On SLM basis on the actual cost of assets
- ✓ Such option, once exercised shall be final and shall apply to all the subsequent assessment years.

Consequences if the above assets are sold

- Depreciation on the basis of WDV: same treatment as done in block concept
- Depreciation on the basis of SLM:
 - Sale price including scrap value is less than WDV
Difference is Terminal Depreciation allowed in the PY of sale.
 - Sale price including scrap value, is exceed WDV of such asset

(a) If sale price is not more than actual cost:

[sale price-WDV]= Balancing charge (taxable is PGBP u/s 41(2)in the previous year of sale).

(b) If sale price is more than actual cost :-

[Actual cost – WDV] = balancing charge (taxable in PGBP u/s 41(2) in the previous year in sale.

[Sale price – Actual cost] = capital gain u/s 45.

- If such assets sold in the same P/Y in which such asset is acquired, then STCG will arise.

Notes:

1. The total depreciation u/s 32(1)(i) shall not exceed the actual cost of asset.

2. Additional depreciation u/s 32(1)(ia) is not available to power generating undertakings

Depreciation restricted to 50%

- **Depreciation restricted to 50% if put to use for less than 180 days**
- **In the year of acquisition.**
- **Restriction applies only in the year of acquisition i.e. put to use for less than 180 days in the year of acquisition.**

Actual cost section 43(1) :-

Mode of acquisition	Actual cost
(i)Where assessee himself acquired the asset	Purchase price Add: interest on the loan for the period up to the date of usage, freight, insurance, loading unloading etc., installation and erection charges. Less: Any amount meet by authority or any other person by way of subsidy, credit.
(ii)Assets used in scientific research subsequently put into use for business.	NIL
(iii) Gift, will, or inheritance.	WDV to the previous owner.
(iv) Acquisition of asset to claim depreciation on enhanced cost to evade tax.	Cost as determined by the Assessing officer with the prior approval of JCIT.
(v)Transfer of an asset and reacquisition of the same.	WDV at the time of original transfer or re-purchase price whichever is less.
(vi) Sale of an asset to the lessor and taking them back on same.	WDV to the transferor.

(vii) Building used for private purpose and subsequently put into use for the purpose of business.	cost of acquisition or construction reduced by notional depreciation for the period of personal use.
(viii) succession of business	WDV to the previous owner.
(ix) Amalgamation	WDV to the amalgamating company.
(x) Transfer by the holding company to its subsidiary company.	WDV to the amalgamating company
(xi) Transfer by subsidiary company to holding company	WDV to subsidiary company
(xii) In the hands of demerged company after demerger	WDV of demerged company before demerger Less: WDV of assets transferred to resulting company
(xiii) In the hands of resulting company	WDV to demerged company
(xiv) Assets brought into India by a non-resident.	Actual cost of acquisition Less: Notional depreciation for the period held outside India.
(xv) capital asset for the successor LLP, in case the predecessor company has claimed deduction under section 35AD	Nil

Set-off and carry forward of unabsorbed depreciation: [32(2)]

- (i) The carry forward provision is applicable only when there is no profit or profit before charging depreciation is not sufficient to absorb whole of the depreciation.
- (ii) Unabsorbed depreciation of current previous year shall be added to the following previous year's depreciation.
- (iii) It can be set off against any head of income.
- (iv) It can be carried forward to any number of years until it is fully set-off.

Notes:

(i) Depreciation shall be allowed to be carried forward even if business has been discontinued.

(ii) The unabsorbed depreciation can be carried forward indefinitely.

(iii) Priority of set-off

- **Current year depreciation**
- **Brought forward Business losses**

-
- **Brought forward depreciation**

(iv) Unabsorbed depreciation can be carried forward and set-off, even if the return is filled after the due date of filling of return or return is not filed at all. (HARYANA HOTELS LTD.)

Tea, coffee and Rubber Development Account [33AB]

Eligible Assessee:

All assessee engaged in the business of growing and manufacturing **tea, coffee or rubber** in India.

Quantum of deduction:

The deduction shall be lower of the following:

- Amount deposited in NABARD or Deposit Account under Scheme framed by TCR board.
- 40% of PGBP of such business before deduction u/s 33AB

Notes:

- Deduction to be allowed before setting off the brought forward losses.
- Tea development allowances must be in relation to the income of business of growing and manufacturing tea, rather than in relation to taxable portion of business of growing and manufacturing tea. After allowing the tea development allowance, the 40% of balance income is taxable. (same will apply for coffee and rubber also)

Conditions:

- Assessee** must deposit any amount in NABARD or Deposit account
- Amount must be deposited before the expiry of **6 months from the end of the previous year** or **before the due date of furnishing** the return of income, **whichever is earlier.**

Q. 3. Mr. x earned Rs. 1,00,000 from business growing and manufacturing tea. He deposited (i) Rs.18,000 (ii) Rs. 25,000 in the scheme of rubber board before the due date. Find the deduction that can be claimed u/s 33AB.

Site Restoration Fund Account: [33ABA]

Eligible Assessee:

All assessee engaged in the business of prospecting or extraction or production of petroleum or natural gases in India

Quantum of deduction:

The deduction shall be lower of the following:

- Amount deposited or

ii. **20% of** PGBP of such business before deduction u/s 33ABA

Conditions:

The assessee has deposited, before the end of the previous year, an amount

- i. With SBI in a special account opened as per the scheme of ministry of petroleum and natural gas or
- ii. **In** site restoration account opened as per the scheme of the ministry.

Common Provision in case of section 33AB/33ABA:

1. Amount withdrawn from deposit to be utilized in accordance with scheme specified.
2. However, amount withdrawn for the purchase of following shall be deemed to be Business income.
 - (i) Plant & machinery to be installed in office or Residence
 - (ii) Office appliances (other than computer)
 - (iii) Plant & machinery, whole of cost allowed as deduction under PGBP in one year.
 - (iv) Plant & machinery for manufacturing an article specified in XI schedule.
3. Asset sold before 8 years from end of previous year in which acquired, the deduction allowed shall be deemed to be an income under head PGBP.
4. Accounts audited by Chartered Accountant & report attach with ROI.

Expenditure on scientific Research [35]:

Section 43(4) :- Scientific research means any activities for the extension of knowledge in the fields of natural or applied sciences including agriculture, animal husbandry and fishers.

Deduction:-

(a) **Section 35(1)(i): Revenue Expenditure incurred Before commencement of Business :**

Expenditure incurred on salary (excluding perquisite) and on purchase of material used in research within 3 years immediately preceding the year of commencement of business, shall be allowed as a deduction in the year of commencement provided such expenditure is certified by the prescribed authority.

Revenue Expenditure Incurred After Commencement of Business:

100% of revenue expenditure laid out or expended on scientific research related to the business carried on by the assessee

- (b) **Section 35 (1) (ii): an amount equal to 175% of any** sum paid to a research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for

research provided such association/university/college/institution is approved by central Government under section 53(1)(ii).

(c) **Section 35(1)(ia):** an amount equal to 125% of any sum paid to a company to be used by it for research:

Provided that such company-

- a. Is registered in India,
- b. Has as its main object the research and development,
- c. Is, for the purpose of this clause, for the time being approved by the prescribed authority in the prescribed manner, and
- d. Fulfils such other conditions as may be prescribed.

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(d) **Section 35(1)(iii):** an amount equal to 125% of any sum paid to a university, college, or other approved institution to be used for research in social science or statistical research provided such university/college/institution is approved by central government under section 35(1)(iii).

Note: The deduction for the sum paid under section 35(1)(ii)/35(1)(iii) shall not be denied if the approval of research institute has been withdrawn subsequent to the making of payment by the assessee.

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

Note:

1. No depreciation shall be allowed in respect of assets for which deduction has been claimed under section 35.
2. It is not necessary that the assessee should carry out the the research himself. If research is carried out by the some other person for the business of the assessee, payment made to such other person will be treated as expenditure on research[**CIBA of India ltd.(SC)**]
3. **The** set off and carry forward of unabsorbed research capital expenditure is in the same manner as that of depreciation.
4. If land and building is purchased through a composite agreement, then the cost of the land and building shall be bifurcated on the basis of their FMV. Cost of the land is not is not allowable as deduction and cost of building shall be allowed as deduction under section 35(1)(iv).

35(2AA)	Higher Deduction on payment made to Approved specified person for scientific research	Deduction- 200% of sum paid to a National Laboratory, university, IIT or specified person approved by prescribed authority with a specific direction that it shall be used for scientific research under an approved programme (AY-12-13)
35(2AB)	Higher deduction to companies which are engaged in business of manufacture or production of specified articles for conducting in house scientific research	Deduction- 200% of the expenditure (excluding cost of land or building) on scientific research on an approved in house research & development facility- Revenue as well as Capital Expenditure. Eligible assessee: companies engaged in the business of manufacture or production of any other article or thing or other than those specified in Eleventh schedule. Note: cost of building shall be allowed under section 35(1)(iv) @ 100%.

NOTE:-

Payee company cannot claim weighted deduction under section 35(2AB):-

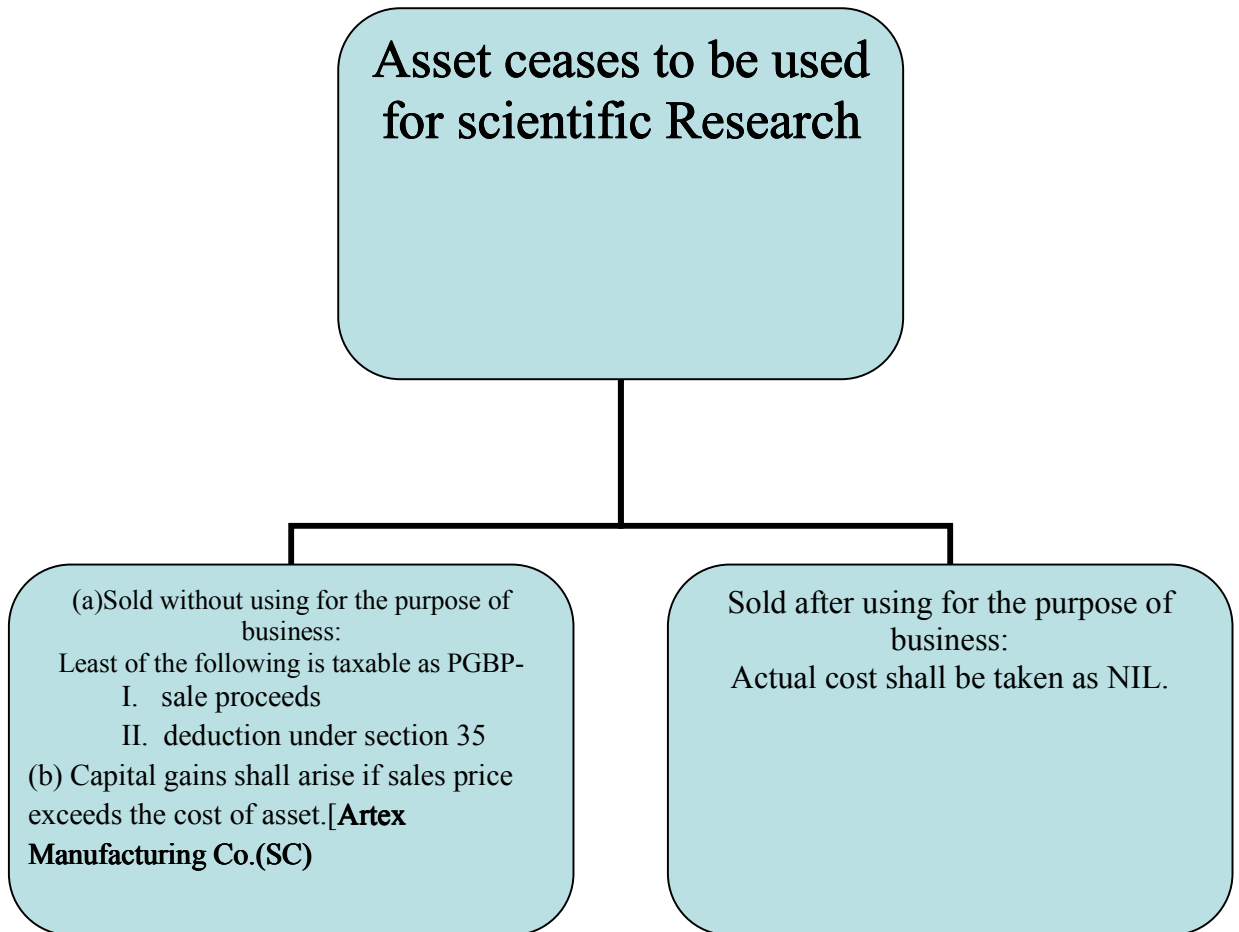
With a view to avoid multiple claims for deduction, it has been provided that the payee company approved under to avoid multiple claims for deduction, it has been provided that the payee company approved under the provisions of section 35(2)(iia) will not be entitled to claim weighted deduction of 200% under section 35(2AB). However, deduction to the extent of 100% of the spent as revenue expenditure or capital expenditure on scientific research which is available under section 35(1), will continue to be allowed.

Amalgamation :-

In the case of amalgamation, the amalgamation company cannot claim any deduction u/s35.

However, the amalgamated company (being an Indian company) can avail deduction u/s35.

Sale of scientific research asset [section 41(3)]:-



This shall apply even if business is not in existence.

Q. 4. X purchased an asset for scientific research for Rs. 15,00,000 in the previous year 2003-04. During the previous year 2011-12, the said asset ceased to be used for scientific research.

The following information is given:

Profit from business before depreciation	5,00,000
WDV of block of assets @15% as on 1-4-2011	10,00,000

The scientific research asset if used for business shall be eligible for depreciation @15%

Compute the total income if the scientific research asset is sold for Rs. 25,00,000

assuming:

- It is sold without using for business;
- It is sold after using for business

Expenditure on acquisition of patent Rights or copy Rights[35A]

Capital expenditure incurred on acquisition of patents, copyrights upto 31.03.1998. Allowed in 14 equal annual installments from previous year of commencement.

Key Note :- w.e.f. 04.04.1998, Capital expenditure on patent, copyright shall be eligible for depreciation @ 25%.

Expenditure for obtaining telecommunication licence [35ABB]

(1) Condition for allowability :-

- Expenditure should be capital in nature.
- It should be incurred for the purpose of acquiring any right to operate telecommunication services.
- Payment should have been actually made to obtain a licence.
- It may be incurred either before commencement of business or any time during the previous year.

$$(2) \text{ Amount of Deduction} = \frac{\text{Amount paid}}{\text{Remaining period of licence}}$$

(3) If the licence is transferred:

whole licence is transferred and sale price is less than unamortized licence fees:

deduction u/s 35ABB in the year of transfer will be as under

Unamortised licence fees

Less: sale price

part licence transferred and the sale price is less than the unamortized licence fees

deduction u/s 35ABB shall be allowed as under for the period beginning with the previous year in which the licence expires, i.e. residual period:

$$\frac{\text{unamortized licence fees- sale price}}{\text{the residual period}}$$

part licence/ whole licence is transferred and sale price exceeds the unamortized licence fees:

least of the following is taxable as PGBP in the year of sale:

- (f) Sale price- unamortized licence fees
- (g) Deduction allowed till date u/s 35ABB

Note :

1. Where a deduction for any previous year has been claimed and allowed under this section, no depreciation shall be allowed under section 32(1) for the same or any subsequent year.

2. Capital gains shall be arised if the sale price of the licence is more than the cost of the licence. No capital gains shall be arise if sale price of the licence is less than the cost of licence

Q. 5. Reliance Ltd. Obtained a licence to operate telecommunication services from Department of telecommunication on 5-6-2011 for a period of 11 years i.e. till 4-6-2022 for a sum of Rs. 13,20,000. Calculate the amount of deduction available to the company under section 35ABB for the various previous years assuming:

a. the payment of the entire licence fee is made on the date of acquisition of the licence;

b. Rs. 4,00,000 was paid on the date of acquisition, Rs. 2,60,000 was paid on 15-10-2011 and balance Rs. 6,60,000 will be paid in two equal installments of Rs. 3,30,000 each during previous 2012-13 and 2013-14.

Q. 6. Mr x paid Rs. 1,00,000 for acquiring telecom licence. He claimed deduction u/s 35ABB of Rs. 20,000 and then sold the licence. Determine the taxable income in the following cases:

- (i) 70,000**
- (ii) 90,000**
- (iii) 125,000**

Donation for Eligible Project [35AC]

Eligible Expenditure:

- a. For all assessee :- Payment to a public sector company, local authority, approved association/institution for carrying out approved eligible project.
- b. For companies only:- Direct expenditure incurred on eligible project/scheme

Amount of deduction:-

Actual payment or actual expenditure incurred

Withdrawal of exemption:

If institution is approved by the National Committee and subsequently:-

- (i) Committee is satisfied that the project is not being carried on in accordance with conditions subject to which approval was granted; or
- (ii) Such institution has not furnished to the National Committee, after the end of each financial year, a report.

The National Committee may, after giving a reasonable opportunity, withdraw the approval.

Investment-linked tax incentive for specified business [35AD]

This section has been introduced by the Finance Act, 2009 to provide investment linked incentive to the following specified business:

- i. Setting up and operating a **cold chain facility**. Commence its operations on or after 1.4. 2009.
- ii. Setting up and operating a **warehousing facility** for storage of agricultural produce. Commence its operations on or after 1.4.2009.
- iii. Laying and operating a **cross-country natural gas or crude or petroleum oil pipeline network** for distribution including storage facilities being an integral part of such network. Commence its operations on or after 1.4.2007.
- iv. Building and operating, anywhere in India, a **new hotel of two star** or above category as classified by the Central Government. Such business should commence its operations on or after 1.4. 2010.
- v. Building and operating , anywhere in India, a **new hospital** with at least **one hundred beds** for patients. Such business should commence its operations on or after 1.4,2010.
- vi. Developing and building a **housing project** under a scheme for slum redevelopment or rehabilitation framed by the central government or a state government, as the case may be, and which is notified by the board in this behalf in accordance with guidelines as may be prescribed. Such business should commence its operation on or after 1.4. 2010.

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- vii. **Developing and building a housing project under a scheme of affordable housing framed by the central government or a state government, as the case may be, and which is notified by the board in this behalf in accordance with guidelines as may be prescribed. Such business should commence its operation on or after 1.4. 2011.**
 - viii. **Production of fertilizer in India. Commence its operation on or after 1.4.2011.(F.A.-2012-13)**

The deduction shall be as under:

- a. any capital expenditure incurred before commencement of business allowed fully in the year in which business is commenced provided capitalized in the books.
- b. any capital expenditure incurred after the commencement of business fully allowed in the year in which expenditure is incurred.

Note:

Expenditure on land, goodwill and financial instrument shall not be allowed as deduction.

Conditions:

- a. It is not set up by splitting up, or the reconstruction, of a business already in existence.
- b. No deduction under chapter VI-A shall be allowed.
- c. It is not set up by the transfer to the specified business of machinery or plant previously used for any purpose, However, 20% value of the total plant and machinery can be second hand.
 - (i) Where the assessee is carrying on business relates to laying and operating a cross country natural gas or petroleum oil pipeline network for distribution then such business.
 - (ii) Is owned by a company formed and registered in India under the companies Act,1956 or by a construction of such companies or by an authority or a board or a corporation established or constituted under any central or state Act.
 - (iii) Has been approved by the Petroleum & Natural Gas Regulatory Board.
 - (iv) Has made not less than one third (for a natural gas pipeline network) or one fourth (for petroleum product pipeline network) of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person.
 - (v) Fulfils any other condition as may be prescribed.

Notes:

- 1. **An “associated person”** in relation to the assessee , means a person
 - A. Who participates in the management of the assessee;
 - B. Who holds at least 26% voting power in the assessee ;
 - C. Who appoints more than half of the Board of Directors;

D. Who guarantees not less than 10% of the total borrowings of the assessee.

Donation for rural development [35CCA]

100% deduction will be allowed to the assessee in respect of payment made by assessee to –

1. An association having the object of undertaking of any approved rural development program
2. An association engaged in training of persons for implementing rural development program.
3. Rural development fund set by the central government.
4. The national urban poverty eradication fund set up and notified by the central government.

Preliminary Expenses [35D]

1. Type of assessee:- The deduction is available to Indian company or non corporate resident assessee.
2. Eligible expenditure:-
 - (i) Incurred before the commencement of business or
 - (ii) Incurred after the commencement for
 - a. Extension of existing undertakings or
 - b. For setting up new unitSuch expenditure may be for the (i) feasibility report (ii) project report (iii) survey (iv) drafting of agreement between the assessee and any other person (v) expenditure of MOA. AOA registration or issue of shares or debentures (vi) other expenditures as may be prescribed.
3. Maximum deduction:
 - (i) For Non corporate assessee it can not exceed 5% of cost of project
 - (ii) For a company it can not exceed
5% of (a) cost of project or (b) capital employed
Whichever is higher.
4. Quantum of deduction:

Deduction is allowed in 5 equal installments.

Key Notes:-

- ✓ **Cost of project** means actual cost of fixed asset on the last day of P/Y in which the business is commenced or extension is completed or new unit commences operations as the case may be.
- ✓ **Capital employed** means issued share capital + debentures + long terms borrowings on the last day of the same P/Y as referred above.
- ✓ Amount must be audited CA and report should be furnished along with return.

Expenditure in case of amalgamation or demerger [35DD]

Indian company shall be allowed deduction of such expenses in five installments for five years starting from the year of payment.

Expenditure incurred under voluntary retirement scheme [35DDA]

- ✓ Expenditure on payment to employee in connection with his voluntary retirement as per voluntary retirement scheme
- ✓ Shall be allowed deduction in 5 equal installments for 5 years starting from the year of payment
- ✓ If payment is made by the employer in more than one year, then deduction shall be allowed in five installments starting from the year of every payment
- ✓ No deduction shall be allowed of such expenditure under any other provision
- ✓ In the case of conversion of a private company/unlisted public company in to limited liability partnership (LLP) by satisfying the requirement of section 47(xiib), this deduction will be available to the successor LLP from the year in which conversion takes place.

Expenditure on prospecting of minerals [35E]

1. Deduction is available to an Indian co. and resident non –corporate assessee engaged in any operations relating to prospecting, extraction or production of specified minerals.
2. The expenditure incurred during the first year of commercial production and 4 years preceding the first year is aggregated.
3. Deduction of such aggregate amount shall be allowed in **10 years equal to one-tenth of total** of such expenditure in every previous year starting from the year of production.
4. **No deduction is allowed for capital expenditure for which depreciation is allowed u/s 32/**
5. Maximum amount of deduction in one P/Y:
 - (i) One –tenth of aggregate expenditure or
 - (ii) Income from such business of the P/Y.Whichever is less.
6. **Any** installment remaining unallowed shall be added to the next year's installment.
But no deduction shall be allowed after 10 years from the start of commercial production.

Other deduction [36(1)]

Nature of expenditure:

1. Insurance premium on risk of damage or destruction of stock/stores used in business:
Deduction allowable only in the year of payment
2. Insurance premium on life of cattle owned by a member of a primary co-operative society:
Deduction will be allowed only in the year of payment.
3. Insurance premium paid on health of employees:
Premium can be paid by **any mode other than cash** under in approved scheme of General Insurance Corporation of India or IRDA.
Insurance premium paid on lives of partner is personal expenditure and hence not allowed as deduction. However, keyman insurance policy premium is allowable.
4. Bonus or commission paid to employees:
Allowable as deduction only if such sum is not payable as profit or dividend and payment shall be made on or before due date of filling of return.
5. Interest paid on borrowed capital.
Money should be borrowed for purpose of business. Interest on proprietor capital is not allowed. **Interest is not deductible where borrowed money is loaned to a director without charging any interest. If assessee borrows from bank @ 12% and gives loan to director @ 2% then 10% interest shall be disallowed.**
Interest on loans taken for payment of Income-tax is not an allowable expenditure since payment of income tax is a personal liability
6. Employer's contribution to recognized PF or Approved Superannuation Fund:
The payment should be made on or before the due date of filling of return of income.
7. Contribution to approved gratuity fund.
The payment should be made on or before the due date of filling of return of income.
8. Contribution from employees towards welfare fund accounts.
The remittances must be made on or before the due date under the relevant act for the relevant fund.
9. Allowances in respect of dead or permanently useless animals which were used for the purpose of business.
→ The animals shall not be held as stock in trade
→ Amount of deduction = Actual cost of animals- Amount realized on sale of the animal or their carcasses.
10. Bad debts (excluding provision for bad debts)

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- The debt must be incidental to the business & such debt should be revenue in nature.
 - It must have been taken in to account in computing the income of the assessee.
 - The bad debt must have been written off in the books of the assessee.
 - The business in which such debt is incurred should be continued during the previous year.
11. Provision for bad and doubtful debts for rural branches of Bank and Co-operative bank.
However the deduction shall not exceed 10% of the aggregate average advances made by the rural branches of co-operative bank.
12. Special reserve created by Financial Corporations
13. Promoting family planning amongst employees (only for company assessee)
 - Revenue expenditure is fully allowed as deduction.
 - Capital expenditure incurred will be allowed in 5 years in equal installments commencing from the previous year in which it was incurred.
 - Unabsorbed family planning expenditure shall be carried forward in the same manner as unabsorbed depreciation.
14. Discount on issue of zero coupon bonds to be allowed as deduction on pro rata basis :-Any discount on a zero coupon bonds issued by a infrastructure capital company or a infrastructure capital fund or a public sector company or a schedule bank (w.e.f.A.Y.2009-10) shall be allowed on a pro rata basis having regard to the period of life of such bond calculated in a manner as may be prescribed.
15. Special deduction allowed to national housing bank of an amount not exceeding 20% of the profits subject to creation of a reserve.
- 16. Contribution by an employer towards a pension scheme (AY 12-13): any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD(2) on account of an employee to the extent it does not exceed 10% of the salary of the employee in the previous year, shall be allowed as deduction in computing the income under this head.**
Note: salary includes DA if the terms of employment so provide, but excludes all other allowances and perquisites.

General Deduction [37]

- (i) The expenditure should have been incurred wholly or exclusively for the purpose of the business or profession.
- (ii) The expenditure not being in nature of personal expenditure of the assessee.

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- (iii) Expenditure should not be of capital nature.
 - (iv) The expenditure should have been incurred during the P/Y.
 - (v) It should not be covered by section 30 to 36.

Key Notes:

- ✓ Any expenditure incurred by an assessee for any purpose, which is an offence, or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction shall be allowed in respect of such expenditure.
- ✓ Penalty for infraction of law not deductible.
Example:- penalty under Sales Tax, Excise Act etc. are also not allowable as deduction.
 - ✓ Penalty in nature of compensation- Allowable as deduction.
Example:- penalty for breach of contract - Allowable as deduction since there is no infraction of law.
 - ✓ Interest paid under Income Tax Act and Wealth Tax Act- Not allowable.
 - ✓ Interest paid under any other law allowable as a deduction if interest is compensatory in nature.
If interest is in nature of penalty then no deduction is allowable.
Example:- penal interest paid to bank is allowable as deduction since penal interest is payable as per the agreement between banker and borrower.
There is no infraction of law.
- ✓ Interest on loan taken to pay the income tax is not allowable as deduction.
- ✓ Litigation expenses in protecting the trade or business or capital asset of the business.
- ✓ Legal charges for obtaining a loan from financial institution.
- ✓ Commission paid to selling agent.
- ✓ Professional tax paid by a person carrying on business or trade.

Section 38

If any building, machinery, plant or furniture (or other expenditure) is not exclusively used for business or profession, the deduction shall be restricted to such proportion as determined by assessing officer.

Expences not deductible [40(a)]

1. Any salary , interest, royalty, fees for technical services etc. payable outside India or to non-resident on which tax has been paid or deducted at source before the prescribed time.
However deduction shall be allowed in the previous year in which TDS is paid.
2. Any interest , commission, rent, royalty or fees etc. payable to resident on which TDS has not been deducted or paid before the due date of return of income u/s 139[1].

However deduction shall be allowed in the previous year in which TDS is paid if it is paid after the due date of return of income.

3. Any sum paid under Income tax Act.
4. Any sum paid under Wealth Tax Act.

Key Notes:

- a. Any provision for income tax or wealth tax or any other tax is not allowed as deduction.
- b. Any interest paid under income tax or wealth tax Act is also not allowed deduction. But interest paid under any other law is allowed deduction.
- c. Any expenditure which is an offence or which is prohibited under any law shall not be allowed as deduction.
- d. However any payment in connection with legal proceedings of income tax or wealth tax or any other tax is allowed as deduction.

Disallowance for partnership firm including LLP [40(b)]

- ✓ For payment of interest to any partner:- As per partnership deed or 12% p.a. (whichever is lower)
- ✓ For payment of salary, bonus, commission or other form of remuneration to a working partner.
 - No salary, Bonus, Commission is allowed to a non-working partner.
 - Salary etc. to working partner authorized by partnership deed, is allowed on following basis:-

Specified Profession Firm		Other Firm
On the first Rs. 300000 of the book profit or in case of a loss		Rs. 150000 or at the rate of 90% of the book profit, whichever is more
On the balance of the book profit		60% of Book Profit

Key notes:-

1. Book Profit:-Means income under head PGBP as increased by aggregate remuneration payable to all partners if such amount has been deducted while computing net profit.
2. Working Partner:-Individual who is actively engaged in conducting the affairs of Business or profession of the firm of which he is partner.

Payment to specified person [40A(2)]

- If payment of expenditure has been made to specified person.
- **AO may disallow that expenditure as he consider excessive or unreasonable.**
- **Having regard to fair market value of goods, services, facilities for which payment made and legitimate needs of income.**

Key Notes:

Specified person for this section:

- ➔ Individual: Relative , person in whose business the individual or his relative has substantial interest
- ➔ Company: Director, relative of Director, person in whose business the company, director or any relative of such director has substantial interest.
- ➔ Meaning of relative: Spouse, any brother, sister, lineal ascendant or descendent of such individual.

Cash payment in respect of expenditure exceeding Rs. 20,000 [40A(3)]

- Where an assessee incurs any expenditure in respect of which payment in excess of Rs. 20,000 is made otherwise than Account payee cheque or Account payee Demand draft
- 100% of such expenditure shall be not be allowed as deduction
- If aggregate payment otherwise than Account payee cheque/draft to the same person during a day exceeds Rs.20,000, the provision of section 40A3 will apply and the entire amount of such payment will be disallowed.
- Enhancement of limit for disallowance of expenditure made otherwise than by account payee cheque or account payee bank draft for plying, hiring or leasing goods carriages in the case of transporters to Rs 35,000 from the existing limit of Rs. 20,000.
Exceptions to section 40A3:

Rule 6DD:

- a) Payment made to bank and financial institution e.g. IDBI,UTI etc.
- b) Payment made to Govt. e.g. sales Tax, Custom Duty etc
- c) Payment made on banking holiday.
- d) Where any payment is made to an employee of 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 payable to employee or his heir does not exceed Rs. 50,000.

- e) Payment made to in town or village not served by any bank.
- f) Payment by book adjustment against liability.
- g) Payment to cultivator or producer of agriculture, forest, animal husbandary, dairy, poultry forming or fish products.
- h) Payment for purchase of products manufactured by producer without aid of power in cottage industry.

Key Notes:

- ✓ Repayment of loans or payment towards the purchase price of capital assets does not attract provisions of section 40A(3)
- ✓ Section 40A(3) is applicable only for computing income under PGBP and income from other sources.

Disallowance of provision for gratuity [40A(7)]

Any provisions for gratuity made by the assessee is not allowed deduction, deduction is allowed only:

- Towards approved gratuity fund actually paid
- For payment of gratuity actually becoming payable during P/Y.

Deduction based on actual payment [43B]

Certain deduction are made only on actual payment basis:

- Any tax, duty, cess, or fee under any law in force.
- Interest on loans and advances from scheduled bank.
- Interest on loan from any public financial institution or state financial corporation.
- Any bonus or commission to employees.
- Any sum payable by an employer by way of contribution to PF or superannuation fund or gratuity fund or other fund for the welfare of the employees.

Key Notes:

- i. Provision of section 43B shall not apply:
 - If such sum is actually paid by assessee on or before the due date of return of income u/s 139(1)..
 - In respect of the the P/Y in which liability to pay such sum was incurred.
 - And evidence of such payment is furnished along with return of income.
- ii. Employers contribution to PF, ESI shall be made on or before the due date of filing return but employees contribution recovered by employer shall be paid before the due date under the respective Act.
- iii. If interest has been converted in to loan/advances then it is not deductible.

**Maintenance of accounts by person carrying on profession or business
[44AA & Rule 6F]**

I. Business assessee other than notified profession :

- Where income from business or profession exceeds Rs. 1,20,000 or
 - Where total sales/gross receipt exceeds Rs. 10,00,00.
 - In any of the three preceding previous years or
 - Likely to exceed Rs. 1,20,000 or Rs 10,00,000 during the current previous year in case of newly set up business or profession.
 - Then assessee is required to maintain such books of accounts and other documents as may enable the assessing officer to compute income.
- II. Not required to maintain any books, if the specified amounts are not exceeded.

Notified Professions:

- I. specified books of accounts and documents are required to be maintained
- if the gross receipt have exceeded Rs. 1,50,000 immediately in all of the three years immediately preceding the P/Y or
 - likely to exceed Rs. 1,50,000 during the current P/Y if the profession is newly setup.
- II. If gross receipt does not exceed Rs. 1,50,000
- In any one of three years immediately preceding P/Y or
 - If profession is newly set up in the P/Y, if gross receipt for that year are not likely to exceed Rs. 1,50,000.
 - Then assessee is required to maintain such books of account and other documents as may enable the assessing officer to compute income.

Key Notes:

- i. Notified Professions: profession of law, medicine, engineering, accountancy ,CA, CS, CWA, architecture, film artist, information technology, technical consultancy , interior decoration .authorised representative.
- ii. Specified Books:
- a. Cash book
 - b. Journal if mercantile system is adopted
 - c. Ledger
 - d. Carbon copies of bills exceeding Rs. 25.
 - e. Original bill for expenditure exceeding Rs 50.
- In case of medical profession, the following additional books are to be maintained:
- a. Daily cash register
 - b. Medicine inventory register.

Compulsory Audit of Accounts [44AB]

1. Applicability in case of:

- a. Assessee carrying on any business where total sales or gross receipt exceeds Rs.60,00,000 or
- b. Assessee carrying on profession where gross receipt exceeds Rs 15,00,000 or
- c. Assessee carrying on business referred to u/s 44AD/AE/BB/BBB. And declaring lower income than prescribed.

2. Filling of report:

The assessee has to furnish audit report of Chartered Accountant by 30th Sept. of the relevant assessment year along with return.

3. Other point:

If accounts are required to be audited under any other law, then it will be sufficient compliance if the assessee get the accounts audited under such law and furnish an audit report by the due date under such other law and further report under this section

4. Consequence of non – compliance:

If the report is not submitted along with return then AO may treat the return as defective return.

Presumptive income in case of specific Business or profession [44AD/AE]

Particulars	Section 44AD	Section 44AE
Eligible business	Any business except business of section 44AE if gross receipt does not exceeds Rs. 60 lacs.	Persons carrying on business of plying, hiring and leasing goods carriages and not owning more than 10 goods carriages at any time during the P/Y.
Eligible assessee	Individual, HUF, Firm not being LLP	Any assessee
Minimum amount of presumptive income	8% or more of gross turnover or gross receipts	In case of heavy goods vehicle –Rs.5000 per month or part of month. Others-Rs. 4500 per month or part of a

		<p>month.</p> <p>Income shall be considered from the date of ownership.</p>
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Common provision in case of all the above scheme

3. from the estimated income no deduction or disallowance from section 28 to 43C shall be made. But in case of a firm normal deduction of salary and interest to partners u/s 40(b) shall be allowed.
4. The above income will be aggregated with the other income of the assessee and then all the deduction u/s 80C to 80U will be allowed.
5. The assessee is neither required to maintain any books of accounts u/s 44AA nor he is required to get his accounts audited u/s 44AB.
6. If any assessee claims that his income is lower than the estimated income then he will have to maintain books of account audited u/s 44AB.
7. An assessee opting for the 44AD scheme shall be exempted from payment of advance tax related to such business under the current provisions of the income tax act.

**Q. 7. JK @ Co. a partnership firm engaged in the manufacturing business has a gross receipt of Rs. 59,00,000 from such business. The partnership deed provides for payment of salary of Rs.10,000 p.m. to each of the partner i.e. J and K. The firm uses machinery for the purpose of its business and the WDV of the machinery as on 1-4-2011 is Rs. 2,00,000. The machinery is eligible for depreciation @15%. Compute the profits from the business, if the firm opts for the scheme under section 44AD.
(b) What will be profit from the business, if each partner is paid Rs. 20,000 p.m. as salary instead of Rs. 10,000 p.m.?**

- Q. 8. X owns the following commercial vehicles:**
- a) light commercial vehicles-one for 9 months and two days and the other for 12 months.
 - b) 2 heavy goods vehicles-one for 6 months and 25 days and the other for 11 months and 12 days.
 - c) 2 medium goods vehicles-one for 6 months and other for 8 months and 15 days.
- i. **Compute the income from business if X opts for the scheme u/s 44AE.**
 - ii. **What will be the income if the trucks were not used for business for two months during the year due to strike?**

Special provision for computing the profits and gains of shipping business in case of non-residents [44B]

This section provides for computation of the profits and gains of the business of shipping carried on by non residents to the extent they chargeable to income tax in India.

According to this provision, a sum equal to 7.5% of the aggregate of the following amounts must be deemed to be the profits and gains of the business of shipping chargeable to tax under the head PGBP.

- i. This amount paid or payable, whether within India or outside India, to the assessee or to any person on this behalf, on account of the carriage of passengers, livestock, mail or goods shipped at any port in India.
- ii. The amount received or deemed to be received in India by or on behalf of the assessee, on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

Special provisions for computation of taxable income from activities connected with exploration of minerals oils [44BB]

- i. Applicability:- the computation of taxable income of non- resident taxpayer engaged in the business of providing services and facilities in connection with or supplying plant and machinery on hire, used or to be used in the exploration for and exploitation of minerals oils.

- ii. Presumptive rate – 10%

- iii. Option for lesser amount of income:

The assessee can declare income u/s 44B to be lower than 10% if

- a. They keep and maintain books of accounts and documents as required u/s 44AA, and
- b. Get their accounts audited under the provisions of section 44AB.

Special provision for computing profit and gains of business, operation of AIRCRAFT in the case of Non-Residents [44BBA]

A non-resident engaged in the business of operation of aircraft can offer his income on presumptive basis at 5% of the following:

- a. Amount receivable by the assessee from any where in the world, in respect of carriage of passengers, goods etc. from India.
- b. Amount receivable by the assessee from any place outside India, in respect of carriage of passengers, goods etc to India.

Special provision for computing profits and gains of foreign companies engaged in the business of civil construction etc. in certain turnkey power projects [44BBB]

- i. Applicability: In the case of foreign company engaged in the business of construction or the business of erection of plant or machinery in connection with a turnkey power project approved by the CG.
- ii. Presumptive rate= 10% of the amount paid or payable.
- iii. Option for lesser amount of income:

The assessee can declare income u/s 44BBB to be lower than 10% if:

 - a. They keep and maintain books of accounts and documents as required u/s 44AA, and
 - b. Get their accounts audited under the provision of section 44AB.

Special provisions for computing income by way of Royalties etc. in case of non-resident [44DA]

Applicability:

Paid by Government or Indian concern and received by non-resident not being company or a foreign company.

1. Conditions:

- a. The non-resident carries on business in India through a permanent establishment in India or performs professional services from a fixed place of profession.
 - b. Accounts and audit: maintain books of accounts u/s 44AA and get his accounts audited and submit report in the prescribed form.
2. Computation of income: the income shall be computed under the head PGBP.
3. Inadmissible expenditure:
- a. Expenditure or allowance wholly and exclusively not related to business of such permanent or fixed place of profession in India.
 - b. The amount paid to its head office or other offices.

Special provision for computing deduction in the case of business reorganization of co-operative banks [44DB]

Where business reorganization of co-operative bank has taken place during the financial year, the predecessor and the successor co-operative bank shall be allowed proportionate deduction in respect of the following expenses in the relevant financial year.

- a. Depreciation u/s 32.
- b. Amortization of preliminary expenses u/s 35D.
- c. Amortization of expenditure in case of amalgamation of demerger scheme u/s 35DD.
- d. Amortization of expenditure incurred under voluntary retirement scheme u/s 35 DDA.

Business must be carried on during the previous year

u/s 28, the income is chargeable as profit of the business, only if the business is carried on by the assessee at any time during the previous year. It is, however, not necessary that the business is carried out throughout the previous year or till the end of the previous year.

Exceptions:

- Recovery against any loss, expenditure or trading liability earlier allowed as a deduction [41(1)].
- Balancing charge in case of electricity companies [41(2)].
- Sale of capital asset used for scientific research [41(3)].
- Recovery against bad debts [41(4)].
- Amount withdrawn from special reserve [41(4A)].

Capital Gains

Basis of charge [45(1)]:-

Any profits or gains arising from the transfer of a capital assets effected in a previous year shall be chargeable to income tax under the head “ **capital gain**” in the previous year in which transfer took place after providing exemption u/s 54 to 54GA whenever applicable.

Capital Asset [2(14)]:-

It means property of any kind, held by an assessee, whether or not connected with his business or profession.

But it does not include [**exclude**]:-

- 1) Stock in trade :- Raw material or consumable stores used by the assessee in his business or profession.
- 2) Personal effects:- Movable property held for personal use by an assessee or by any member of his family dependent on him. **However** it excludes the following:-
 - a) Jewellery
 - b) Archaeological collections (monuments of ancient times).
 - c) Paintings, drawings or any work of art
 - d) Sculptures.

CIT v. Benarshilal Katarika: silver utensils constitute personal effects and no capital gain on sale of silver utensils.

- 3) Rural agricultural land :8 km away from the local limits of municipality or population of the municipality not exceeding 10,000.
- 4) Gold Deposits Bonds issued under Gold Deposit Scheme 1999.
- 5) Special Bearer Bonds, 1991 issued by the CG.
- 6) 6.5 % Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Gold Bonds, 1980, issued by the CG.

Types of capital assets :-

- 1) **Short-term capital assets[2(42A)]:** Capital assets held by an assessee for not more than 36 months immediately preceding the date of transfer are treated as short term capital assets.
However, in the following cases the period of holding should be 12 months or less:-
 - a) Equity or preference shares of a company
 - b) Securities listed in a recognised stock exchange
 - c) Unit of UTI or unit of Mutual fund specified
 - d) Zero coupon bonds.
- 2) **Long term capital asset:-** A capital asset which is not a short term capital asset.

Transfer [2(47)]:

Transfer in relation to a capital asset, includes:-

- 1) Sale, exchange or relinquishment (to give up, surrender) of the asset.
- 2) Extinguishment (to bring to an end of any rights there in.)
- 3) Compulsory acquisition there of under any law.
- 4) Conversion of capital assets in to stock-in-trade.
- 5) Maturity or redemption of zero coupon bonds.
- 6) Part performance of a contract u/s 53A of the Transfer of property act and possession of property
- 7) Allotment under a house building scheme of society, company or other association.

ANARKALI SARABHAI (SC):

REDUPTION of preference shares amount to transfer and will result in capital gains in the hands of the preference shareholder.

Transaction not regarded as transfer [47]:

The following transactions will not be regarded as transfer for the purposes of section 45 and therefore, no capital gains will arise:

- 1) Distribution of capital assets on the total or partial position of a HUF.
- 2) Transfer of a capital assets under a gift or will or irrevocable trust.
(However 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 ESOP shall be treated as transfer.)
- 3) Transfer of capital asset by holding company to its subsidiary company.
Conditions:-
 - a) Holding company must hold the whole of the shares of the subsidiary company.
 - b) The subsidiary company must be an Indian company.
Note: This exemption shall not be available if the capital asset is transferred as stock in trade.
- 4) Transfer of capital assets by subsidiary company to its holding company:-
Conditions:-
 - a) The whole of shares of the subsidiary company must be held by the holding company.
 - b) The holding company must be an Indian Company.
Note: This exemption shall not be available if the capital asset is transferred as stock in trade.
- 5) Transfer in a scheme of amalgamation of a capital asset by the amalgamating company to the amalgamated company.
Condition :-
 - a) Amalgamated company must be an Indian Company.

-
- 6) Amalgamation of a banking company with a banking institution sanctioned and brought in to force by the central government under the Banking Regulation Act, 1949 is not regarded as transfer.
- 7) Transfer of shares by shareholder in a scheme of amalgamation.
Conditions:-
- The amalgamated company is an Indian Company.
 - Only shares are received in consideration.
- 8) Transfer of capital assets by demerged company to the resulting company.
Condition:-
The resulting company Is an Indian company.
- 9) Transfer or issue of shares by a resulting company to the shareholders of demerged company.
Condition:-
- The issue is made in consideration of demerger of the undertakings.
- 10) Transfer of certain bonds or shares referred in section 115C(1)
Conditions:-
- Transfer must be made outside India.
 - The transfer must be made by the non-resident to the another non-resident.
- 11) Transfer of the word of art, archaeological collections, books, manuscripts, drawings, paintings, photographs, printings.
Condition:-
The transfer is made to government, university, national museum, national art gallery, national archives or any institution notified by central government.
- 12) Transfer by way of conversion of bonds, debentures, debenture stock or deposit certificates in any form in to shares or debentures of that company.
- 13) Transfer of land under a scheme prepared and sanctioned u/s 18 of sick industrial companies(special provision) Act,1985 by a sick industrial company which is managed by its workers' co-operative.
Condition:-
such transfer is made in the period commencing from the previous year in which the said company has become a sick industrial company and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
- 14) Transfer of capital asset on conversion of a firm/sole proprietary concern
In to company
if
- All assets/liabilities of firm become t h e assets/liabilities of company
 - All partners of firm become shareholder in the ratio of their capital account.
 - Partners have at least 50% votin g power for at least 5 years.
- 15) Conversion of foreign currency exchangeable bonds (FCEB) into shares or debentures of any company shall not be treated as transfer.

Key notes :-

- 1) Indexed COA = $\frac{\text{COA} \times \text{CII for the year of transfer}}{\text{CII of the year of acquisition}}$.
- 2) Indexed COA (If the asset is acquired by the assessee before 1.4.1981) = $\frac{\text{COA or FMV on 1.4.1981 (whichever is higher)} \times \text{CII of the year of transfer}}{\text{CII of 1981-82}}$.
3. Indexed COI = $\frac{\text{COI after 1.4.1981} \times \text{CII of year of transfer}}{\text{CII of the year in which the improvement was made by the assessee or previous owner}}$.
4. COI is always indexed in case of long term capital asset irrespective of year in which such improvement was incurred.
5. Benefit of indexation shall not be available in the case of bonds and debentures, other than capital indexed bonds issued by the govt.
6. Cost of improvement incurred before 1.4.1981 shall be ignored in all cases.
7. Benefit of indexation is not available for bonds/debentures of any company or for bonds issued by the govt.
8. The securities transaction tax (STT) paid on sale of shares/units shall not be reduced from the sale price and the STT paid on purchase of shares/units shall not be added to the cost of acquisition.

Q 1. X purchased a piece of land on 4-1-1978 for Rs 50,000. This land was sold by him on 2-9-2011 for Rs. 9,00,000. The market value of the land as on 1-4-1981 was Rs. 1,20,000. Expenses on transfer were 2% of the sale price. Compute the capital gain for the AY 2012-13.

What would be the answer if the land was purchased by X on 1-4-1988 for Rs. 1,50,000?

Q. 2. X acquired the property in the previous year 1982-83 for Rs. 5,00,000 and paid Rs. 18,000 as registration charges. X died on 15-9-2007 and the property was transferred to his son Y through inheritance. The market value of the property as on 15-9-2007 is Rs. 10,00,000. Y sold this property on 31-5-2011 for Rs. 12,00,000. Compute the capital gain for the assessment year 2012-13.

Q. 3. X acquired a land in 1977-78 for Rs 2,00,000 and gifted it his major son Y on 1-6-1980, when the market value of the land was Rs. 2,50,000. The fair market value of that land as on 1-4-1981 was Rs. 3,00,000. Y sold on 15-9-2011 for Rs. 25,00,000. Compute the capital gain for the AY 2012-13, assuming that the expenses on transfer were Rs.1,00,000.

What would be the capital gain if the land was gifted by X to his son Y on 15-5-1995?

Cost of inflation index (CII) as notified by the central government is as under:

Financial year	Cost Inflation Index(CII)	Financial year	Cost Inflation Index(CII)
1981-82	100	1996-97	305
1982-83	109	1997-98	331
1983-84	116	1998-99	351
1984-85	125	1999-00	389
1985-86	133	2000-01	406
1986-87	140	2001-02	426
1987-88	150	2002-03	447
1988-89	161	2003-04	463
1989-90	172	2004-05	480
1990-91	182	2005-06	497
1991-92	199	2006-07	519
1992-93	233	2007-08	551
1993-94	244	2008-09	582
1994-95	259	2009-10	632
1995-96	281	2010-11	711
2011-12	785		

Cost of Acquisition: (55)

A

Capital Asset	Cost of acquisition	
	Acquired	Self generated
Goodwill of a business	Purchase price	NIL
Trade mark or brand name associated with a business	Purchase price	NIL
Tenancy rights	Purchase price	NIL
Rout permits	Purchase price	NIL
Loom hours	Purchase price	NIL
Right to manufacture, produce or process any article or thing	Purchase price	NIL
Right to carry on any business	Purchase price	NIL

Note:

1. **Goodwill of profession is not taxable B.C. Srinivasa Setty (SC).**
2. **The option to take cost of acquisition as FMV as on 1-4-1981 is not available even if such assets were acquired before 1-4-1981.**

B

Capital Asset	Cost of acquisition	Period of holding
Original shares/securities	Purchase price	From the date of purchase or allotment
Right shares/securities	Price actually paid under the right issue	From the date of allotment
Renoucement of right to subscribe shares/securities: <ul style="list-style-type: none"> • In the hands of the person who renounces the right • In the hands of the purchase right 	<p style="text-align: center;">NIL</p> <p>Price paid to the person who renounced the right and document paid to the company to acquire the right shares</p>	<p>From date of offer(always short term)</p> <p>From the date of allotment</p>
Bonus shares/securities	NIL	From the date of allotment

Note:

- ✓ **The option to take FMV as on 1-4-1981 is available.**

C. In relation to other capital assets:

1. Where the capital asset is acquired by the assessee or the previous owner before 1-4-1981:

- Cost of acquisition to the assessee or the previous owner , or
 - FMV as on 1-4-1981
- Whichever is higher.

2. Where the capital asset is acquired by the assessee or the previous owner on or after 1-4-1981:

- Cost of acquisition to the assessee or the previous owner.

COST OF IMPROVEMENT

A . The cost of improvement of the following shall be taken to be nil:

- I. Goodwill of Business.
- II. Right to manufacture, produce or process any article or thing.
- III. Right to carry on any business

B . in relation to other capital assets

- I. Where the capital asset is acquired by the assessee or the previous owner:
Cost of improvement means all capital expenditure incurred on improvement by the assessee and the previous owner.
- II. Cost of improvement incurred before 1-4-1981 is to be ignored in all cases.

Computation of capital gains in special cases:-

- Compensation received from insurers on account of damage of capital asset [45(1A)]:- Where insurance claim is received in respect of capital asset damage or destroyed, as a result of-
 - i. Flood, typhoon, cyclone, earthquake or other conclusion of nature, or
 - ii. Riot or civil disturbance, or
 - iii. Accidental fire or explosion, or
 - iv. Action by an enemy or action taken in combating an enemy
- Value of any money or
- The FMV of other assets on the date of such receipt shall be deemed to be sale consideration for computing capital gains
- Capital gain shall be taxable in the year of receipt of insurance claim.
- If no claim is received on destruction of capital asset, no capital gain shall arise. The cost of the asset destroyed shall be capital loss i.e. dead loss which has no tax treatment.
- For the purposes of computing the nature of capital gains, the date of transfer of the capital asset destroyed should mean the date of destruction

Q. 4. X owns a house property which was purchased by him on 1-5-1979 for Rs. 3,00,000. The said property was destroyed by fire on 3-4-2011 and X received a sum of Rs. 30,00,000 for the insurance company during the year. The market value of the above property as on 1-4-1981 was Rs. 4,00,000.

Compute the capital gain for the assessment year 2012-13.

What shall be the capital gain if the asset was destroyed on 3-3-2011 and the compensation was received during the previous year 2-11-12?

Conversion Of capital Asset into stock in Trade [45(2)]

Capital gains from conversion of capital asset in to stock in trade shall be charged to tax in the previous year in which stock in trade is sold by assessee.

- 1) Indexation shall apply on the basis of the year in which conversion takes place.
- 2) Capital gain = FMV of stock on conversion - cost or indexed COA.
- 3) Business Income = Consideration received on sale - FMV of capital Asset on conversion.
- 4) The amount recorded in the books of account of the business as the value of stock in trade is not relevant.

Q. 5. X invested Rs. 1,00,000 on the purchase of gold ornaments on 4-1-1989. He holds the gold ornaments as investments. On 12-1-2010 he started a business of dealing in jewellery and converts his holding in to his stock in trade. The market value of the gold ornaments as on the date of conversion was Rs 4,00,000 and therefore, X credited his capital account by Rs. 4,00,000 and debited his stock account by Rs 4,00,000. The gold ornaments are now reflected in the business of X as stock in trade. These gold ornaments were sold in the previous year 2011-12 for sum of Rs 5,00,000.

I compute the capital gain and business income.

II what would be the answer if the gold ornaments are held by the assessee till 31-3-2012?

Transfer of shares held as depository [45(2A)]

- The sale of shares held under depository is chargeable to tax as the income of the beneficial owner.
- COA and period of holding shall be determined on the FIFO basis.

Key notes:

- a. FIFO method will be applied for each account independently.

-
- b. Indexation shall apply on the basis of year of acquisition.

Transfer of capital asset by partner to firm [45(3)]

- The Capital gains arising from the transfer of a capital asset by a person to firm in which he is or in which he becomes a partner,
- By way of capital contribution or otherwise,
- Shall be chargeable to tax in the previous year in which such transfer takes place.
- Capital gain= Amount credited in the books in the partner's capital account – cost or Indexed COA.

Note

3. The same provisions will apply where a member of AOP/BOI, transfers a capital asset to AOP/BOI
4. Section 50C shall apply

Dissolution of firm 45(4)

- The Capital gains arising from transfer by way of distribution of capital assets on dissolution of a firm or **otherwise**.
- Shall be chargeable to tax as the income of the firm
- In the previous year in which such distribution takes place
- Capital Gain= FMV on the date of transfer – cost or Indexed COA.

Note:

1. Same provisions will apply where the assets are distributed by AOP/BOI to its members.
2. CIT v. A.N. Naik Associates, the word **otherwise** in section 45(4) also covers retirement.

Compulsory acquisition 45(5)

Where a capital asset is compulsorily acquired under any law there in:

Original compensation:

1. Capital gain for original compensation shall be taxable in the year in which such compensation or part thereof it firstly received by the assessee.

Enhanced compensation:

2. Any increased compensation is taxable in the year in which such increased amount is received, {only the amount received shall be taxable and not the entire increased compensation}
- Nature of increased compensation shall be same as the nature of original compensation
 - For increased compensation COA and COI shall be nil
 - Any expences incurred on realization of increased compensation may be deducted as expences on transfer.

-
3. If such compensation is reduced by any court then capital gain shall be recomputed by taking into consideration such reduced compensation.
 4. It is possible that the transferor may die before he receives the enhanced compensation. In that case, the enhanced compensation or consideration will be chargeable to tax in the hands of the person who received the same
 5. As per the amendment by Finance Act, 2009 interest on compensation/enhanced compensation shall be taxable in the year of receipt. 50% of such interest shall be allowed as deduction from such interest.

Redemption of 80CCB UNITS ASSESSED TO TAX.

Difference between repurchase price and amount invested shall be deemed as capital gain {No indexation benefit is available}

Liquidation of a company [46]

In the hands of company:

Where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company.

In the hands of shareholders, capital gain of shares:

Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income tax under this head for such receipt and sale consideration of shares shall be FMV of assets on the date of liquidation less deemed dividend u/s 2(22)(c).

While computing the period of holding of such shares the period after the date of liquidation shall not be taken.

Capital gain on sale of asset received in liquidation :

- The COA of the asset received in liquidation
- Shall be its FMV on the date of distribution, without deducting deemed dividend.

Buy back of shares 46A

Where a company purchases its own shares, the difference between the COA and consideration received shall be the capital gain.

Computation of capital gains on slump sale 50B

- ✓ Slump sale means transfer of one or more undertakings as a result of sale for a lump sum consideration without assigning any value to individual assets and liabilities transferred.
- ✓ Capital gain arising from slump sale of capital asset, being one or more undertakings owned or held by the assessee for more than 36 months is Long term capital gains otherwise it will be treated as Short term capital gains.

- ✓ Benefit of Indexed cost of acquisition/improvement is not available computing long-term capital gains.
- ✓ No profits under the head PGBP shall arise in case of slump sale even if stock is transferred in slump sale.
- ✓ Net worth of undertaking transferred shall be deemed to be the cost of acquisition/improvement.
- ✓ Capital gain= Lump sum consideration less net worth
- ✓ Net worth= Aggregate value of assets less value of liabilities.
- ✓ Aggregate value of assets= WDV of depreciable asset Add Book value of other assets.
- ✓ Any change on account of revaluation of assets shall not be considered.
- ✓ Transferor can carry forward the unabsorbed losses and unabsorbed depreciation of the transferred undertaking.
- ✓ Every assessee, in the case of slump sale shall furnish a report of Chartered Accountant indicating the net worth has been computed correctly.
- ✓ While computing the net worth in case of slump sale for the purpose of computing capital gain, in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction u/s 35AD , its cost shall be taken as Nil as the entire cost of the same has been allowed as a deduction .

Q..6. X Ltd., has two divisions namely the paints Division and Tyres Division and the balance Sheet of the company as on 31-3-2010 is as under:

	Rs.		Rs.
Paid up capital	60,00,000	Paints Division	
		Fixed asset (W.D.V. as on 31-3-2011)	
		After charging depreciation	
		A land and building	15,00,000
		B Plants and machinery	14,00,00
		Debtors	20,00,000
Reserve and surplus	84,00,000	stock in trade	
15,00,000			
Creditors:		other corrent assets	5,00,000
Paints divisions	19,00,000	Tyre Division	
Tyre division	60,00,000	fixed assets	60,00,000
		(W.D.V. as on 31.3.2011 after	
		Charginf depreciation)	
		Investments	20,00,000
		Debtors	30,00,000
		Stock in trade	40,00,000
		Other current assets	4,00,000
	2,23,00,000		2,23,00,000

The company decides to sell the paint division which was established in 1995 to another company G Ltd. On 1-5-2011 for a lump sum of Rs. 90,00,000. The fixed assets of the company include land and building whose W.D.V. as on 1-4-2011 as per income tax is Rs. 12,00,000, but it has been valued as Rs. 50,00,000 for the purpose of stamp duty.

The WDV of block of assets of plant and machinery of X Ltd. Carrying 15% (25% up to AY 2005-6) as on 1-4-2011 is Rs. 32,00,000. The company has acquired a new machinery on 10-5-2011 for Rs 4,00,000 and has sold a machine on 5-10-2011 for Rs. 8,00,000. All the machines of paint division which were transferred in slump sales were acquired on 3-1-2004 for Rs 36,00,000.

Compute the capital gain taxable in the aforesaid case assuming the market value of the stock transferred is Rs.20,00,000.

Special provision for full value of consideration in certain cases **[50C]**

1. **Where the** sale consideration on the transfer of land or building or both, is less than the value assessed by the “stamp valuation authority” for payment of stamp duty in respect of such transfer,
The value so assessed or assessable shall be deemed to be the sale consideration accruing as a result of such transfer.
2. **Where:**
 - a. The assessee claims before any Assessing officer that the value assessed by the stamp valuation authority under sub-section {1} exceeds the fair market value of the property on the date of transfer and
 - b. The value so assessed by the stamp valuation authority has not been disputed in any appeal before any other authority or court
The assessing officer may refer the valuation of the capital asset to a valuation officer. And then value determined by valuation officer shall be taken as sale consideration.
3. If the value ascertained under sub-section {2} by the valuation officer exceeds the value assessed by the stamp valuation authority in sub-section {1} The value assessed by stamp valuation authority shall be taken as the sale consideration accruing as a result of the transfer.

Advance money forfeited [51]

Where any capital asset was on any previous occasion the subject matter of negotiations for its transfer, and any advance money or other money received is forfeited by the assessee, then the amount so forfeited shall be deducted from

- a. The cost for which the asset was acquired, or
- b. The FMV as on 1.4.1981 where FMV as on 1.4.1981 has been taken as COA, or
- c. The WDV in case of depreciable assets

As the case may be, in computing the cost of acquisition.

This provision is applicable only when the transfer as per the original agreement does not take place and the advance money is received and forfeited by the assessee as per the agreement.

Notes:

- ✓ **Other money received includes any earnest money received for guaranteeing the performance of the contract and not forming part of sales consideration.**
- ✓ **Amount forfeited before 1/4/1981 is also to be deducted as per section 51.**
- ✓ **Amount forfeited by the previous owner is not to be deducted under section 51.**
- ✓ **Travancore Rubber & Tea Co. Ltd. (SC) : if advance money forfeited exceeds the cost, the excess shall be a capital receipt not taxable.**

Q.7. R purchased a house in Delhi in December 2008 for Rs. 1,20,000. In march, 2011 he entered into an agreement to sell the property to X for a consideration of Rs. 2,00,000 and received earnest money of Rs. 20,000. As per the terms of the agreement, the balance payment was to be made within 30 days of the the agreement. If the intending purchaser does not make the payment within 30 days, the earnest money would be forfeited. As X could not make the payment within the stipulated time the amount of Rs. 20,000 was forfeited by R subsequently on 5-5-2011, R sold the house to M for Rs. 2,50,000. He paid 2% brokerage on sale of the house. Compute the capital gains chargeable to tax for the AY 2012-13.

Reference to valuation officer [55A]

Under the following conditions the A.O. may refer the valuation of the capital asset to the valuation officer and his valuation report shall be binding on the A.O.

1. Where the value of the asset is estimated by the registered valuer:
If the A.O. is of the opinion that the value so claimed is less than its Fair Market Value.
2. In any other case, if the AO is of the opinion that:
 - a. [FMV of the asset – value claimed by the assessee] exceeds Rs. 25,000. Or [FMV of the asset – value claimed by the assessee] exceeds 15% of the value claimed by Assessee.
 - b. Having regard to the nature of the asset and other relevant circumstances it is necessary to make the reference.

EXEMPTION OF CAPITAL GAINS

Exemption on compulsory acquisition of agricultural land [10(37)]

In the case of individual or HUF , any income chargeable under the head “ capital gains” arising from the transfer of urban agricultural shall be exempt if:

- i. Such land, was being used for agricultural purposes by such HUF or individual or their parent , during two years immediately preceding the date of transfer.
- ii. Transfer is by way of compulsory acquisition under any law, or consideration is determined by central Govt. or RBI.
- iii. Such income has arisen from the compensation received by assessee on or after the 01.04.2004.

Exemption of LTCG shares [10(38)]

Long term capital gain from the transfer of equity shares or units of equity-oriented mutual fund shall be exempt if:

- i. Transfer took place on or after 01.10.2004.
- ii. They are sold through recognised stock exchange.
- iii. Security transaction tax is chargeable on such transaction.

Tax on STCG from shares 111A

Short term capital gain from transfer of shares or units of equity oriented- mutual fund shall be taxable at 15% if :

1. Transfer took place on or after 01.10.2004
2. They are sold through recognized stock exchange
3. Security transaction tax is chargeable on such transaction.

No deduction under chapter VI-A shall be allowed from such income.

Key notes:

- a. Sec. 111A is applicable to all assessee including FII and non residents
- b. Sec. 111A is not applicable to securities other than equity shares and units of equity oriented fund. Thus, it does not cover other types of securities such as preference shares, debentures, deep discount bonds, units of debt mutual fund etc.

Tax on LTCG from listed securities

The tax payable by the assessee on long term capital gain from securities listed on any stock exchange in India or units of UTI or mutual funds covered under section 10(23D)] and Zero coupon bond shall be minimum of the following two amounts:

- i. Tax @20% on long term capital gains computed after indexation of cost of such shares, securities or units . or

- ii. Tax @ 10% on long term capital gains computed without indexation of its cost.

RATES OF TAX ON CAPITAL GAINS

particulars	LTCG on listed securities		Any other LTCG	STCG	
	Suffered STT	Not suffered STT		Listed securities suffered STT	No STT or STCG on any other assets.
Section	10{38}	112	112	111A	
Rate of tax	Fully exempt	20% with ICA or 10% without ICA	20%	15%	Normal rate
Deduction of chapter VI-A	NA	Not applicable		NA	Available
Residents whose total income excluding LTCG is below Basic exemption	No income is taxable	10% or 20% of {total income less unavailed basic exemption}	20% of {total income less unavailed basic exemption}	15% of total income less unavailed basic exemption	Normal rate of tax
Non resident individual and HUF	Nil	LTCG taxable{basic exemption not available}	LTCG taxable	STCG taxable {basic exemption not available}	Normal rate

**Exemption from Capital Gains under section
54/54B/54D/54EC/54F/54G/54GA**

Sec	Asset Transferred	Who is Entitled	Use Or Holding period	Amount to be invested	New Asset	Exemption	Prescribed Period for investment	Treatment of unutilized amount	Sale of new Asset
54	Residential House	Individual Or HUF	Exceeding 36 months	Capital Gains	Residential House	Capital gains of amount invested whichever is less	Within 1 year before or 2 years after the date of transfer in case of purchase, or within 3 years after the date of transfer, in case of new construction	Deposit in Capital Gains Account scheme on or before due date of furnishing the return of income.	If held within 3 years from date of purchase/ construction, for the purpose of computation of STCA on the new asset shall be reduced by the amount of CG claimed as exempted.
54B	Agricultural Land	Individual	Used for 2 years for agriculture	Capital Gains	Agricultural Lands	As Above	Within two years after transfer	As Above	As Above
54D	L & B for industrial undertaking	Any assessee	Used for two years	Capital Gains	L & B for industrial undertaking	As Above	Within 3 years after transfer	As Above	As above
54EC	Long Term Capital	Any Assessee	LTCA	Capital	Bonds issued on or after	Capital gains or	Within 6 months of transfer of	Not Applicab	If sold within 3 years,

	Asset			Gains	1.4.2007 by NHAI or RECL	amount invested (which ever is less) Max. Rs. 50 lakh during any financi al year	original asset	le	exempte d Capital Gain will be deemed to be the income from LTCG of the assessee in the year of sale of new asset
54F	Any asset other than Residential house	Individual of HUF	Should be LTCA Should not own more than house on date of transfer	Net consi der- ation	Residential House	Capital Gains x (Amou nt investe d/ net consid eration)	Within 1 year or before or two years after transfer in case of purchase or 3 years after transfer in case of construction	Deposit in Capital Gains account scheme on or before due date of furnishi ng return of income	Sale as for sec 54, 54B, 54D except that under section 54F it will be taxed as LTCA.
54G	P & M or L & B for industrial undertakin g in urban area	Any assessee	May be LTCA or STCA	Capit al Gains	P & M or L & B used for industrial undertakin g in non urban areas or meeting expenses of shifting	Capital Gains or amoun t investe d whiche ver is less	Within 1 year before or within 3 years after the date of transfer	As Above	Same as for section 54, 54B, 54D
54GA	P & M or L & B for industrial urban area	Any assessee	May be LTCA or STCA	Capit al Gains	P & M or L & B used for industrial undertakin g in SEZ or meeting	Capital Gains or amoun t investe d	Within 1 year before or within 3 years after the date of transfer.	As above	Same as per section 54

					expenses of shifting	whiche ver is less			
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Q.8. X sold a residential house on 28-6-2011 for Rs. 14,00,000. He had purchased this house on 1-10-1985 for Rs 1,20,000 and had spent Rs. 70,000 on improvement of the house during the year 1986-87. He purchased a new house on 21-10-2011 for Rs. 3,50,000. This house was sold by him on 16-7-2011 for Rs. 6,00,000. He purchased another house on 21-11-2012 for Rs. 8,00,000. Compute the capital gains for the AY 2012-13 and 2013-14.

Q. 9. Mr. X purchased jewellery worth Rs. 80,000 during the year 1984-85. During the year 1990-91, he further purchased jewellery worth Rs. 90,000. All the jewellery was sold by him on 15-5-2011. The jewellery purchased in 1984-85 was sold for Rs. 5,50,000 and that purchased in 1990-91 was sold for 5,60,000. He purchased a plot of land for 3,15,000 on 4-1-2012 for construction of residential house. On 15-6-2011 he deposited rs. 5,00,000 in the capital gains accounts scheme and further sum of Rs 2,00,000 as on 15-11-2012.

He owns only one residential house as on 15-5-2010.
Compute the capital gains for AY 2012-13.

INCOME FROM OTHER SOURCES

- **Basis of Charge**[56(1)]

A source of income which does not specifically fall under any one of the other four heads of income is to be computed under the head “**Income from Other Source**”

- **Specific Income** [56(2)]

The following income shall be charged to tax only under the head “**Income from other sources**”

1. Dividends Income
2. Remuneration received by member of parliament (but allowance is exempt).
3. Winning from lotteries, crossword puzzles, races card games and other games of any term gambling or betting of any form.
4. Income from letting of machinery, plant or furniture along with building and only machinery, plant or furniture.
5. Income from sub letting of a House Property.
6. Interest on securities.
7. **Income from undisclosed sources**
8. **Interest paid by the Govt. on excess payment of Advance tax, tax etc.**
9. **Any property being shares of closely held company received without consideration or for inadequate consideration by the firm or closely held company if aggregate value of the amount of such gift or inadequate consideration exceeds Rs 50,000 [Finance Act, 2010,w.e.f 1-6-2010]**
10. **Interest received on delayed compensation or enhanced compensation shall be deemed to be income of the year in which it is received .**
50% deduction to be allowed from such interest.
11. **Where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1.10.2009.**
 - (a) Any sum of money, **without consideration**, the aggregate value of which exceeds Rs.50,000 then Taxable income = The whole of the aggregate value of such sum.
 - (b) **Any immovable property**
 - 1) **Without consideration**, the stamp value of which exceeds Rs.50,000 then taxable income = the stamp duty value of such property.
 - (c) **Any property other than immovable property-**
 - 1) Without consideration the aggregate fair market value of which exceeds Rs.50,000 then taxable income=the whole of the aggregate fair market value of such property.
 - 2) For a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs.50,000 then taxable income=the aggregate fair market value of such property-such consideration.

Provided that this clause shall not apply to any sum of money or any property received—

- 1) from any relative; or
- 2) on the occasion of marriage of the individual; or
- 3) under a will or by way of inheritance; or
- 4) in contemplation of death of the payer
- 5) from any local authority, trust (u/s 12AA) or university/ hospital/medical institution/any institution covered u/s 10(23C)

Note:-

1 “Relative” means for this purpose is as under:

- I. Spouse of the individual;
- II. Brother or sister of the spouse of individual;
- III. Brother or sister of the spouse of the individual;
- IV. Brother or sister of either of the parents of the individual;
- V. Any lineal ascendant or descendant of the individual;
- VI. Any lineal ascendant or descendant of the spouse of the individual;
- VII. Spouse of the person referred to in clause (a) to (f)

2 Property means:-

- 1) immovable property being land or building or both;
- 2) share and securities
- 3) jewellery;
- 4) Archaeological collections;
- 5) Drawings;
- 6) Paintings;
- 7) Sculpture; or
- 8) Any work of art;
- 9) bullion

3 Where the stamp duty of value of immovable property is disputed by the assessee then assessing officer may refer the valuation of such property to a valuation officer (provision of Section 50C apply).

Nature of asset	Particulars	Taxable value
Money	Without consideration	The whole amount of the same exceeds Rs.50,000.
Immovable property	Without consideration	The stamp value of the property, if it exceeds Rs.50,000
Movable property	Without consideration	The aggregate fair market value of the property, if it exceeds Rs 50,000.
Movable property	inadequate consideration	The difference between the aggregate fair market value and the consideration, if such difference exceeds Rs 50,000.

◆ **Method of Accounting 145:**

- Income from other sources is to be computed according to method of accounting regularly employed by Assessee.
- If book of accounts are maintained on Cash Basis, income is taxable during a previous year only if it is actually received during that Previous Year.
- Where as it books of account are maintained on mercantile basis, income is taxable during Previous year only if it becomes due during that Previous Year.

▪ **Deemed Dividend(22)**

“Dividend” includes the following disbursement by the Company to the shareholders to the extent of accumulated profits.

- a) Any distribution by a Company involving the release of the assets of the company.
 - b) Distribution of Debenture/Deposit certificates to shareholders and bonus share to preference shareholder.
 - c) Distribution of accumulated profit to shareholders on liquidation of the Company.
 - d) Distribution on reduction of share capital.
- e) Any advantage/loan by a private company to
- 1) Equity shareholders holding not less than 10% voting power.

-
- 2) Any concern in which such member(holding not less than 10% voting power) is having no less than 20% beneficial interest.

Key Note:-

Any income by way of dividend except **dividend u/s 2(22)(e)** and from unit of mutual fund is exempt.

Corporate Dividend Tax

- Every domestic company, in addition to income tax, is liable to pay [tax@16.609%](#) on dividend (whether interim or final) except on dividend u/s2(22)(e).
- Such tax s payable even f income tax s not payable by the company.
- No deduction of dividend or tax thereon shall be allowed to the company or the shareholder.
- However such dividend shall be exempt n the hands of shareholder u/s 10(34)

Deductable Expenses 57:

- 1) Any reasonable sum paid by way of commission or remuneration for purpose of realising dividends or interest on securities.
- 2) Contributions of ESI, EPF and Superannuation fund paid before due dates under relevant Acts.
- 3) Repairs, insurance and depreciation of building, plant & **machinery** and furniture.
- 4) For family pension 33.33% of family pension or Rs.15,000 whichever is less.
- 5) Any other expenditure (not being capital expenditure) expended to earn such income.
- 6) **Interest received on delayed compensation or enhanced compensation shall be deemed to be income of the year in which it is received [w.e.f.A.Y.2010-2011]**

50% deduction to be allowed from such interest and no other deduction shall be allowed.

Inadmissible Expenses 58:

- 1) Personal Expenses
- 2) Interest and salary payable outside India, if tax has not been paid or deducted at source.
- 3) Wealth Tax

- 4) Expenses of the nature described in Section 40A[Section 40A(2) & Section 40A(3) etc],
- 5) Any expenditure or allowance in respect of winning from lotteries, cross word puzzles, card games, race including horse race etc.

However, expenditure incurred for activity of owning and maintaining race horses shall be allowed as a deduction.

Rate of tax in case of winning from Lottery etc.115BB

Winning from Lottery, Crossword Puzzles, Race including horse race or card game and other game of any sort or from gambling or betting of any form, tax shall be calculated as under:-

30% of such income + Education Cess@ 2% and SHEC @ 1%

The person responsible for paying income by way of lottery etc. in an amount exceeding Rs.10,000 (Rs. 5000 up to 30.06.2010) and Rs 5000 (Rs 2500 up to 30.06.2010) for horse race shall at the time of payment thereof, deduct TDS.

Key Note:-

1. NO expenditure or allowance can be allowed against such income;
2. No benefit of carry forward and setoff of loss or unabsorbed depreciation allowance is available against income, and
3. No deduction under chapter VI-A(Sec. 80C to 80U) can be allowed;
4. No basic exemption limit is available.

This provision does not apply to income derived from owning and maintaining race horse in respect of which normal rates of tax shall apply.

Interest on Securities

Income from interest on securities is chargeable under the head “Income from other sources” of such income is not chargeable under the head “Profit and Gain Business and Profession.”

Interest on securities means 2(28B)

Interest on any securities of central or state government.

Interest established by central, State or Provincial act.

Rate of TDS :-	
(i) For Listed Securities	10%
(ii) Unlisted securities	10%

However no TDS shall be deducted on:-

- 1) Interest payable on any security of the CG/SG.
- 2) Interest on listed Debentures issued by a Public Company, if the interest is paid by account payee cheque and Interest does not exceed Rs.2,500.

Bond Washing Transactions :-

If owner of any security sells it just before due date and again acquires them after due date, he will be able to avoid payment of tax on interest.

In such case as per section 94 interest would be deemed to be the income of transferor and not transferee.

Exceptions:- If there is no avoidance of income Tax or

- 1) The avoidance of Income Tax was exceptional and not systematic and that there was no avoidance of income tax by such a transaction in any of the three preceding years.

Interest exempt from Tax

- 1) Interest on notified bonds/certificates
 - a. 12 year National Saving certificates
 - b. National defence bond 1980
 - c. National Plan saving certificates
 - d. Special bearer bonds
 - e. Treasury saving deposit certificates
 - f. Post-office cash certificates
 - g. Post office national saving certificates
 - h. Post office saving bank account.
 - i. Post office commulative time deposit certificates.
 - j. Fixed deposits time deposit certificates.
- 2) Interest on 10% Relief Bond & 6% Relief Bond
- 3) 7% Capital investment bonds
- 4) Interest on notified bonds/debenture of public sector company.
- 5) Interest on Public Provident Fund (PPF) is also exempt.

No deduction [14A]

For computing the total income under the five heads, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which is exempt.

Income from Letting of Machinery, Plant or Furniture

If Plant & Machinery etc. is not let out as part of assessee's business activity than Income arising from such hire will be taxable under the head other sources.

If letting is as part of his business activity than under the head P.G.B.P.

Income from composite letting of machinery, Plant, Furniture and Buildings

If letting of building is inseparable from letting of Plant & Machinery etc. and such letting is not as part of his business activity, then income arising from such letting will be taxable under the head other sources.

If letting is as part of his business activity then under the head P.G.B.P.

Family Pension

Family Pension received by legal heir of Deceased employee, taxable under the head "other sources" Standard Deduction to legal heirs is allowed

- 1) 33.33% of Pension or
- 2) Rs.15.000

Whichever is less.

Practical problems:

1 Mr. A dealer in shares, received the following without consideration during the p.y. 2010-11 from his friend Mr. B

A cash gift of Rs 75,000 on his anniversary, 15th April, 2010.

Bullion, the fair market value of which was Rs 60,000, on his birthday, 19th June, 2010

A plot of land at Faridabad on 1st July 2010, the stamp value of which is Rs 5 lakh on the date. Mr. B had purchased the land in April, 2005.

Mr. A purchased from his friend C, who is also a dealer in shares, 100 shares of X Ltd. @ Rs 400 each on 19th June, 2010 the fair market value of which was Rs 600 each on that date. Mr. A sold these shares in the course of his business on 23rd June, 2010

Further, on 1st November, 2010, Mr. A took possession of property (building booked by him two years back at Rs 20 lakh. The stamp duty value of the property as on 1st November, 2010 is Rs 32 lakh

Further on 20th November, 2010 Mr. A purchase land from his sister's mother-in-law for Rs 5 lakh. The stamp value of land was Rs 7 lakh.

On 1st March, 2011, he sold the plot of land at Faridabad for Rs 7 lakh

Compute the income of Mr. A chargeable under the head "income from other sources" and "capital gains" for A.Y. 2011-12.

2. Mrs. Priya, who draws a salary of Rs 12,000 per month received the following gifts during the previous year 2010-11.

- I. Gift of Rs 1,50,000 on 15.05.2010 from her close friend.
- II. Gift of jewellery worth Rs 3,00,000 on 01.08.2010 from her fiancée.
- III. Gift of Rs 51,000 each received from her two friends on the occasion of her marriage on 30.10.2010.
- IV. Gift of Rs 51,000 on 1.11.2010 from her father's sister.
- V. Gift of Rs 21,000 from her husband's friend on 1.1.2011.
- VI. Gift of Rs 25,000 on 12.01.2011 from her family friend.
- VII. Gift of Rs 11,000 on 12.02.2011 from her brother's mother in law.
- VIII. Gift of Rs 75,000 from her sister-in-law.

Compute her gross total income for the assessment year 2011-12.

- 3** R, the friend of A, has gifted **an Immovable property to A** whose stamp duty value on the date of gift is Rs 45,00,000.
- a. What shall be the value of gift taxable u/s 56(2) ?
 - b. What shall be the amount taxable if A purchased the above property from R for a consideration of Rs36,00,000?

Clubbing of income

➤ **Transfer of income without transfer of assets [60]**

When income is transferred without transfer of the asset giving rise of such income, it is deemed to be the income of the transferor.

➤ **Revocable transfer of assets [61]**

Income arising to any person as a result of revocable transfer of assets shall be deemed to be income of the transferor.

Exception:-

1. If any assets transfer to the transferee, it is not revocable during the lifetime of the transferor.
2. If any assets transfer to the transferee, it is not revocable during the lifetime of the transferee.
3. In the case of transfer before 1st April, 1961 if it is not revocable for a period exceeding six years.

Income of an individual to include income of spouse, minor child etc. [64]

The following incomes of the spouse, minor child etc. of an individual shall be included in the total income of the individual:-

1. Income from spouse remuneration [64(1) (ii)] :-

Income of the spouse by way of Salary, commission, fees or any other form of remuneration from a concern in which such individual has a substantial interest.

Key notes:

- a) If the payment of the above type of remuneration is due to the technical or professional qualification of the spouse, the remuneration shall not be clubbed.
- b) Substantial Interest means,
 - 1- Company:- If individual himself or with relative hold at least 20% of equity share beneficially at any time during the previous year.
 - 2- Other concern:- if individual himself or with relative entitled to at least 20% profit at any time during the previous year.

Relative means:- Individual, spouse, Brother, sister, or linear ascendant & descendant. if husband & wife both have substantial interest in concern and both getting remuneration from concern, then remuneration of both shall be clubbed with that spouse, whose total income is greater, before clubbing that income.

(Once income is clubbed with either spouse, next year income shall be clubbed with that spouse only, unless the Assessing Officer considers the change necessary).

2. Income from Assets transferred to spouse [64(1)(iv)]

When any assets (excluding house property) is transferred by an individual to his/her spouse directly or indirectly, the income from such assets shall be deemed to be the income of transferor.

It shall not be applicable if—

- i- Transfer is before marriage.
- ii- Transfer is for adequate consideration.
- iii- Transfer is under an agreement to live apart.
- iv- If relationship of husband and wife does not exist either at the time of transfer or at the time of accrual of income.

3. Income from assets transferred to son's wife ([64(1) (vi)])

If an individual transfers any assets to son's wife, without adequate consideration, then income from such assets shall be clubbed with individual's income.

Transferred assets is invested in business:

If transferred asset is invested by spouse/son's wife in any business, the following amount shall be clubbed with individual income:

Income from business x value of the investment out of the assets transferred on the first day of PY

transferee Total investment on the first day of PY by

4. Transfer of assets for the benefit of spouse[64(1)(vii)]

If an individual transfer any assets for the benefit of his/her spouse to any person or AOP, then the income of transferred assets shall be clubbed with the individual's income.

5. Transfer of assets for the benefit of son's wife [62(1)(viii)]

If an individual transfer any assets for the benefit of son's wife to any person or AOP, without adequate consideration, then the income of transferred assets shall be clubbed with individual's income.

Clubbing of Minor's Income [64(1A)]

- 1- Income of minor child shall be clubbed with income of the parent whose total income (before including minor's income) is greater.
- 2- If marriage of parent does not exist, minor's income will be clubbed in the income of that parent who maintains the child.
- 3- Once income is clubbed with either parent, income of subsequent year will be clubbed.

Exception :

In the following cases income of minor shall not be clubbed:

- 1- Minor suffering from disability specified in Sec 80U.
- 2- income from manual work done by the minor or activity involving skill, talent or specialized knowledge etc.

Key note:

- 1- Where minor's income is clubbed, that parent can claim exemption u/s 10(32) of maximum Rs.1,500 each minor child.
- 2- Minor child includes step and adopted child.

Income from self acquired property converted into joint-family property [64(2)] :-

1-where a member of HUF has converted or transferred self acquired property into joint family property for inadequate consideration , income arising there from is taxable as the income of the transferor.

2-if the converted property is subsequently partitioned among the members of the family, the income derived from such converted property as is received by the spouse of the transferor will be taxable as the income of the transferor.

Recovery of tax [65]

Although the income from any assets transferred to certain specified persons mentioned in the above sections of clubbing of income, is includible in the total income of the transferor.

Practical problems

1. Mr. A has three minor children- two twin daughters and one son. Income of twin daughters is Rs 2000 p.a. each and that of son is Es 1200 p.a. compute the income in respect of minor children, to be clubbed in the hands of Mr. A.
2. Mrs. Vibha started the business in 2008. Her capital in the business as on 1.4.2009 stood Rs 3,00,000. Mr. Sumit (her husband) gifted a sum of Rs 2,00,000 to Mrs. Vibha on 10.12.2009, which was also invested in the aforesaid business on the same date . She earned a profit of Rs 150,000 and 390,000 during the PY 2009-10 and 2010-11 respectively. Compute the amount of the income to be clubbed in the hands of Mr. Sumit.

Set-off and carry forward of Losses

Set-off of loss from one source against income from another sources under the same head [70]

Losses In respect of any source of income shall be setoff against income from any other source under same head. **Except**

- a. Loss in speculation business can not be set-off against the profit in a non-speculation business.
- b. Loss incurred in the business of owning and maintaining race horses can be set-off only against income from such business.
- c. Loss can not be set-off against income from winning from lotteries, crossword puzzles, races including horse races, card games etc.
- d. Long term capital loss can not be set off against short term capital gain
- e. Loss from a source, income of which is exempt, can not be set off against income of taxable source.

Set-off of loss from one head against income from another head [71]

When after setting off a loss under the same head of income there still remains some loss, the remaining loss shall be setoff against his income under any other head. **Except**

- a. Loss from speculation business can be set off only against the income from another speculation business.
- b. Loss under the head “**Business or profession**” can not be set-off against income under the head “**salaries**”.
- c. Loss under the head “**capital gains**” can be set-off **only** against the income under the head “**capital gain**”.
- d. Loss can not be set-off against winning from lotteries, crossword puzzles etc.
- e. Loss incurred in the business of owning and maintaining race horses can be set-off only against income from such business.

Carry forward and set-off of losses:

Where all losses could not be set-off during the same assessment year in which they occurred, that losses which could not be set-off can be carried forward for next assessment year.

The following losses can be carried forward:

- a. Loss under the head “income from house property”
- b. Loss of business or profession

- c. Loss of speculation business
- d. Capital loss
- e. Loss from activity of owning and maintaining race horses.

Key notes:

- a. Return of loss must be submitted by the assessee on or before the due date of filling of the returns prescribed u/s 139(1). However loss under the head income from house property can be carried forward even if the return is not filed on or before the due date u/s 139(1).
- b. If losses are carry forward and are not set off against profit of succeeding year (inspite of profit being there), they can not be set off in latter years.

Carry forward and set-off of loss from house property [71B]

A loss under the head house property could not be set-off in the same assessment year, will be allowed to be carried forward and set-off in subsequent assessment years upto a maximum of 8 assessment year against income from house property.

Carry forward and set-off of business losses [72]

Where the loss under the head “ PGBP” other than than loss from speculation business, could not be set-off in the same assessment year, can be carried forward and set-off in subsequent assessment years up to maximum of 8 years.

Key notes :

- a. The business loss can be carried forward even business in respect of which a loss is incurred may or may not be continued.
- b. Loss can be set-off by the assessee or his legal heir who has incurred loss.
- c. Business losses and unabsorbed depreciation of an amalgamation can be set-off against the income of the amalgamated company if the amalgamation is within the meaning of section 72A.
- d. Loss of demerged company can be carried forward by the resulting company subject to fulfillment of conditions of section 72A.
- e. Besides the business loss, the following can also be carried forward.
 - i. Unabsorbed capital expenditure on scientific research
 - ii. Unabsorbed depreciation.
 - iii. Unabsorbed expenditure on family planning.

Carry forward of loss/depreciation in the case of conversion of company in to LLP [72A(6A)]

In the case of succession of business, whereby a company (i.e., a private limited company or unlisted public limited company) is succeeded by a limited liability partnership fulfilling the conditions laid down in section 47(xiiib),

The accumulated loss and the unabsorbed depreciation (including unadjusted capital expenditure on scientific research) of the predecessor company ,shall be deemed to be the loss or as the case may be, allowance for depreciation of the successor limited liability partnership for the previous

year in which business reorganization was effected and the other provisions of the Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

In other words, accumulated loss shall be allowed for fresh 8 years and unabsorbed depreciation will be allowed to be carried forward indefinitely

When conditions of section 47 (xiiib) are not complied: the benefit of set off of business loss/unabsorbed depreciation availed by the LLP would be deemed to be the profits and gains of the LLP chargeable to tax in the previous year in which the LLP fails to fulfill any of the conditions.

Carry forward& set off of speculation loss [73]

Any loss, in respect of speculation business, shall not be set off except against profits of another speculation business.

- Where for any assessment year any loss of speculation business has not been wholly set off under sub-section {1}, so much of the loss is not so set off, shall be carried forward to the following assessment year, and-
 - I. it shall be set off against the profits and gains of any speculation business carried on by him assessable for that assessment year, and
 - II. if the loss can not be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.
- No loss shall be carried forward under this section for more than four assessment years immediately succeeding the assessment year for which the loss was first computed.

Section 73A:

- **Loss** of any business specified u/s 35AD shall be allowed to be set off only against the income of the specified business under head PGBP.
- **The loss** not set off in the same assessment year shall be allowed to be carried forward and shall be allowed to set off against the income of specified business only.

Losses under the head “capital gains” [74]

If there is loss under the head “capital gains” the loss shall be carried forward to the following assessment year, and-

- I. if loss relates to a short-term capital asset, it shall be set off against income under the head “capital gains” assessable for that assessment year in respect of any other capital asset;
- II. If loss relates to a long-term capital asset, it shall be set off against under the head “capital gains” assessable for that assessment year in respect of any other capital asset not being a short –term capital asset.

III. If the loss can not be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

Losses of firm :

A firm can carry forward & set off its losses .However the share of loss from a firm can not be set off by partners against their incomes.

Practical problems:

1. From the following information submitted to you, compute the total income of A for the AY 2011-12 and calculate tax liability assuming he is not allowed any deduction u/s 80C to 80U.

Income from salary	460,0000
Income from House property	40,000
Business loss	(-) 180,000
Short term capital loss	(-) 60,000
Long term capital gain	140,000

Agricultural Income

As per section 10(1) agricultural income is exempt from income tax. If the agricultural land is situated outside India, income from agricultural land is taxable as income from other sources.

Agricultural income means [2(1A)]

- a. Any rent earned from the land and that land used for agricultural purposes.
- b. Any income derived from such land by;
Agriculture or
The sale of the produce raised or received as rent in kind.
- c. Any income derived from saplings or seedings grown in a nursery shall be deemed to be agricultural income.
- d. Any income derived from any building occupied by the cultivator provided that the building is on or in the immediate vicinity {near by area} of the land and is a building which the cultivator requires as a
 - Dwelling house or
 - As a store house.

However income from any such land or building from the use of any purpose **other than** agriculture such as letting for residential or business purpose shall not be treated as agricultural income.

Income which is partly agricultural and partly from business:

Name of business	Agricultural income	Non-agr.
Income		
a. Income from growing and manufacturing of tea.	60%	40%
b. {i} Income from growing and maufacturing of coffee{only cured}	75%	25%
{ii} income from growing and manufacturing of coffee {cured, roasted and grounded}	60%	40%
c. Income from growing and manufacturing of rubber	65%	35%

Partly agricultural and partly non- agricultural income

If assessee is carrying on agricultural operations as well as non-agricultural operation in determining non-agricultural income which is chargeable to tax 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 utilized as a raw material in such business shall be deducted and no further deduction shall be made in respect of any expenditure by the assessee as cultivator or receiver of rent in kind.

For the purpose of the above market value shall be deemed to be:

- a. Where the agricultural produce is ordinarily sold in the market, the average price at which it has been sold, during the relevant previous year; or

-
- b. Where the agricultural produce is not ordinarily sold in the market, the aggregate of the following shall be its market value:
- i. The expenses of cultivation
 - ii. The rent paid for the land on which it was grown and
 - iii. Reasonable profit determined by Assessing Officer.

Non-agricultural income:

1. Income from self-grown grass trees or bamboos.
2. **Income from fisheries**
3. Income from brick making
4. remuneration received as manager of an agricultural farm
5. Dividend from a company engaged in agriculture.
6. **Harvest crop on purchased land**
7. **Income from dairy farm, poultry farming etc.**
8. Income from land used for storing agricultural produce.
9. Income from supplying surplus water to other agriculturists
10. Income from markets
11. Income from stone quarries.

Partial integration of agricultural income with non-agricultural income.

If

- i. Non- agricultural income exceeds exemption limit and
- ii. Agricultural income exceeds Rs. 5000

Then tax shall be calculated in the following manner:

Step1: Add agricultural income with non-agricultural income and calculate the tax on the aggregate as if it is the total income.

Step2: compute tax on the [exemption limit+ agricultural income] as if it is the total income.

Step3: step1- step2 will be the tax payable

Step4: Add Education cess 2%+1% SHEC.

PRACTICAL PROBLEMS:

- 1. THE total income of Mr. x for the AY 2011-12 is Rs 4,00,000 which includes short term capital gain u/s 111A of Rs 50,000 and card games Rs 40,000. Compute the tax payable by him assuming his agricultural income for the PY is Rs 40,000.**

Income of Charitable or Religious Trusts, Political Parties & Electoral Trust

Charitable purpose [2(15)]

It is defined to include relief of poor, education, medical relief, preservation of environment (including watersheds, forests and wild life]preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

However, the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of :

a. If it involves the carrying on of:

Any activity in the nature of trade, commerce or business or

Any activity of rendering of any service in relation to any trade, commerce or business for a fee or cess or any other consideration, irrespective of the nature of use of application of the income from such activity, or the retention of such income, by the concerned entity and

b. If the total receipts from any such activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business **exceeds Rs 25 lakh** in the previous year.

Exemption of Income from property held for charitable or religious purposes[11]

The following income shall not be included in the total income of some charitable or religious trusts:

- a. Income from property held by a trust wholly for charitable or religious purposes to the extent to which it is so utilized in India.
- b. Income from property held to promote international welfare in which India is interested to the extent such income is used for such purposes outside India.
- c. Come of trust from voluntary contributions which shall form part of the corpus of the trust.

Accumulation of income [11(2)]

It is not necessary that the entire income derived in particular year should be utilized for charitable or religious purposes in the same year. Even if 85% of the income is so applied during the relevant accounting year and not more than 15% s accumulated for such utilization in the future, the exemption from tax will still be available.

-
- a. **F more than 15% of the income is accumulated for such use in future, the excess over 15% should be invested or deposited as under [u/s11(5) to get full exemption.**
 - b. Give in writing to the Assessing officer the purpose for which the income is being accumulated and also the period for which is accumulated.

Conditions for registration of charitable trust [12A]

Application for registration of trust/institution should be made in the prescribed form and manner to the commissioner. Such trust/institution shall be registered under section 12AA where total income before gong exemption exceeds maximum amount not chargeable to tax, Audit Report should be filed in the prescribed form

Commissioner of income tax empowered to cancel registration [12AA(3)]

The commissioner is empowered to cancel the registration of trust granted under both section 12A and section 12AA, if the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust or institution.

Forfeiture of exemption[13]

The following income of charitable/religious trust do not qualify for exemption

- a. Income for private religious purpose
- b. Income for the benefit of particular religious community
- c. Income for the benefit of interested person.

Income of political parties [13A]

Income of political party which is chargeable under the head “ income from house property” or capital gain or income from other sources or any income by way of voluntary contributions received by political party from any persons shall not be included in the total income of the previous year of such political party, provided that:

- a. Such political party keeps and maintains such books of account and other documents as would enable the Assessing officer to properly compute its income.
- b. In respect of each such voluntary contributions in excess of Rs 20,000, such political party keeps and maintains a record of such contributions, and the name and address of the person who has made such contribution; and
- c. The accounts of such political party are audited by a Chartered Accountant.

If the treasurer of such political party/authorized person fails to submit a report to the Election Commission regarding donations received in excess of Rs 20,000, before the due date of furnishing the return of income, exemption shall be available for such financial year.

Electoral Trust [2(22AAA)]

“ Electoral trust” means a trust so approved by the Board in accordance with the scheme made in this regard by central government.

Special provisions relating to voluntary contributions received by electoral trust [13B]

Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust if-

- a. Such electoral trust distribute to any, registered under section 29A of the representation of the people Act, 1951, during the said previous year , 95 % of the aggregate donations received t during the said previous year along with the surplus if any brought forward from any earlier previous year, and
- b. Such electoral trust functions in accordance with the rules made by the central government.

Assessment Procedure

Return of Income [139(1)]

Every person

- a. Being a company or firm or
- b. Being a person other than a company or firm if his Gross Total Income (before deduction u/c VI-A) exceeds the maximum amount not chargeable to tax shall file return on or before due date in the prescribed form verified in the prescribed manner and setting forth (putting forward) such particulars as may be prescribed.

Due date

1 due date

i. for company

ii. a person other than company if the accounts are

Required to be audited under this act or under any other law 30th sept. of AY

iii. the person not covered under (i) & (ii) is working partner of

a firm are required to be audited under this act or under any other law.

2. in any other case

31st July of AY

Interest for the late filing of return [234A]

An assessee shall be liable to pay interest u/s 234 A @ 1% P.M. or part of the month for late filing of return. Interest is calculated on the amount of tax due i.e. tax assessed on the total income less advance tax, TDS. If:

<u>Default</u>	<u>period for computing interest</u>
The return of income is furnished after due date	from the date immediately following the due date filling return of income up to the date of furnishing of return of income.
The return of income is not filled	from the date immediately following the due date For filling return of income up to the date of completion of Assessment u/s 144 by the officer.

Particulars required to be furnished with the return [139(6)]

The prescribed form of the return shall , in certain specified cases, require the assessee to furnish the particulars of

- i. income exempt from tax
- ii. asset of the prescribed nature and value and belonging to him
- iii. his bank account and credit card held by him
- iv. expenditure exceeding the prescribed limits incurred by him under prescribed heads
- v. such other outgoing as may be prescribed.

Bulk Return [139(1A)]

- ✓ Any person being an individual who is in receipt of salaries may at his option furnish a return of his income for any previous year to his employer, as per specified scheme.
- ✓ And such employer shall furnish all returns of income received by him on or before the due date, in specified form (including on a floppy diskette, CD-ROM or any other computer readable media) and
- ✓ in such case, any employer who has filed a return of his income to his employer shall be deemed to have furnished a return of income under sub-section (1).

Return on computer readable media [139(1B)]

Without prejudice to provisions of sub section (1) any person, being a company or other than a company may at his option furnish return of his income for any previous year in accordance with scheme specified by board.

In such prescribed form (including on a floppy diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and return furnished under such shall be deemed to be return furnished under sub-section(1)

Return of loss [139(3)]

Losses under head “PGBP” and “capital gain “ can be carry forward only if return og loss is filed within due dates mentioned u/s 139(1)

And such return shall be deemed to have been filed u/s 139(1)

Notes:

1. Loss under head house property and unabsorbed depreciation can be carried forward even if the return is not filed up to the due date.
2. Loss can be set off even if the return is filed after the due date.
3. Loss of the year for which return is filed after the due date can be be carried forward but the loss of earlier years for which return was filed within due date can be carried forward.

Belated Return [139(4)]

If the return is not furnished within time allowed u/s 139(1) or 142(1) it can be filed

- i. Within one year from the end of relevant AY or
- ii. Before completion of assessment

Which ever is earlier.

Return of Charitable trust [139(4A)]

The trust is required to file a return if its following incomes (before exemption u/s 11 and 12) exceed the maximum amount not chargeable to tax.

- i. income from house property under trust
- ii. Voluntary contributions

The return is to be filed within due date u/s 139(1) by the representative of the trust and such return shall be deemed to have been filed u/s 139(1).

Return of political party [139(4B)]

If total income (before exemption u/s 13A) exceeds the maximum amount not chargeable to tax, chief executive officer shall file the return on or before due date u/s 139(1) and such return shall be deemed to have been filed u/s 139(1)

Return of exempted entities [139(4C)]

If the total income of any research association, news agency, institution having its object the control or encouragement of the profession of law, medicine, accountancy or other specified profession or university or other educational institution or any hospital or trade union, **notified body or authority or trust or board or commission**. Before claiming exemption under section 10, exceeds the maximum amount not chargeable to income tax.

Shall furnish a return of such income and it shall be treated that as if it were a return to be furnished under sub-section (1).

Return of various institutions [139(4D)]

Every university, college or other institution referred in section 35, which is not required to furnish return of income or loss under any other provision shall furnish the return in respect of its income or loss in every previous year and it shall be deemed that such return is filed under sub section (1).

Revised return [139(5)]

If assessee discovers any omission or wrong statement in return filed u/s 139(1) or 142(1) he may furnish a revised return

1. within one year from the end of the relevant assessment year or
2. before the completion of assessment, whichever is earlier .

Notes:

1. in the case of **Kumar Jagdish Chandra Sinha**, supreme court held that a belated return filed u/s 139(4) can not be revised.
2. Revised return substitute the original return and it is deemed to have been filed from the date when the original return was filed. Therefore, a revised return can also be revised.

Defective return [139(9)]

A return is said to be defective if any of the following conditions is not satisfied:

- i. The annexure, statement and columns in the return are duly filled in.
- ii. Proof of TDS, advance tax or self assessment tax is attached.
- iii. Statement of computation of income is attached
- iv. Audit report is attached.

-
- v. Cost audit report u/s 233B of companies Act is attached.
- vi. If regular books of account are maintained and return is accompanied by
- a. Trading and PL a/c or income or expenditure a/c and Balance sheet etc.
 - b. Proprietor business/profession---- personal a/c of proprietor.
Firms/AOP---- personal account of all partners/members
Partner of firm---- personal account in the firm.
- vii. If regular books are not maintained, return is accompanied by statement indicating turnover, gross profit, net profit, debtors, creditors and stock etc.
- If the AO considers that return is defective he may treat the return as invalid.

Dispensation from furnishing documents [139C]

The Board may make rules providing for :

- **A class** or classes of persons who may not be required to furnish
- **Documents, statements, receipts, certificates, audit reports or any other documents**
- Which are otherwise required to be furnished along with the return
- **But shall be produced before Assessing Officer on demand.**

As per Rule 12(2) the returns shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax claimed to have been deducted or collected at source or the advance tax or self assessment tax or report of audit etc.

Furnishing documents in Electronic form [139D]

The board may make rules providing for:

A class or classes of persons who shall be required to furnish the return in electronic form; the form and the manner in which the return in electronic form may be furnished, documents, statements, receipts, certificates, audit reports or any other documents, which may not be furnished along with the return in electronic form but shall be, produced before Assessing Officer on demand.

As per rule 12(3) a company has to file return compulsorily in electronic form.

PAN [139A]

In the following cases an application for allotment of PAN has to be made:

- i. **If the return** is to be filed u/s 139(4A)
- ii. **If the total income of any person during any previous year exceeded maximum amount not chargeable to tax.**

- iii. **If total sales** or gross receipts are more than Rs 5 lacs in any PY.

Time limit for making application:

In case of (i) & (iii) above: on or before the end of financial year.

In case of (ii) : on or before 31st May of the AY relevant to the previous year whose income exceeded the exemption limit.

Every person who has been allotted PAN shall quote it:

1. In all returns, challans and correspondence with income tax authority.
2. Sale/ purchase of motar vehicle other than two wheeler.
3. Sale/purchase of any immovable property for Rs 5 lacs or more.
4. Application for telephone connection including cellular connection.
5. Payment in cash in connection with foreign travel excluding travel to neighbouring countries i.e. Pakistan , Nepal, Bhutan, Bangladesh, Sri Lanka, Maldives or China for kailash Mansarover and Saudi Arabia for Haj Pilgrimage, at any time exceeding Rs 25,000.
6. Payment to hotels, restaurant bills exceeding Rs 25,000 at any time.
7. Opening a bank account.
8. Time deposits with a bank or post office saving bank account exceeding R\$5 50,000.
9. Deposit in cash with bank aggregating Rs 50,000 or more during any one day.
10. Payment in cash for purchase of bank draft or pay orders aggregating Rs 50,000 or more during any one day.
11. Contract for sale/purchase of securities exceeding Rs one lakh.

Any person who has not been allotted PAN shall make a declaration in Form 60.

Tax Return prepare [139B]

1. CBDT may frame a scheme providing specified persons to furnish their returns of Income through a Tax Return Prepare authorized to act as such under the scheme.
2. This scheme is not applicable for a company or in case of compulsory audit.
3. Scheme framed shall specify the manner in which the tax return prepare shall assist the persons furnishing the return of income, and shall also affix his signature on such return.
4. The following persons are not authorized to act as tax return preparer:
 - i. Officer of a scheduled bank in which the assessee has current a/c or has regular dealings or
 - ii. A legal practitioner, or
 - iii. A Chartered Accountant
5. The scheme shall provide: the manner in which a tax return prepare shall be authorized, educational and other qualifications to be possessed , training and other conditions to be fulfilled by a person to act as a tax return preparer, the code of conduct for the tax return preparer.

Signing of return [140]

i. Individual

- **Himself**
- If not in India by himself or by duly authorized person
- If incapacitated, by his guardian.

ii. HUF

- **By karta**
- **If not in India or mentally incapacitated, by any adult members**

iii. Company

- By MD
- If not available, by any director
- For non-resident company, by person holding valid power of attorney from such co.
- For company being wound up, by liquidator

iv. Firm: by managing partner or if not available, by any partner.

v. LLP: by designated partner or if not available, by any partner

vi. Local authority: by principal officer.

vii. Political party: by chief executive officer

viii. Any other association: by any member

Return not signed as per section 140 is not a defective return, rather it is void-ab-initio.

Self Assessment [140A]

Every person, before submitting return of income u/s 139 or 142(1) is under obligation to make a self assessment of his income and after taking in account the amount of tax, if any, already paid, pay the self assessment tax, if due.

The assessee shall be liable to pay such tax together with interest payable for any delay in furnishing the return or any default or already in payment of advance tax.

Service of Notice [142(1)]

If a person has not filled the return of income within time allowed u/s 139(1), then AO may issue a notice to him to furnish his return of income on or before the time specified in the notice.

Notice under this section shall be valid even if issued after the end of relevant AY.

AO may issue notice to produce such books of a/c & documents as he may require. However AO may not require to produce a/c's relating to period more than 3 years prior to the PY.

AO, after prior approval of Joint Commissioner may ask for a statement of all assets & liabilities of the assessee whether included in the A/C's or not.

Advance Tax

Liability for payment of advance tax [207]

Tax shall be payable in advance during any financial year, as per the provisions of sections 208 to 219, in respect of the assessee's current year's income.

Arises [208]

Advance tax shall be payable during a financial year where the amount of advance tax payable during the year is Rs.10,000 or more.

Computation of advance tax:

Estimated total income of the current financial year	xxxxxxx
Tax on total income	xxxxxxx
Less : tax deducted at source	xxxxxxx
Advance tax payable	xxxxxxx

Installments of Advance tax and due dates

Due date of installment	company	other than company
Till 15 th June of current year	15% of advance tax liability	Nil
Till 15 th Sept tax liability	45% of advance tax liability	30% of advance
Till 15 th Dec. tax liability	75% of advance tax liability	60% of advance
Till 15 March	100% of advance tax liability	100% of advance tax liability

If assessee does not pay the installments by the due date, he shall be liable to pay interest u/s 234B/C

If the last day for the payment of any installment 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 such cases, the mandatory interest leviable under section 234B and 234C would not be charged.

Interest for deferment of tax [234C]

1. Interest u/s 234 C is attracted for deferment of advance tax beyond the due dates.
2. The interest liability would be 1% per month, for a period of 3 months, for every deferment.

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3. However, for the last installment of 15th March, the interest liability would be 1% for one month.
 4. Such interest is calculated on the amount of difference between the Advance tax payable up to that date and the actual tax paid.

Interest for non-payment [234B]

1. **Interest u/s 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 the payment of tax.
3. Such interest is calculated on the amount of difference between the assessed tax and the the advance tax paid.
4. **Assessed tax is** the tax calculated on total income less TDS.

Payment of Advance Tax in case of casual income proviso to section 234C

1. Advance tax is payable by an assessee on his total income, which includes capital gains and casual income like income from lotteries, crossword puzzles etc.
2. Generally it is not possible to estimate his capital gains, income from lotteries etc.
3. Therefore it has been provided that if any such income arises after the due date for any installments, then, the entire amount of tax payable on such capital gains or casual income should be paid in the remaining installments of advance tax which are due.

If such income are earned after 15th March, the entire tax should be paid by 31st March of the relevant financial year.

4. No interest liability would arise if the entire tax liability is so paid.

Computation of advance tax [209]

Computation by Assessee: An assessee has to estimate his current income and pay advance tax thereon and deposit the same.

Computation by the AO: AO can serve an order requiring the assessee to pay advance tax, if he is of the opinion that such person is liable to pay advance tax. For the purpose of

- ✓ The total income of the latest previous year in respect of which officer has assessed income , or
- ✓ The total income declared by assessee in any return after the year of assessment by officer.

Whichever is higher shall be taken.

If Assessee's estimation of advance tax is

Less than the estimate of the AO: Assessee can file estimation of his current income and determine the amount of advance tax payable.

More than the estimate of the AO: Advance tax shall be paid on such higher amount.

TAX Deducted at Sources [TDS]

Section	TDS provisions	
192	TDS on salaries	<p>Deductor-Any person. Deductee- Resident or Non-resident. Time of Deduction-at the time of payment. Rate of TDS- Slab rate applicable to the estimated income of the employee. Note: ✓ Income from previous employer may be considered. ✓ Relief u/s 89(1) shall also be considered while deducting TDS. ✓ Only loss under the head House property shall be taken in to account for the purpose of TDS and no any other loss. ✓ The employer may deposit from his own pocket tax on the non-monetary perquisites to employees. Such tax is exempt income in the hands of employee and is disallowable expenditure to employer.</p>
193	TDS on Interest on securities	<p>Deductor- Any person Deductee- Resident Time of deduction- At the time of credit or payment, whichever is earlier. Rate of tax- 10% Note- TDS shall not be deducted in following cases: ✓ Interest paid to resident individual, on listed debentures of widely held company, by account payee cheque of an amount not exceeding Rs. 2500 during a financial year. ✓ Interest payable on central Govt. or state Govt. securities except where the interest paid exceeds Rs. 10,000 in case of 8% saving (Taxable bonds), 2003 during the financial year. ✓ Interest paid to LIC, GIC or any other insurer, in respect of securities owned by it or held by it as beneficiary. ✓ Interest paid on any listed security issued by a company held in dematerialization form.</p>

194	TDS on Dividend	<p>Since dividend under section 115-O is exempt in the hands of shareholders, therefore, No TDS is required to be deducted.</p> <p>However, deemed dividend under section 2(22)(e) is taxable in the hands of shareholder and company is required to deduct TDS on the same. Rate of tax- 10%</p>
194A	TDS on interest other than “ interest on securities”	<p>Deductor- Any person, (other than individual or HUF(not liable to tax audit in preceding Financial Year)) Deductee- Resident. Time of deduction-at the time of credit or payment, whichever is earlier. Rate of tax-10% Note: TDS shall not be deducted if:</p> <ul style="list-style-type: none"> ✓ Interest paid does not exceed: <ul style="list-style-type: none"> c. Rs. 10,000 where payer is Banking company. d. Rs. 10,000 where payer is a co-operative society bank e. Rs, 10,000 on deposit with post office. f. Rs. 5,000 in any other case. ✓ Interest is credited or paid by the firm to its partner. ✓ Interest on Zero Coupon Bond ✓ Interest paid by Govt. under the Income Tax Act or wealth Tax Act. ✓ Interest not exceeding Rs. 50,000 on compensation awarded by Motor Accident Claim Tribunal.
194B	TDS on winning from lottery or crossword puzzle or card game and other game of any sort	<p>Deductor-Any person Deductee- any person Time of Deduction- At the time of payment. Rate of TDS—30% Note:</p> <ul style="list-style-type: none"> ✓ No TDS where amount does not exceed Rs. 10,000 during a financial Year. ✓ In a case where (a) the winning are wholly in kind or (b) 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 winning, the person responsible for paying shall, before releasing the winning, ensure that the tax has been paid in respect of the winnings.

194BB	TDS on winning form Horse race	<p>Deductor-any person being the holder of license for the horse racing. Deductee- any person. Time of deduction- at the time of payment. Rate of TDS- 30% Note:</p> <ul style="list-style-type: none"> ✓ No TDS where amount amount does not exceed Rs. 5000 during a Financial Year.
194C	TDS on payment to contracto rs	<p>Deductor- any person,(other than individual or HUF (not liable to tax audit in the preceding financial Year)) Deductee- any resident. Time of Deduction- at the time of credit or payment, whichever is earlier. Rate of TDS- I. 1% in case payee is individual or HUF. II 2% in case of any other assessee. Note:</p> <ul style="list-style-type: none"> ✓ No TDS where amount payable does not exceed: <ul style="list-style-type: none"> • Rs. 30,000 in case of a single contract. • Rs. 75,000 in case of aggregate of contracts during a Financial Year. ✓ No TDS is required to be deducted by individual by individual or HUF under a contract for personal purpose, even if he is subject to tax audit. ✓ No TDS if the transporter of goods furnishes his PAN. ✓ The definition of “work” shall include: <p>“manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. However, it shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.”</p> ✓ TDS shall be deducted” <ul style="list-style-type: none"> a. On the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or b. On the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

194D	TDS on insurance commission	<p>Deductor- Any person Deductee- Any resident Time of deduction- at the time of credit or payment, whichever is earlier. Rate of TDS- 10% Note: ✓ No TDS where amount does not exceed Rs. 20,000 during a Financial Year.</p>
194E	TDS on payment to non-resident sportsmen or sportsmen association	<p>Deductor- Any person Deductee- any non-resident sportsmen not citizen of India and non-resident sports association. Time of deduction- at the time of credit or payment, whichever is earlier. Rate of TDS- 10%</p>
194G	TDS on commission, etc. on the sale of lottery tickets	<p>Deductor- Any person. Deductee- any person. Time of deduction- at the time of credit or payment, whichever is earlier. Rate of TDS- 10% Note: ✓ No TDS where amount does not exceed Rs. 1000 during a financial year.</p>
194H	TDS on commission (other than insurance commission) or Brokerage.	<p>Deductor- Any person ,[other than individual or HUF (not liable to tax audit in the preceding financial year)r Deductee- Any Resident. Time of deduction- At the time of credit or payment, whichever is earlier. Rate of TDS- 10% Note: ✓ No TDS where amount does not exceed Rs. 5000 during a financial year. ✓ No TDS is required to be deducted by BSNL or MTNL on commission or brokerage paid to their PCO franchisees. ✓ Commission to employees and employee directors will form part of salary income and is liable to TDS u/s 192 of the act and not under this section.</p>

194	TDS on Rent	<p>Deductor- Any person [other than individual(not liable to tax audit in the preceding Financial Year)]</p> <p>Deductee- Any resident.</p> <p>Time of deduction- at the time of credit or payment, whichever is earlier.</p> <p>Rate of TDS- I. for use of Plant & Machinery-2% II for use of Land, building, Furniture or fitting-10%</p> <p>Note:</p> <ul style="list-style-type: none"> ✓ No TDS where amount does not exceed Rs. 1,80,000 during a financial year. ✓ TDS should also be deducted on advance rent, warehousing charges and non-refundable deposits. ✓ TDS is not required to be deducted on service tax component on rent.
194J	<p>TDS on :</p> <p>-fees for professional services, or</p> <p>--Fees for technical services, or</p> <p>--Royalty, or</p> <p>--any sum referred to in clause (va) of section 28 i.e. non-compete fees</p>	<p>Deductor- Any person, [other than individual or HUF(not liable to tax audit in the preceding financial year)]</p> <p>Deductee- any resident</p> <p>Time of deduction- at the time of credit or payment whichever is earlier.</p> <p>Rate of TDS- 10%</p> <p>Note:</p> <ul style="list-style-type: none"> ✓ No TDS where amount does not exceed Rs. 30,000 during a financial year for each type of payment. ✓ If any fees is paid through regular banking channels to any Chartered Accountants, lawyer, solicitor who is resident in India by the non-resident who do not have any agent or business connection in India, then no TDS is required to be deducted on such fees. ✓ No TDS is required to be deducted by Individual or HUF for professional fees paid for personal purpose, even if he is subject to tax audit.
194LA	Payment of comensation on compulsory acquisition of any immovable	<p>Deductor- Any person</p> <p>Deductee- Any resident.</p> <p>Time of deduction- at the time of payment.</p> <p>Rate of TDS- 10%</p> <p>Note:</p> <ul style="list-style-type: none"> ✓ No TDS where amount does not exceed Rs. 1,00,000 during a financial year.

	property (other than agricultural land)	
195	TDS on any interest or other sum chargeable under the I.T. Act payable to non - resident or a foreign company	<p>Deductor- Any person Deductee- non-resident or a foreign company. Time of deduction- at the time of credit or payment, whichever is earlier.</p> <p>Note:</p> <ul style="list-style-type: none"> ✓ The assessee can make an application to AO for non-deduction of TDS where the sum payable to non-resident or foreign company, is not taxable in India. ✓ The person responsible to deduct tax should furnish the particulars of payments in prescribed form.
196B	TDS on LTCG from Units referred to in section 115AB	<p>Deductor- any person. Deductor- offshore fund</p>

Note 1: Surcharge or Education Cess on Rates Prescribed

IN CASE OF RESIDENT ASSESSEE:

PAYEE (i.e. to whom payment is made)	Applicability of surcharge and Education cess.
Companies	No surcharge or education cess shall be added.
Any other assessee	No surcharge or education cess shall be added to the prescribed rate of TDS. However, education cess shall be added on the TDS on the salary.

IN CASE OF NON-RESIDENT ASSESSEE:

Payee (i.e. to whom payment is made)	Applicability of surcharge and Education cess.
Foreign Companies	The rates of TDS shall be increased by: I surcharge of 2% (where the payment made or to be made to payee and which is subject tax deduction during the financial year exceeds rs 1 crore); and II education cess of 3%
Any other assessee	The rate of TDS shall be increased by education cess of 3% only. No surcharge is to be added

TIME LIMITS**SECTION 200: any person who deducts tax shall pay within the time prescribed to the credit of central Government.**

Tax deducted at source is required to be paid to the credit of the central Government within the time given below-

Different situation	Time limit for deposit of tax
When payer is the Government or when payment is made on behalf of the Government	Same day
When tax is deducted by a person other than Government under sections 193, 194A, 194C, 194D, 194E, 194G, 194H, 194-I, 194J, 195, 196A, 196B, 196C and 196D and the amount is credited or paid in the month of the March	On or before 30 th April.
Any other case	Within one week from the last date of the month in which tax deduction is made

Periodic Return are required to be furnished as may be prescribed. (presently, Quarterly return is also required to be furnished within 15 days from the end of the quarter. However, for March quarter, quarterly return is to be furnished by 15th May.)

Common provision

1. **No tax shall** be deducted if the payment is made to Govt., RBI,, specified Mutual funds or any statutory corporation.
2. **The person liable for deducting** for deducting tax has to apply for TAN (tax deduction and collection account number).
3. **Certificate of TDS is given in form** 16A for income other than salary income. Whereas in case of salary income certificate is given in form 16.
4. **All sums deducted under the above provisions will** be deemed to be the income received.
5. **The** tax deducted shall be treated as the tax paid by the assessee and he shall get credit of the tax deducted provided he furnishes the certificate issued to him.
6. Where the income is received for an asset held jointly by two or more persons, credit of tax deducted shall be given to all the holders in the same proportion in which they shared the income.
7. Interest for late payment [201]
 - **If the person liable to deduct** tax fails to deduct or pay tax so deducted
 - **He shall** be liable to pay simple **interest @ 1.% for** every month or part of the month on the amount of tax from the **date on which such tax was deductible to the date on which such tax is deducted ;and**
 - **He shall** be liable to pay simple **interest @ 1.5%** for every month or part of the month on the amount of tax from the **date on which such tax was deducted to the date on which such tax is actually paid.**
 - **Such interest shall be paid before furnishing a quarterly statement for each quarter.**
 - **Where** the tax has not been paid after it is deducted, the amount of tax along with the interest shall be charge upon all the assets of the person liable to deduct tax.
8. **Quoting PAN through TDS regime [206AA]**

It is mandatory for deductee to furnish his PAN to dedutctor, otherwise higher of following rates will be applicable for TDS.

 - a. The rates prescribed for the relevant section under which TDS is required to be deducted;or
 - b. The rates prescribed by the Finance Act
 - c. At the rate of 20%

9. TDS at a rate lower than prescribed [197]

- ✓ Assessee can make an application to AO for deduction of tax at lower rate or non-deduction of tax (except in case of lottery).
- ✓ If AO is satisfied that his application is justified he may give assessee such certificate.
- ✓ Once the assessee furnishes the certificate, the person liable to deduct tax shall deduct
- ✓ tax at lower rate or deduct no tax, as the case may be, until the certificate is cancelled by AO.

DEDUCTIONS

Deductions u/c VI-A are not allowed from the following incomes:

- 1. Any type of Long term capital gains.***
- 2. Short term capital gains only on equity shares u/s 111A.***
- 3. Winning from lotteries, horse races etc.***

DEDUCTION FOR LIFE NSURANCE PREMUM, PF CONTRIBUTION etc [80C]

Available to : only individual and HUF

Amount of deduction : Rs 1,00,000 or amount paid/deposited whichever is less

On the following amounts deduction is allowed:

Life insurance premium on life of himself, spouse and children, in HUF any member of family; **premium paid in excess of 20% of the capital sum assured shall be ignored.**

1. Contribution by employee to statutory or recognised fund
2. Contribution by any person to public provident fund
3. Subscription to NSC VIII issue
4. Subscription to NSC 1992
5. Notified equity linked saving scheme of UTI
6. Amount invested in deposit scheme of a public company engaged in infrastructure facility or approved mutual fund
7. Repayment of loan taken from central/state Govt./any other bank/LIC/national housing bank, employer where employer is statutory corporation or public company or university or college or local authority or a co-operative society for purchase or construction of residential house property.
8. Tuition fees (excluding donation or development fee etc.) at the time of admission or thereafter for full time education for any two children of such individual to any university, college, school or other educational institution situated in India.
9. Fixed deposit with scheduled bank for not less than 5 years.
10. Subscription to notified Bonds of NABARD.
11. Amount paid in an account under the senior citizens savings scheme.
12. Amount paid as five year time deposit in an account under the post office time deposit.

The deduction shall be allowed when the amount has been actually paid during the PY

Investment in pension fund [80CCC]

Persons entitled: Individual

Quantum of deduction : Amount paid or Rs. 1,00,000 whichever is less (any interest bonus given by insurance company shall not be allowed deduction)

Payment regarding: Annuity plan of any insurance co. for receiving annuity or pension.

Note:

if assessee or nominee receives any pension or other amount, then such amount shall be taxable in the previous year in which the amount is received.

Deduction in respect of contribution to pension scheme of central Government [80CCD]

1. Where a self employed individual or a person employed by the central Government or any other employer, has deposited any amount in his account under a notified pension scheme, he shall, be allowed a deduction of the amount deposited or ten percent of his salary/GTI in the previous year. **which ever is less**
2. IF the central Govt. or any other employer makes any contribution to his account the assessee shall be allowed a deduction of
 - a. The amount contributed by the central Govt. or any other employer or
 - b. ten percent of his salary/GTI in the previous year**which ever is less**
3. where any amount standing to the credit of the assessee's account in respect of which a deduction has been allowed, together with interest, is received by assessee or his nominee, in any PY
 - a. on account of closure or his opting out of the pension scheme; or
 - b. as pensionthe whole of such amount shall be deemed to be the income of the assessee or his nominee, in the previous year in which such amount is received.

Note :

for this section "salary" includes DA, if the terms of employment so provided, but excludes all other allowances and perquisites.

As per section 80CCE

Total deduction under section 80C, 80CCC and 80CCD(except contribution by employer) can not exceed Rs. 1,00,000

Note:

Contribution made by the central Govt. or any other employer to a pension scheme under section 80CCD(2) shall be excluded from the limit of Rs. 1,00,000 provided under this section.

Deduction in respect of subscription to long term infrastructure bonds [80CCF]

- a. Allowed to individual or a HUF
- b. Deduction is allowed for depositing the amount as subscription to long term infrastructure bonds, as may be notified by the CG.
- c. Amount of deduction:
 - ✓ amount deposited or
 - ✓ Rs 20,000whichever is less.

Medical insurance premium [80D]

Persons entitled : Individual, HUF

Payment regarding : Medical Insurance premium for (a) self, spouse , parents whether dependent or not, dependent children (b) any member of HUF or Any contribution made to the central government health scheme.

quantum of deduction : An assessee shall be allowed deduction of

- 1. Rs 15,000 (for tax payer, spouse, dependent children)
20,000 if senior citizen + Rs 15000 for insurance of parents
20,000 for senior citizen or
- 2. Amount paid

Whichever is less

Conditions for deduction : payment be any mode other than cash.

Medical treatment of dependent handicapped [80DD]

Persons entitled : Resident (a) individual (b) HUF

Payment regarding : expenditure on medical treatment, or training or deposit in a scheme for receiving annuity or lump sum amount for the benefit of disabled dependent relative or member of HUF.

quantum of deduction: an assessee shall be allowed deduction of Rs 50,000 irrespective of actual amount deposit or spent
In case of severe disability Rs 1,00,000 [80% or more disability]

Conditions for deduction: (a). A certificate issued by the medical authority should be furnished along with the return [if certificate is given for a certain period then after such period new certificate should be obtained]

Deduction for handicapped [80U]

Persons entitled: Resident individual, who is suffering from specified disability at any time during the previous year.

Quantum of deduction : An assessee shall be allowed deduction of Fixed Rs 50,000 and Rs 1,00,00 {in case of severe disability}

Conditions for deduction: A certificate issued by the medical authority should be furnished along with the return.

Expenditure on specified diseases [80DDB]

Persons entitled: Individual, HUF

Paying regarding: Actually incurred any expenditure on medical treatment of specified disease of himself or dependent relative or member of HUF

Quantum of deduction: An assessee shall be allowed deduction of (i) Rs 40,000 (Rs 60,000 for treatment of senior citizen)

Amount actually spent. **Whichever is less**

Deduction shall be reduced by the amount received from insurance and employer

Conditions for deduction: Furnish a certificate from a specified govt. doctor

For the purpose of section 80DD and 80DDB:-

1. Relative in relation to an individual means spouse, children, brother, sister or parents of the individual.
2. Members of H.U.F. It includes all persons lineally descended from a common ancestor and includes their wives and unmarried daughters and a stranger who has been adopted by the family, except those who separated by partitioning of asset.
3. Senior citizen in the entire Act means a person who is resident in India and has attained the age of 65 years or more at any time during the P.Y.

Payment of interest on loan for higher education [80E]

Persons entitled: Individual

Payment regarding: payment of interest to financial institution or approved charitable institution on loan taken for higher education of himself or relative. [higher education means all fields of study including vocational studies after 10+2] Relative means spouse and children or the student for whom the individual is legal guardian.

Quantum of deduction : Actual interest paid. No limit

Conditions for deduction: Deduction for maximum period of 8 years, starting from the year in which payment of interest on the loans begins.

Deduction for donations [80G]

Deduction under this section is allowed to all assesses, whether company or non-company, having income under any head.

Essential conditions:

1. The donation should be of a sum of money. Donations in kind do not qualify for deduction.
2. The proof of payment is furnished along with the return.
 - (A) Donations made to following are eligible for 100% deduction without any qualifying limit:
 - i. National Defence Fund set up by the Central Govt.
 - ii. Prime minister's National Relief Fund.
 - iii. Africa (public contributions-India) Fund.
 - iv. National Foundation for Communal Harmony.
 - v. An approved University/Educational Institution of National Eminence.
 - vi. Maharashtra Chief Minister's Earthquake Relief Fund.
 - vii. Fund set up by Gujrat Govt. For providing relief to the victims of Gujrat earthquake.
 - viii. Zila saksharta samiti constituted in any district.
 - ix. The National Blood Transfusion Council or any state Blood Transfusion Council.
 - x. Any fund set up by a state Govt. To provide medical relief to the poor.
 - xi. The army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund.
 - xii. National illness Assistance Fund.
 - xiii. The chief minister's Relief Fund or The Lieutenant Governor's Relief Fund in respect of any state or Union Territory, as the case may be.
 - xiv. National sports fund set up by the central Govt.
 - xv. National cultural fund set up by the central Govt.
 - xvi. Fund for Technology Development and application.

xvii. National Trust for welfare of persons with mental retardation and multiple disabilities.

(B) Donations made to the following are eligible for 50% deduction without any qualifying limit

- i. Jawaharlal Nehru Memorial Fund
- ii. National Children's Fund
- iii. Prime Minister's Drought Relief Fund.
- iv. Indira Gandhi Memorial Trust
- v. Rajiv Gandhi Foundation

(C) Donations to the following are eligible for 100% deduction subject to qualifying limit.

- i. Donations to Govt. Or any approved local authority, institution or association to be utilized for promoting family planning.
- ii. Donations made by a company to Indian Olympic Association or to any other notified institution, for development of infrastructure for sports in India.

(D) Donations to the following are eligible for 50% deduction subject to qualifying limit

- i. Donations to Govt. Or any approved local authority, institution or association to be utilized for any charitable purpose other than promoting family planning.
- ii. Any approved charitable institution which satisfies the conditions of section 80G. The institution should not be for the benefit of any particular community.
- iii. To any authority for satisfying the need for housing accommodation or any corporation for promoting interest of minority community.
- iv. Any notified temple, mosque, gurudwara, church or other place notified by the central Government to be historic, archaeological or artistic importance, for renovation or repair of such place

For calculating qualifying limit, all donations made to fund/institution covered under (C) and (D) above shall be aggregated and the aggregate amount shall be limited to 10% of Adjusted Gross Total Income. (such amount shall be maximum donation which shall be considered for both C and D)

Adjusted Gross Total Income means

Gross Total Income

Less Long term capital gains

Less short term capital gains u/s 111A

Less Deduction under other sections of chapter VI -A (but without deducting deduction under A,B)

Note: Although deductions of this chapter are not allowed from lottery, therefore logically it should also be excluded while calculating adjusted GTI. But as law does not provide for exclusion while calculating maximum limit it shall not be deducting only for this purpose.

Deduction for payment of rent [80GG]

1. Allowed to individual

- i. Who is self employed i.e. engaged in his own business or profession or
 - ii. If he is an employee, he is neither getting HRA nor rent-free accommodation. But if rent is paid by employee to employer then this deduction is allowed.
2. Assessee, spouse, minor child or HUF does not own any residential accommodation in the city where he works.
 3. The assessee paid the rent in specified cities.
 4. Amount of deduction: least of the following is allowed as deduction
 - i. Rent paid- 10% of Adjusted Gross Total Income
 - ii. 25% of the Adjusted Gross Total Income
 - iii. Rs 2,000 per month.

Note : AGTI means as in section 80G

Deduction for non businessman [80GGA]

This deduction is allowed from GTI if GTI does not include income under head PGBP. The deduction is 100% of the sum paid to the following institutions:-

- i. Approved research association, university, college or other institution to be used for scientific research.
- ii. Approved research association who has its object the undertaking of research in social science or statistical research or to a university, college or other institution for research in social science or statistical research.
- iii. Association engaged in any approved programme for rural development etc. or notified national urban poverty eradication fund.
- iv. Public sector company or local authority etc. for carrying out any eligible project.

Deduction for donation to political party or Electoral Trust

Section 80GGB:

- ✓ In computing the total income of company
- ✓ 100% deduction shall be allowed of contribution made in the previous year to a political party [or an electoral trust]

Section 80GGC

- ✓ In computing the total income of any person

-
- ✓ Deduction shall be allowed of contribution made in the previous year to a political party [or an electoral trust]
 - ✓ But if local authority and artificial juridical person give donation to any party etc then they shall not be allowed deduction

Development of infrastructure [80-IA]

- ✓ **Who is eligible:** An Indian company or statutory body carrying on the business of developing, operating or maintaining any infrastructure facility such as road , bridge, rail system, port, airport or water supply system or inland port etc.
- ✓ **Audit of accounts:** Accounts must be audited by a Chartered Accountant and the report should be furnished along with the return.
- ✓ **Power of central government:** central government may specify the class of undertakings to which this deduction shall not apply.
- ✓ **Amount of deduction:** 100% deduction of profits from such business for any 10years out of 15 years starting from the year in which the undertaking starts its operations.
- ✓ **Transfer of business:** if the business is transferred to another developer then deduction shall be allowed to transferee only for the remaining period of 10 years.

Development of SEZ [80-IAB]

Who is eligible: An assessee engaged in the business of developing a special economic zone notified under special economic zone act.

Amount of deduction: 100% of profits from such business for any 10 years out of 15 years starting from the year in which SEZ is notified by central government.

Transfer of business: if the business is transferred to another developer then deduction shall be allowed to transferee only for the remaining period of 10 years.

Audit of accounts: Accounts must be audited by a CA and the report should be furnished along with the return.

Power of central government: central government may specify the class of undertakings to which this deduction shall not apply

Manufacturing in specified areas [80-IC]

Who is eligible:

1. Any assessee who is engaged in manufacturing or production.
2. The manufacturing should be in Sikkim, Himachal Pradesh, Uttaranchal or North-eastern states.
3. It should start manufacturing within the specified period only

Amount of Deduction:

In Sikkim or North East Region: 100% of profits for 10 years stating from the year in which starts operations

In Himachal Pradesh or Uttarakhand: 100% of profits for 5 years starting from the year in which starts operations. And 25 % of profits for next 5 years (30% for company)

Other conditions:

1. It is not formed by dividing or the reconstruction of business already in existence.
2. at least 80% of total cost of plant and machinery should be new plant. Therefore maximum 20% can be old used plant.
3. If deduction is claimed under this section then no other deduction shall be allowed from the profits of such undertaking

Audit of accounts: Accounts must be audited by a CA and the report should be furnished alongwith the return.

Power of central government: central government may specify the class of undertakings to which this deduction shall not apply.

Operating Hotels and Convention Centre [80ID]

Who is eligible: Any undertaking engaged in the business of hotel or business of building , owning and operating a convention centre located in specified area.

Audits of accounts: Accounts must be audited by a chartered Accountant and the report should be furnished along with the return.

Power of central government: central government may specify the class of undertakings to which this deduction shall not apply.

Amount of deduction: 100% of profits from such business for 5 consecutive A/Y beginning from the year in which such hotel starts functioning or convention centre starts operating on commercial basis.

Other conditions:

- I. It is not formed by dividing or the reconstruction of a business already in existence.
- II. at least 80% of total cost of plant and machinery should be new plant. Therefore maximum 20% can be old used plant.
- III. If deduction is claimed under this section then no other deduction shall be allowed from the profits of such undertaking
- IV. Such Hotel or Convention centre should be constructed at any time during the period [01.04.07 to 31.07.2010]
Specified area means: the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad and engaged in the business of hotel located in the “specified district having a world heritage site”.

Manufacturing of specified Articles/Eligible Business in specified areas [80-IE]

Who is eligible:

- a. Any undertaking engaged in manufacturing or producing any eligible article or thing or substantial expansion of such manufacturing.
- b. The manufacturing should be in North-Eastern States (i.e. the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura)

Audit of Accounts:

Accounts must be audited by a chartered accountant and the report should be furnished along with the return.

Power of central government:

central government may specify the class of undertakings to which this deduction shall not apply.

Amount of deduction: 100% profits shall be allowed as deduction for 10 consecutive A/Y commencing from the year in which it begins to manufacture or produce articles or things, or completes substantial expansion.

Other conditions:

- a. It is not formed by dividing or the reconstruction of a business already in existence.
- b. At least 80% of total cost of plant and machinery should be new plant. Therefore maximum 20% can be old used plant.
- c. If deduction is claimed under this section then no other deduction shall be allowed from the profits of such undertaking.
- d. It should start manufacturing between 1st April, 2007 to 1st April, 2017.

Transfer of business: If the business is transferred to another undertaking of an Indian Company then deduction shall be allowed to transferee only for the remaining period of 10 years.

Eligible Article or thing means the article or thing other than the following:

- a. Tobacco.
- b. Pan masala
- c. Plastic carry bags etc.

Bio-degradable waste for generating power [80JJI]

Deduction shall be allowed from the profit derived from the business of collecting and processing or treating of bio-degradable* waste for generating power etc.

(*readily decomposed by bacterial action)

Amount of deduction- 100% profits shall be allowed as deduction for the 5 consecutive A.Y. beginning with the year in which such business is commenced.

Assignment of copyright of any book [80QQB]

1. Allowed to individual resident in India.
2. Deduction is allowed for income from assignment of copyright of any book.
3. Such book should be a work of literary, artistic or scientific nature and not textbooks for schools, guides, commentaries, newspapers, journals, pamphlets and other publication of similar nature.
4. Royalty in excess of 15% of the value of the books sold during the previous year shall be ignored.
5. However, this condition is not applicable where the royalty is receivable in lump sum.
6. Amount of deduction:- An assessee shall be allowed deduction of
Rs.3,00,000 or
Actual royalty
Whichever is less.
7. If royalty is received from outside India then it must be brought into India in foreign exchange.
8. For claiming deduction a certificate has to be taken from specified officer.

Income from Inventions [80RRB]

1. Allowed to resident individual who is registered as true and first inventor in respect of an invention under the patents act.
2. Deduction is in respect of income by way of royalty of a patent.
3. Amount of deduction: An assessee shall be allowed deduction of (a) Rs 3,00,000 or (b) actual royalty
Whichever is less
4. If royalty is received from outside India then it must be brought in to India in foreign exchange.
5. For claiming deduction a certificate has to be taken from specified officer.

Employment of New Workmen [80JJAA]

1	Persons entitled:	Indian Company
2	Quantum of deduction:	<ol style="list-style-type: none">1. 30% of wages paid to new regular workmen.2. Deduction is available for 3 A.Y. starting from the year in which the employment is provided.3. Wages qualifying for deduction<ol style="list-style-type: none">➤ In case of a new co. Wages paid to workers in excess of 100➤ In case of an existing co. Wages paid to workers in excess of 100 But there should be at least 10% increase in workers, as employed on the last day of the preceding year.
3	Conditions for deduction:	<ol style="list-style-type: none">1. It should be engaged in the manufacture or production of any article or thing.2. Accounts must be audited by a chartered accountant and the report should be furnished along with the return of income.

Meaning of Regular workmen:-

The section defines regular workmen as not including:

1. Person employed in managerial or administrative capacity; or
2. A workmen employed as a casual workman or contract labour; or
3. Any other workman employed for a period of less than 300 days during the previous year.

Income of co-operative society [80P]

The income from following activities shall be allowed 100% deduction in case of co-operative societies:

- a. Income from business of banking or providing credit facilities to its members, or
- b. Income from cottage industry, or

-
- c. Income from the marketing of the agricultural produce grown by its members; or
 - d. Income derived from the purchase of agricultural implements, seeds, livestock or other articles intended for agricultural ,or
 - e. Income from fishing & allied services.
 - f. Income from processing without the aid of power, or
 - g. Income from supplying milk, oilseeds, fruits & vegetables raised by its members to federal milk co-operative society.

Co-operative societies engaged in a business other than those mentioned above shall not be liable to pay tax on:

In case of consumer co-operative society: First 1,00,000 of its income.

In other cases: First 50,000 of its income

Deduction allowable to all co-operative societies:

- a. Any interest, dividend income derived from its investments with any other Co-operative society.
- b. Income derived from letting out of godown or warehouses of storage, processing or facilitating the marketing commodities.

Income of offshore banking units & international financial services centre [80LA]

Who is eligible:

- a. A scheduled bank having an offshore banking units in SEZ or
- b. Any bank, incorporated under the laws of a foreign country, and having an offshore banking unit in SEZ or
- c. A unit of an international financial services centre

Amount of deduction:

For the first 5 consecutive years: 100 % of such income beginning with the PY in which

- a. The permission of the banking regulation act was obtained or
- b. The permission under the SEBI Act, 1992 was obtained
- c. The permission or registration under any other relevant law was obtained.

For the next 5 years: 50% of such income

Documents to be attached with the return:

- a. A report of a Chartered Accountant certifying that the deduction has been correctly claimed and should be submitted along with the return of income.
- b. A copy of permission obtained under the Banking Regulation Act, 1949 should be furnished along with the return of income.

Common provision under all the sections

1. CG may specify the class of undertakings to which these deductions shall not apply.
2. Accounts must be audited by a CA and the report should be furnished.
3. In case of transfer, the deduction shall be allowed to transferee for the remaining period only(except 80IC and 80ID)
4. First year of deduction shall start from the year:
80IA- in which undertaking start its operation
80IAB- SEZ is notified under special economic zone act
80IC- in which operations start.
80ID: in which such hotels start functioning or convention centre operating on commercial basis.
80IE- in which it begins to manufacture, or produce specified articles or things, or completes substantial expansion(specified article does not include Tobacco,pan masala, plastic carry bags)

Other conditions (only for 80IC,80ID,80IE)

1. It is not formed by dividing or the reconstruction of a business already in existence.
2. At least 80% of total cost of plant and machinery should be new plant. Therefore maximum 20% can be old used plant.
3. If deduction is claimed under this section then no other deduction shall be allowed from the profits of such undertaking.

Notes:

Specified area for

80IC—Sikkim, Himachal Pradesh, Uttaranchal or North-eastern states.

80ID—NCR of Delhi and Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad and in specified district having a world heritage site.

80IE—North eastern states(i.e. the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim & Tripura)

Total Income & Tax Liability of Individual

Computation of total income of Mr. X for the AY 2012-13

1. Income under head Salary

Basic Salary	-----
Allowances (Taxable)	-----
Gratuity(taxable)	-----
Commuted pension(taxable)	-----
Value of perquisites	-----
Employer's contribution to RPF in excess of 12% of salary	---

Of employee	
Gross salary	-----
Less: deduction u/s 16(ii) &(iii)	-----

Taxable Income from Salary

2. Income under head House property

Gross Annual value	-----
Less: municipal taxes	-----
Annual value	-----
Less: deductions u/s 24	
a. Standard deduction @ 30% of NAV	-----
b. Interest on borrowed capital	-----

Income from House Property

3. Income under head Profits and Gains from Business and profession

Net profits as per Profit & Loss account	-----
Add: Items debited to P&L a/c but not deductible.	
Items chargeable as business/professional income but not credited to P&l a/c-----	
Less: Items credited to P&L but not taxable under this head of income	
Items not debited to P&L a/c but allowable as deduction	-----

Taxable income from from business/profession

4. Income under head capital gains

I Computation of Short Term Capital gains

Full value of consideration	-----
Less:	
1. Expenses incurred in connection with transfer	-----
2. Cost of acquisition (COA)	-----
3. Cost of improvement(COI)	
Less: Exemption u/s 54B,54D&54G(if applicable)	----

Net taxable short term capital gains

II computation of long term capital gains

Full value consideration	-----
Less:	
i. Expenses incurred in connection with the transfer	-----
ii. Indexed cost of acquisition	-----
iii. Indexed cost of improvement	-----

Gross Long term capital gains

4 Income from other sources

Winning from Lottery etc	-----
Other Incomes	-----
Less: deductible expenses	-----
Add: clubbed income under the relevant head	-----
Less: set off and carry forward as allowed from the relevant income	-----

Gross total income

1. Income other than on LTCG,STCG u/s 111A and winning from lotteries etc	-----
Less: deductions under chapter VI-A	-----
2. LTCG	-----
3. STCG (u/s 111A)	-----
4. Winning from lottery etc.	-----

Total income (rounded off to the nearest Rs. 10)

Exemptions (Income which do not form part of total income)

Exemption & Deduction

Income which are exempt u/s 10 or other sections will not be included for computing total income

While incomes from which deductions are allowable will first be normally included in GTI and then deductions will be allowed.

1. **Agricultural Income in India [10(1)]**: Refer chapter Agricultural Income.
2. **Share received by a member of HUF from the income of HUF [10(2)]**:
 - ✓ As per section 10(2), any receipt by member of a HUF out of the family income is fully exempt.
 - ✓ Any remuneration received by a member of HUF as a partner/director in a company in which the investment is made out of the funds of HUF shall be taxable in the hands of HUF.
3. **Leave travel concession [10(4B)]** - Refer chapter salary. Other exemptions relating to salary are covered under the chapter salary.
4. **Allowances payable outside India [10(7)]** - refer chapter salary.
5. **Palace of ex-ruler [10(19A)]** - Refer chapter house property.
6. **Long term capital gain on equity shares [10(38)]** - refer chapter capital gains.
7. **Clubbed income of minor[10(32)]** - Refer chapter clubbing of income.
8. **Compensation received on account of disaster [10(19BC)]**: this clause exempts any amount received or receivable as compensation by an individual or his legal heir on account of any natural or other disaster.
9. **Receipts from LIC[10(10D)]**: this clause clarifies that 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..
10. **Payment from provident fund[10(11) and 10(12)]** - Refer chapter salary.
11. **Scholarships granted to meet the cost of education[10(16)]**
12. **Payment to MPS & MLAs: [10(17)]**: any daily allowance or constituency allowance received by any MP/MLA will be exempt.
13. **Exemption with regard to award or reward of state government or central government [10(17A)]**
14. **Family pension received by widow/children/nominated heirs of members of armed forces [10(19)]**
15. **Political party [13A]**
16. **Electoral Trust [13B]**
17. **Income of scientific research association [10(21)]**

18. **Manufacturing in free trade zone (FTZ) or electronic hardware technology park (EHTP) or software technology park (STP)[10A]:** Exemption is available for 10 consecutive years starting from the year of production.

AY 12-13 is the last year of this exemption.

17. **Unit manufacturing in special economic zone (SEZ)[10AA]:**

- ✓ upto 20% only can be old plant & machinery.
- ✓ Accounts must be audited by a CA.
- ✓ Period of exemption:
 - 100% profits for first 5 years starting from the year of production.
 - 50% profits for next 5 years
 - 50% profits for another 5 years if amount credited to special reserve and used in scientific manner.

18. **Manufacturing in 100% export oriented units(100%EOU)[10B]:**

- ✓ Accounts must be audited by a CA.
- ✓ AY 12-13 is the last year of this exemption.
- ✓ 100% exemption is allowed for 10 years from the year of production.
- ✓ Calculation of amount in all 3 above cases:
Profits of business **X** Export turnover (amount brought in foreign exchange)/ total turnover

19. **Perquisite and allowances of Chairman and Members of UPSC is exempt[10(45)]**

20. **Specified income of notified body or authority or trust or board or commission is exempt[10(46)]: any specified income of body, authority, board, trust or commission (by whatever name called) which is-**

- ✓ Set up or constructed by central, state or provincial Act or
- ✓ Constituted by the central Govt. or state Govt.

With the object of regulating or administering an activity for the benefit of the general public, provided-

- ✓ It is not engaged in any commercial activity, and
- ✓ Is notified by the central Govt. in this behalf.

The nature and extent of income to be exempted will also be specified by the central Govt. while notifying such entity.

21. **Income of an infrastructure Debt Fund is exempt [10(47):** notified infrastructure debt fund which is set up in accordance with the prescribed guidelines. **However it is required to file a return of income under section 139(4C).**

Note:

- ✓ As per section 115A of the income tax act such notified infrastructure debt fund shall be taxable at the special rate of 5% on the gross amount of such interest income.

-
- ✓ New section 194LB is inserted so that tax shall be deducted at the rate of 5% by such notified infrastructure debt fund on any interest paid by it to a non-resident not being a company or a foreign company.
 - ✓ The non-resident not being a company or a foreign company shall not be required to file return of income if his/its total income consists only of such interest income and tax on the same has been deducted at source.

Service Tax Law

[Finance Act 1994]

List-I- Union list	Entry No.-97-Any matter not in list II or list III (Residuary Item)
	Entry No-92C- Taxes on services
	Entry No.- 82- Taxes on Agricultural Income
List II- State list state	Entry No.54- taxes on sale, purchase of goods other than inter sales

Imposition of service tax

A beginning in taxing the services was finally made in Budget 1994.

The finance Minister, Dr. Manmohan Singh stated in his budget speech:

“ over the years, while attempts have been made to widen the base for domestic indirect taxes, the services sector has not been subjected to taxation. Yet this sector accounts for about 40% of our GDP and is showing strong growth. There is no sound reason for exempting services from taxation, when goods are taxed and many countries treat goods and services alike for tax purposes. The tax reforms committee has also recommended imposition of tax on services as a measure for broadening the base of indirect taxes. I, therefore, propose to make a modest effort in his direction by imposing a tax on services of telephones, non-life insurance and stock brokers. The tax will be charged at 5% on the amount of telephone bills, insurance companies and the stock brokers in relation to their services”.

Background of service tax

- 1. Levied** after recommendation made by committee headed by Raja J. Chelliah in 1994-95.
- 2. Service tax was first imposed on telephones, non-life insurance and stock brokers @5%.**
- 3. No** special Act was made, Finance Act 1994 was used for charging service tax.
- 4.** CBEC is the central authority to regulate service tax matters.
- 5.** India presently follows selective approach.
 - Under selective approach, few selected services are subjected to service tax.
 - Under comprehensive approach, all the services are made taxable and a negative list is given in case a few services are to be exempted.

Nature of service Tax

- ✓ Service tax is an Indirect Tax.
- ✓ The liability to pay service tax is on service provider, however service provider recovers the amount of tax from receiver of service.
- ✓ Tax is deposited by the receiver through service provider indirectly. Hence its nature is of indirect tax.

Act and Rules governs the levy of service tax

- ✓ The Finance Act 1994 (as amended by Finance Act 2011)
- ✓ Service Tax Rules, 1994 (finance act, 1994 has delegated some powers to the central government to make rules from time to time for carrying out the provisions of the act)

Sources of service tax law

- ✓ The origin of service tax lies in Union List-Entry NO.-97.
- ✓ Finance act 1994 as amended by finance act,2011
- ✓ Various exemption and other notifications issued by the govt.
- ✓ Circulars issued by CBEC
- ✓ Various rules:
 - Service tax rules 1994
 - Valuation of services rules
 - Export of service rules
 - CENVAT Credit Rules
- ✓ Judgments given by various courts

Amendments made by Finance act related to service tax matters comes in to force

- ✓ From the date of enactment of the finance act i.e. date on which the finance bill receives the assent of the president of India.
- ✓ Changes in the rules and notifications become effective from the date of issue of notification,
- ✓ Certain amendments will effective from the particular date notified in the act (ie. Taxable of new services)

Chapter V of the Finance Act.1994 (as amended by Finance Act,2011)

Extent, commencement and application [64]

- ✓ This chapter extends to the whole of India **except** the state of **Jammu & Kashmir**.
- ✓ It shall apply to taxable services provided.
- ✓ The provisions of chapter V of Finance Act, 1994 have been extended to the designated areas in **Exclusive Economic Zone of India**.

Exclusive Economic Zone extends to 200 nautical miles from the base line.

Expansion of “India” for service tax levy (Notification No. 14/2010-ST, dated 27.2.2010)

This notification has been issued to bring under service tax levy any service provided for the following activities within the **continental shelf and the exclusive economic zone of India**.

-
- Construction of installations, structure and vessels for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof.
 - Any services provided to such installations, structures and vessels and supply of any goods connected with said activities

Note:

- ✓ All other services (other than above) not connected with prospecting or extraction or production of mineral oil and natural gas supply thereof will not be subject to service tax, unless these services are rendered within 12 nautical miles from the base line.
- ✓ Service tax is a destination based consumption tax. It means that tax shall be payable only if service tax is imposed at the place where the service is used.

Charge of service tax on service received from outside India [66A]

1. Where any taxable service is provided by a person, in a country other than India, and received by a person, in India then such services shall be taxable service, and such taxable services shall be treated as if the recipient had himself provided the service in India, and all the service tax provisions shall apply accordingly.

However, where the recipient of the service is an individual and such service is received by him is otherwise than for the purpose of use in any business or commerce, then the same shall not liable to tax under this section.
2. In case of person having permanent establishment in India as well as in other countries then such permanent establishment shall be treated as separate persons for their section.

Registration
Rule 4 of service tax Rules,1994

1. When to get registered:

- Every person liable for paying the service tax shall make an application to the superintendent of central Excise in Form **ST-1** for registration **within thirty days** from the date on which the service tax is levied.
- Provided that where a person commences the business of providing a taxable service after tax is levied on such service,
- he shall make application for registration within thirty days from the date of such commencement.
- As per **service tax (Registration of Special Category of Persons) Rules,2005**, application for registration can be made within 30 days from the date when receipts exceed Rs 9 lacs.
- As per the same Rules an input service distributor has to obtain registration.

Multiple premises

(2) Where an assessee is providing a taxable service from more than one premises and has centralized billing or accounting systems, He may, at his option register such premises from where such centralized billing or accounting systems is done.

(3) the registration shall be granted,-

by the **commissioner** in whose jurisdiction the premises of centralized billing is located.

(3A) where an assessee is providing a taxable service from more than one premises, and does not have any centralized billing or centralized accounting systems, He shall make separate applications for registration in respect of each of such premises.

(4) Multiple services:-

Where an assessee is providing **more than one taxable service**, he may make a single application, mentioning therein in all the taxable services provided by him.

(5) Certificate of Registration:-

The superintendent shall after verification of the application, grant a certificate of registration in **form ST-2** within **seven days** from the date of receipt of the application. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

(5A) where there is change in any information furnished by assessee in Form ST-1, such change shall be intimated to AC/DC, within 30 days of such change .

(6) where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.

(7) Every registered assessee, who ceases to provide the taxable service for which he is registered, shall **surrender his registration** certificate immediately to the superintendent.

(8) on receipt of the certificate under sub rule (7), the superintendent shall ensure that the assessee has paid all monies due to the central Government and thereupon cancel the registration certificate.

Penalty for non-registration [77]

- ✓ Any person who is required to take registration, fails to take registration u/s 69
- ✓ shall be liable to pay a penalty of 5000 or Rs 200 for every day during which such failure continues,
- ✓ whichever is higher, starting with the first day after the due date of compliance.

Point of Taxation Rules,2011

1. Applicable from:- 1-4-2011

2. **Definition:-** It means the time when a service shall be deemed to have been provided.

3. Determination of point of taxation (service treated to be provided when)

➤ If invoice is issued in 14 days from completion of service:

- Date of payment or
- Date of invoice

Whichever is earlier.

➤ If invoice is not issued in 14 days of completion of service:-

- Date of payment or
- Date of completion

Whichever is earlier.

Note:- If advance is received, the date of receipt of each advance shall be point of taxation.

4. Determination of point of taxation in case of Change in effective rate of tax:

a. Service provided before change in rate:

- After change invoice issued and payment received:
 - ✓ Date of invoice or
 - ✓ Payment

Whichever is earlier.

- Invoice before change but payment after change:
 - ✓ Date of invoice.
- Payment received before change but invoice after change:
 - ✓ Date of payment.

b. Service provided after change:

- Invoice before change but payment received after change:
 - ✓ Date of payment
- Before change invoice issued and payment received:
 - ✓ Date of invoice or
 - ✓ Payment

Whichever is earlier.

- Payment received before change but invoice after change:
 - ✓ Date of invoice

5. Payment of tax in case of New services: A service is taxed for the first time then:-

➤ Before becoming taxable invoice issued and payment received

- ✓ Not taxable

➤ Payment received before tax and invoice issued in 14 days (as per Rule 4A of STR)

✓ Not taxable.

6. Determination of point of taxation in case of continuous supply of service: If contract requires receiver to make payment to the provider on the completion of an

event periodically, the date of completion of each such event specified in the contract shall be deemed to be the date of completion of service.

Note:

- ✓ **Wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.**

7. Determination of point of taxation in case of associated enterprises:

- ✓ Export of service
- ✓ Reverse charge u/s 68(2)
- ✓ Individual or partnership firms providing service of:
 - Architect
 - Interior decorator
 - CA/CS/CWA
 - Scientific and technical consultancy
 - Legal services
 - Engineer

The date on which payment is made.

8. Determination of point of taxation in case of copyrights etc.:

In such cases consideration arises by the use of such rights. The service shall be deemed to have been provided each time

- ✓ When payment is received or
- ✓ Invoice is issued

Whichever is earlier.

9. Service provided upto 30-6-2011:- optional to follow these rules

Payment of service tax

Rule 6 of STR

(1) Due date for payment:

The service tax shall be paid by the

- i. 5th of the month following the calendar month in which the payment are received (**6th if paid electronically**)
- ii. In case of an individual or partnership firm, the service tax shall be paid by the 5th of the month following the quarter in which payments are received. (**6th if paid electronically**)

But the service tax on the amount received during March, or the quarter ending in March, shall be paid by the 31st March.

Provided that where an assessee has paid a total service tax of **rupees ten lakh** or more including the amount paid by utilization of CENVAT credit, in **the preceding financial**, he shall deposit the service tax electronically, through internet banking.

Note:

If any person required to make e-payment fails to pay tax electronically, he shall be liable to penalty of Rs 5000 u/s 77.

1. **No service tax shall be payable for the part or whole** of the value of services, which is belonging to services provided during the period when such services were not taxable.
2. **It is immaterial** that when the amount in respect of such service is received.

(1A) Every person liable to pay service tax, may on his own pay service tax in advance to the credit of central Government and adjust the amount so paid against the service tax of subsequent period.

Assessee shall

- (i) Intimate the amount deposited to the supdtt. Within 15 days from the date of payment.
- (ii) Indicate the details of advance payment and adjustment in the subsequent return.

(2) Deposit of Tax:

The assessee shall deposit the service tax with the bank designated by CBEC in Form **GAR-7**

(2A) Date of deposit in case of cheque:

If the assessee deposit the tax by cheque, the date of presentation of cheque to the bank shall be deemed to be the date on which tax has been paid subject to realization of that cheque.

Recovery of Tax: if assessee has not paid full service tax as self-assessed in the return, then it shall be recovered along with interest.

(3) Adjustment of excess tax paid:

Where an assessee has paid service tax in respect of a taxable service,

- Which is not so provided by him either wholly or partially for any reason.
- The assessee may adjust the excess service tax so paid by him (calculated on pro rata basis.)
- Against his service tax liability for the subsequent period
- If the assessee has refunded the value of taxable service and the service tax thereon to the person from whom it was received.

(4)& (6) provisional Assessment:

Where an assessee is , for any reason unable to correctly estimate the actual amount payable, he may request to the AC/DC giving reasons, for payment of service tax on provisional basis and AC/DC, on receipt of such request, may allow payment of service tax on provisional basis on such value as may be specified by him and

Where an assessee requests for a provisional assessment he shall file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid

In a memorandum in form **ST-3A** accompanying the half yearly return.

(4A) & (4B) & (5) Adjustment of excess tax paid

Where an assessee has paid any amount in excess of the amount required to be paid ,the assessee may adjust such excess against the service tax liability for the next quarter/month

such adjustment shall be possible only if the following conditions are satisfied:

- (i) Excess amount paid by assessee having centralized registration, because of delayed receipt of details of payments can be adjusted any limit.
- (ii) For others the maximum amount that can be adjusted is Rs 2,00,000 for a relevant month or quarter.
- (iii) The details of such adjustment shall be intimated to superintendent within 15 days from the date of such adjustment.

Rule- 6(6A) : service tax self-assessed but not paid- recoverable by recovery cell

Where an amount of ST payable has been self-assessed (u/s 70 of Finance Act, 1994)

- But not paid, either in full or in part,
- The same shall be recoverable along with the interest in the manner prescribed u/s 87 of Finance Act, 1994.

Special provisions for calculation of tax:

(7) Air travel agent has option to pay tax @ 0.515% of basic fare-domestic and @1.03%-international bookings instead of 10.3 % of value of taxable services.

(7A) if the whole premium is not towards risk cover in life then insurer has the option to pay

- ✓ Tax @10.3% on the gross premium as tax.

But such option is not available if

w.e.f. 1.5.2011 it is 1.545%

- (a) The entire premium is only towards risk cover on life insurance or
- (b) The part of premium payable towards risk cover is shown separately in any document.

(7B) A foreign exchange broker, authorized dealer in foreign exchange or authorized exchange broker shall have the option to pay an amount calculated in the following manner:

Gross amount of currency exchanged	ST payable
<ul style="list-style-type: none">• Up to Rs 1,00,000	0.1% or Rs 25, whichever is higher.
<ul style="list-style-type: none">• More than Rs 1 lakh but up to Rs 10 lakh	Rs 100+ 0.05% of the excess over Rs 1 lakh subject to maximum of Rs 550.
<ul style="list-style-type: none">• More than Rs 10 lakhs over Rs	Rs 550+ 0.01% of the excess 10 lakhs or Rs 5000, which ever is lower.

But such option shall not be available if commission is shown separately in the invoice.

EC and SHEC shall be payable additionally.

(7C) The distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing or organizing lottery, shall have the option to pay tax at the following rates:

Sr. No.	Rate	condition
1.	Rs 6,000 on every Rs 10 lakhs (or part thereof) one of aggregate face value of lottery tickets printed prize by the organizing state for a draw. than 80%	If lottery scheme is where guaranteed payout is more
2.	Rs 9,000 on every Rs 10 lakhs (or part thereof) one Of aggregate face value of lottery tickets printed prize By the organizing state for a draw. 80%	If lottery scheme is where guaranteed payout is less than

Face value : it is the amount mentioned on the lottery ticket.

Aggregate face value : face value of lottery X the number of tickets Printed.

Guaranteed Prize Payout: the agreed aggregate prize money distributed to all the winners

Provided that in case of online lottery, the aggregate face value of lottery tickets sold shall be taken.

Note:

when the distributor or agent shall exercise such option within a period of one month of beginning of each FY and such option shall not be withdrawn during the remaining part of the FY.

Interest on late payment [75]

If payment is made after due date, interest has to be paid u/s 75 on amount of tax liable to be paid for the period for which such amount of tax or part thereof is delayed.]

Govt. shall fix rate of interest not less than 10% p.a. but not more than 36% p.a. presently rate of interest is 18%.

Service provider taxable turnover p.a.	period	rate of interest
Taxable turnover > Rs 60 lakhs	w.e.f 1.4.2011	18%
Taxable turnover ≤ 60 lakh	w.e.f 1.4.2011	15%

Amount collected from the receiver to be deposited with CG [73A]

- ✓ Every person who is liable to pay tax and has collected any amount from receiver as service tax, in excess of actual tax, must pay the amount immediately to the Central Govt.
- ✓ If the amount is not so paid, the officer may serve on such person a notice requiring to show cause why the said amount should not be paid by him,
- ✓ officer shall, after considering the reasons given by such person, determine amount payable and
- ✓ such excess amount shall either be credited to the consumer welfare fund or refunded to the person who has borne the burden of such amount.

Interest on amount collected in excess [73B]

- ✓ Where an amount has been collected, in excess of the tax assessed or which is not required to be collected as service tax ,
- ✓ the person shall in addition to the amount, be liable to pay interest at the rate not below 10% and not exceeding the rate 24%.

Presently govt. has fixed the rate @ 18% p.a.

Note :

If the value of taxable services provided during the year of notice or on in the preceding financial year does not exceed 60 lacs, rate of interest shall be 15%.

Amendment made by Notification No. 15/2011 dated 01.03.2011

With effect from 1.4.2011, the said notification has been amended to increase the rate of interest to 18% p.a.

Payment of service tax [68]

(1) Liability of service provider:

Every person providing taxable service shall pay service tax at the rate specified in section 66.

(2) Liability of any person other than service provider:

Notwithstanding anything contained in sub-section(1), CG may specify any other person who shall be liable to pay service tax and all the provisions of this chapter shall apply to such person as if the person liable for paying the service tax.

Person liable for paying service tax

S.N.	service	person liable to pay service tax
1.	service is provided by a person residing Outside India and received in India.	Receiver of such service in India.
2.	Insurance Auxiliary (agents)	Insurance company (receiver of service)
3.	Transport of goods by road	person paying freight(receiver of service, if in organized sector) or Goods transport agency (provider of service)
4.	sponsorship service	Body corporate or firm receiving such service.
5.	business auxiliary service of distribution company	mutual fund or asset management company
	Of mutual fund by a mutual fund distributor an agent	receiving such service

Furnishing of Returns [70] + Rule 7

- ✓ Every person liable to pay the service tax
- ✓ shall himself assess the tax due on the services provided by him and
- ✓ shall furnish a return in such form and manner and at such frequency as may be prescribed and
- ✓ with late fee not exceeding Rs 2000 for delayed filling of return.

As per Rule 7

The assessee has to submit half yearly return, in triplicate, in form ST-3 or ST-3A within 25 days of the end of the half year i.e. 1st April to 30th Sept and 1st October to 31st March.

- ✓ The return should be accompanied by GAR-7 challans, evidencing payment of tax.
- ✓ Provided that where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilization of CENVAT credit, in the preceding financial year, he shall file the return electronically.

Rule 7C

Penalty for delay in furnishing return

Where the return is not furnished within due date, following late fees has to be paid:

Period of delay, from the date of submission	Amount to be paid
Up to 15 days	Rs 500
More than 15 days but up to 30 days	Rs 1,000
More than 30 days	Rs 1,000 + Rs 100 for each day in excess of 30 days

- ✓ but the total amount payable as late fee shall not **exceed Rs 2,000**

-
- ✓ if the gross amount of service tax payable is NIL, the CEO may, on being satisfied that there is sufficient reason for not filing the return reduce or waive the penalty.

Rule 7B Revised Return

An assessee may submit a revised return in form ST-3, in triplicate, to correct a mistake or omission, within a period of 90 days from the date of submission of the return under Rule 7.

Even if a return is filed late it can be revised [as per suggested of ICAI]

Rule 5

Records

1. The records **including computerized data as maintained by an assessee in accordance with the various laws shall be acceptable.**
2. **First return**
Every assessee shall furnish to the superintendent at the time of filling his return for the first time, a list in duplicate, of
 - (i) All records prepared or maintained by assessee for accounting of transaction in regard to:
 - (a) Providing of any service, whether taxable or exempted;
 - (b) Receipt or procurement of input services and payment for such input services.
 - (c) Receipt, purchase, manufacture, storage, sale, or delivery in regard of inputs and capital goods;
 - (d) Other activities, such as manufacture and sale of goods, if any.
 - (ii) All records shall be prescribed at least for 5 years after the financial year to which such records pertain.

SERVICE TAX RETURN PREPARER [71]

1. **The board** may frame a scheme enabling specified persons to prepare and furnish a return u/s 70 through an authorized Service Tax Return Preparer.
2. **Scheme** framed shall specify the manner in which the service tax return preparer shall assist the persons furnishing the return of income.
3. **The scheme shall provide: the manner in which** a service tax return preparer shall be authorized, educational and other qualifications to be possessed, training and other conditions to be fulfilled by a person to act as a service tax return preparer, the code of conduct for the service tax return preparer, the duties and obligations of the service tax return preparer.

Computation of Tax

Charge of service tax [66]

There shall be levied a tax @ 10% of the value of taxable service.

Education cess on taxable services

1. **Education cess shall be levied** in case of all taxable services, @ 2% on the tax which is levied and collected u/s 66 of the Finance Act, 1994.
2. **The education cess** shall be in addition to the tax chargeable on taxable services.
3. **The** provision of chapter V of the Finance Act, 1994 shall apply in relation to the levy and collection of the Education cess on taxable services.

Secondary and Higher Education cess on taxable services

SHEC @ 1% will be levied on service tax in addition to the Education cess.

Valuation of taxable services for charging service tax [67]

1. **For** charging service tax, the value of any taxable services shall be
 - (i) **Consideration in money**
The gross amount charged by the service provider for such service provided not to be provided by him
 - (ii) **Consideration in kind**
Market value of such consideration shall be taxable .
 - (iii) **Consideration not ascertainable:**
If the money value of consideration can not be ascertained then value shall be determined as per rules framed by the Govt. for this purpose.
2. Where the gross amount charged is inclusive of service tax payable, service tax shall be calculated in the following manner:
Gross amount charged $\times 10.3$
110.3

3. The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

Deduction of value of goods sold:-Notification No. 12/2003

Service tax is not payable on value of goods sold during providing of service. There should be evidence about its value.

Valuation of Renting of immovable property: Notification No. 24/2007

In case of renting of immovable property service, a deduction of property taxes paid in respect of property is allowed from gross amount charged for renting of the said property.

Where any amount in excess of amount required has been paid on account of non-availment of such deduction, such excess may be adjusted against service tax liability within 1 year from the date of payment of property tax. The details of such adjustment shall be intimated to superintendent of central excise within a period of 15 days from the the date of such adjustment.

General Exemptions for all services

- 1. All services** provided to United Nations or International Organizations are exempt.
- 2. All services provided to officers** of any foreign diplomatic mission in India or their family members for official or personal use are exempt.
- 3.** Services exported out of India or provided outside India have been exempt.
- 4.** Services provided to a developer or units of Special Economic Zone are exempt.

SEZ have been exempted u/s 26 of SEZ Act,2005. No such exemption for service provided from SEZ to DTA(domestic tariff Area)

Notification No. 17/2011-ST dated 3-2011 w.e.f 1-3-2011

- **Taxable services provided to a unit of SEZ developer or a ASEZ developer by the service provider is exempted from payment of service tax, if the service are wholly consumed within SEZ.**
- **If services are not consumed wholly within SEZ, such services are taxable in the hands of service provider.**
However, the exemption is available by way of refund of service tax paid on the specified services received for the authorized operations in SEZ.

Maximum refund=- $\frac{STXET}{TT}$

ST- service tax paid used for SEZ

ET- Export turnover of SEZ unit

TT- total turnover for the period

- 5.** As per Notification No. 6/2005 service tax has been exempted on value of services up to Rs 10 lakh. But this exemption is available only if value of taxable services in the preceding year does not exceed Rs 10 lakhs.

Role of CA in Service Tax

1. Advisory seervices:

A lot of professional expertise is required to interpret and analyse the service tax law. A CA can analyse and advise his clients in respect of applicability of service tax on the concerned services.

2. Procedural compliance:

CA can provide compliance related services in respect of the service tax procedures like registration, payment, filling of returns etc.

3. Personal representation:

CA can represent his clients before assessing authority in the matters of appeal.

4. Certification and Audit:

Due to the increase in the number of service tax assessee, the department will soon introduce certification and audit by professional so that only exceptional cases are taken for scrutiny by the department. A CA can very well provide such services.

5. Constant up gradation of law and provisions:

CA keeps himself sssupdated with the latest events in the field of taxation and due to his foresight and vision , he can provide services in the nature of tax planning to his clients.

Organizational hierarchy of Excise Department



Announcement by ICAI

Applicability of taxable services for May & November 2012 examinations:

It is clarified that in part-II : Service tax and VAT of Paper4: Taxation, students will be examined only in respect of the following taxable services:

1. Practicing Chartered Accountant's services.
2. Mandap keeper's Services.
3. Commercial training or coaching services.
4. Information technology software services
5. Consulting engineer's services.
6. Business exhibition services
7. Scientific and technical consultancy services.
8. Technical testing and analysis services.

Taxable services

Section 65(105) taxable service- means any service provided or to be provided to any person for cash or deferred payment or any other valuable consideration, by a

1. **Practicing Chartered Accountant:**

- ✓ who is member of the ICAI and
- ✓ is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and
- ✓ includes any concern engaged services in the field of CA.

Services provided by CA in respect of

- a. Preparing and filling of returns (income tax. Service tax, VAT etc.)
- b. Providing opinions on any matter including taxation, preparation of project report
- c. Providing consultancy on any issue including taxation
- d. Conducting audit, certification etc.
- e. Appearing on behalf of client in any court etc.

Shall remain taxable.

2. **Legal consultancy service:**

Legal consultancy service is the service provided or to be provided

- To any person
 - ✓ By any business entity.
 - ✓ In relation to consultancy in any branch of law.
- To any business entity
 - ✓ By any person

-
- ✓ In relation to representational services before any court, tribunal or authority.

It includes services in the nature of

- Advice
- Consultancy or
- Assistance in any manner in any branch of law.

- For the purpose of this service, business entity does not include Individuals.

Therefore services provided by:

- a. An individual advocate to any person

Will not be taxable.

3. Consulting engineer:

- **Who is professionally qualified**

- Includes any firm, body corporate
- Advice, consultancy or technical assistance
- In one or more disciplines of engineering
- Including hardware and software engineering.

Engineer should be engaged in a profession of engineer holding any diploma or degree. Engineers employed under a company, firm are not covered.

4. Manpower recruitment agency:

- **Any person for recruitment** of manpower or supply of manpower, temporarily or otherwise and includes pre-recruitment screening, verifying the credentials of the candidate, authenticity of documents submitted by the candidate and verification of antecedents.

5. Custom house agent: a person licensed, temporarily or otherwise, under the custom act providing service in relation to entry or departure of conveyances or import or export of goods.

Services provided by CHA are:

- Examination of cargo
- Obtaining relevant documents such as invoices, packing list, bill of lading etc
- Preparing bill of entries etc
- Pursuing with custom house for appraisalment of bill of entry
- Making payment of duty on behalf of the client, Arranging for removal of cargo

6. Cargo handling service: means packing, loading, unloading, or unpacking and includes

a. Cargo handling services provided for in special containers or without containers, services provided by a container freight terminal, for all modes of transport and

b. Service of packing together with transportation of cargo

Does not include handling of

- a. Export cargo or
- b. Passenger baggage or
- c. Mere transportation of goods.

7. Commercial training or coaching:

- ✓ Institute providing commercial training or coaching
- ✓ imparting skill or knowledge or lessons
- ✓ on any subject or field
- ✓ with or without profit motive.

Other than

- Sports
- Preschool,
- Issuing certificate under any law
- Vocational training i.e. imparting skill to enable the trainee to seek employment or undertake self employment after such training.
- Recreational training relating to activities such as dance, singing or hobbies
- Individuals providing services at the premises of the receiver are not taxable.

8. Information technology software service:

- ✓ Means any service provided in relation
- ✓ to information technology software
- ✓ whether or not in the business or commerce.

It includes

- Development of software ,
- upgradation, implementation and other similar services in relation to IT software
- providing advice and assistance on the matters relating to IT software.

But it does not include services provided to government or to charitable institution

9. Banking and other financial services:

With effect from 01.04.2011, rule 2B inserted after Rule 2A provides the manner of determination of the value of taxable service for the banking and other financial services so far as it pertains to purchase or sale of foreign currency, including money changing. The value of service shall be determined as follows:

- a. **For currency, when exchanged from , or to, Indian rupees(INR):** the value shall be equal to the difference in the buying rate or the selling rate as the case

may be, and the reserve bank of india reference rate for that currency at that time, multiplied by the total units of currency.

Purchase of foreign exchange= [RBI rate-buying rate] X units of foreign exchange bought

Selling of foreign exchange= [selling rate- RBI rate] X units of foreign exchange sold

- b. **Where RBI reference rate for currency is not available:** then the value shall be 1% of the gross amount of Indian rupees provided or received, by the person changing the money.
- c. **Where neither of the currencies exchanged is Indian rupees:** the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies in to Indian rupee on that day at the reference rate provided by RBI.
- 1% of lower of the following two**
- a. RBI rate X units of foreign exchange sold
- b. RBI rate X units of foreign exchange bought

Past years questions of ICAI exams:

1. Briefly explain the nature of service tax?
2. Which act and Rule governs the levy of service tax in India?
3. What are the sources of service tax law?
4. Explain as to how and when the amendments made in Finance Bill, in respect of service tax matters comes in to force?
5. Is service tax applicable all over India and beyond land also?
6. Is services tax destination based consumption tax?
7. Write the provisions on liability for payment of service tax on services provided abroad.
8. Is service tax payable in respect of services provided in the Indian territorial waters?
9. When does small service provider require to register under the Rules, but not liable to collect and pay service tax?
10. Discuss the accountability of an “input service distributor” who may not be liable to pay service tax?
11. Can Vignesh & co. , providing services from different locations and billing the client from each location, opt for centralized service tax registration?
12. When service tax has to be deposited with the government?
13. Who is liable to pay E-payment of service tax?
14. Where a service provider maintains books of accounts on mercantile basis relating to taxable services provided by him, will service tax be payable on accrual basis?

-
15. Mr. Vasudevan has rendered freely, a service to a client which is taxable, but has not charged or received any free from the client. Is service tax payable on such free service?
 16. Whether “ free services” after sale of motar vehicles, gives by the authorized dealers, for which they are reimbursed by the vehicles manufactures, are subject to service tax?
 17. A particular service has been brought in to the service tax net with effect from 1.6.2009. Mr vignesh has provided this service on 20.5.2009; the payment for the same was received on 10.6.2009. Is service tax payable on the same?
 18. An assessee who has collected service tax from a client is unable to perform the service. Briefly explain the situation in which and conditions subject to which he can adjust the service tax relating to above , against the forthcoming service tax liability.
 19. Is e-filling of service tax return permitted?
 20. Which are the documents to be submitted along with service tax return?
 21. What are due dates for filling of service tax returns?
 22. Who are the persons liable to file service tax return?
 23. Mrs. Amrapali, a registered service provider did not render any services during the financial year 2009-10. Whether she is required to file service tax return?
 24. Mr. Raju is a multiple service provider and file only a single return. State with reasons whether he can do so ?
 25. Whether service tax return can be furnished after due date?
 26. Should service tax paid even if not collected from the client or service receiver?
 27. In case import of services, is a receiver of such services in India liable to pay service tax?
 28. Who is liable to pay service tax in relation to services provided by a goods transport agency?
 29. Who is responsible to pay service-tax in case of sponsorship services?
 30. Whether export service provided by service provider is excluded for the purpose of payment of service tax?

VAT

Introduction

As Income tax is a tax on Income, wealth tax is a tax on wealth; similarly value addition tax is a tax **on value addition** made by a dealer (value addition X rate of tax).

Value addition = value at the time of sale- value at the time of purchase

1. It was first introduced in the year 1954 in France.
2. VAT is multistage tax.
3. Introduction of system of credit in India
 - a. In excise system of credit was first introduced in 1986 on selected commodities.
 - b. In service tax system of credit was introduced in 2002.
 - c. In year 2004, credit of excise duty paid on inputs/capital goods was started for payment of service tax and vice- versa.
 - d. From 1.4.2005 credit was introduced in sales tax by all most all the state.
 - e. In order to bring in uniformity in VAT a committee of state finance ministers was formed. The committee brought out a white paper and recognized that VAT is state subject and therefore , the states will have freedom to prepare rules for VAT for their respective states consistent with the committee.
 - f. But presently credit of excise duty and service tax is not allowed for the payment of sales tax (VAT) and vice-versa.
 - g. In future excise duty, service tax and VAT will be merged in one tax which will be called Goods and Service Tax (GST). Then credit of any of these taxes will be allowed for the payment of any other tax.

Computation of VAT

1. Addition Method:

Under this method VAT is calculated using the following formula

Value addition = profit + trading and manufacturing expenses

A drawback of this method is that it does not require invoices of suppliers for detection of tax evasion. Also it is not possible to find out at the time of sale , exact expenses related to that sales. It may possible only after the end of the year. And indirect taxes have to be determined at the time of sales itself, because they have to be recovered from the customer.

2. Subtraction Method:

Under this method, the purchase price is deducted from sales price and tax is paid on the net amount only i.e. value added.

Value added = sale price- purchase price.

This method can be further divided in to two parts:

-
- (i) Deducting aggregate value of purchase exclusive of tax from the aggregate value of sales exclusive of tax.
 - (ii) Deducting value of purchases from the sales, including taxes and taxing difference between them.

A drawback of this method is that time of making sale of any goods; the selling person should know exactly its purchase price for calculation of VAT using this method.

When a dealer buys and sells hundreds of different goods; it would be very difficult to know the purchase value of each commodity sold by him. So this method is also not practicable.

(iii) **Invoice Method/Tax credit method/voucher method:**

This is the most famous method of calculating tax liability under VAT system. Under this method, tax is imposed at each stage of sales on the entire sales value and the tax paid at earlier stage is allowed as set off.

Input Tax credit

Under invoice method value added tax is calculated using the following formula:

$$\text{VAT} = \text{tax collected on sales} - \text{tax paid on purchases or} \\ \text{Output tax} - \text{input tax}$$

In this method, tax is imposed at each stage of sales on the entire sales value and the tax paid at the earlier stage is allowed as set off. This credit availability is called as input tax credit.

Credit on capital goods

Meaning of capital goods: capital goods are machineries, furniture, air conditions, vehicles etc. which are not kept for sale but are used for producing and selling other goods.

Reasons for allowing credit of taxes on capital goods: Taxes paid on purchase of capital goods can be deducted from the VAT payable on sale of goods. Although it depends on the variation being followed.

- Credit is allowed because the person who sells capital goods deposits VAT with the Govt. on total sale price of such capital goods.
- The person who purchases such capital goods allocates its cost in the sale price of goods by of depreciation etc. And then VAT is charged on the total price of goods including allocated cost of capital goods. This leads to double taxation.
- Hence taxes paid on capital are allowed to be deducted from the VAT payable.

Reasons for hesitation to extends ITC to capital goods: Government of many states hesitate to give ITC to capital goods because they do not want to loose huge tax revenue that may come from capital goods which are normally high value goods.

Also capital goods are not fully used in one or two years. It takes many years to allocate them in the final products.

Variants of VAT

- 1. Gross product variant:** under this variant credit is allowed for taxes on purchases of raw materials but not for capital goods. In this way, credit of taxes paid on capital goods is neither allowed in the year of purchase nor in subsequent years.
- 2. Consumption variant:** As per this variant, credit is allowed for all business purchases including capital goods. No distinction is made between capital and current expenditure.

This is the most popular method in the world because there are no disputes of distinction between inputs and capital goods. Also there is no need to decide that in how many years credit should be allowed.

- 3. Income variant:** In this variant, credit is allowed for taxes paid on raw materials as well as on capital goods. But credit of taxes paid on capital goods is not allowed in one year.

Credit is allowed in installments in 2 to 3 years depending on the state law, but keeping in recommendations of white paper.

Presently this method is being followed in India. Government do not want to forego tax for capital goods at one go but want to lose it gradually. The government forgoes the tax on capital goods ultimately but it incurs that loss in installments.

Input tax credit on capital goods

Procedural requirements for claiming set off:

The dealers are entitled to set off on capital goods like any other purchases, subject to following conditions:

1. As decided by empowered committee there is negative list of capital goods not eligible for credit. Thus the dealer will have to drive their purchase in to eligible and not eligible capital goods.
2. In respect of eligible capital goods the dealer will be required to follow the procedural requirements. For example support purchase of capital goods with tax invoice.
3. If it is subject to certain installments, the dealer will be able to claim set off according to the law of the respective state.

Tax credit on capital goods may be allowed in 3 years equally which can be reduced by states at their option.

Comparison of past sales tax and VAT

BASIS	PAST SALES TAX	VAT
Stage of levy	It was a single tax where the tax was collected on first sale itself.	It is multi stage tax as the tax is collected each time the good is sold.
Subsequent sales	Subsequent sale was exempt. Dealers dealing in such goods were not required to collect any tax.	Subsequent sale is chargeable to tax as VAT is multi stage tax. Although only on the value addition made.
Tax liability	Computation of tax liability was very complex	Tax computation is transparent and easier.
Forms	A large number of forms were required to prove that tax has been paid at one stage. Forms were difficult to be obtained from the department.	VAT has removed all such forms. Now only invoices are required.
Assessment	Assessment was done by department.	Assessment is done by dealers
Penalty	Penalties were stricter	Penalties are not strict.

Merits of VAT

1. **No tax evasion: Under VAT,** credit of tax paid on purchases is allowed against the liability on the final product manufactured or sold. Therefore, unless proper records are kept in respect of various inputs, it is not possible to claim credit.
2. **Transparency:** in the single point tax system, God alone knows the tax component hidden in sale price of a commodity.
But under present VAT system, the buyer knows the exact amount of tax he pays to the govt. what the final buyer pays to his seller is the total tax government gets from that commodity, nothing more or nothing less.
No tax is hidden and everything is known to the customer, which is called transparency. Due to this transparency of VAT its possible to ensure that goods exported are free from all taxes from starting till end by refunding to exporter taxes on his purchases.
3. **Better accounting system:** since tax paid at an earlier stage has to be taken as credit proper accounts have to be maintained.
4. **Better revenue collection:** the government will receive its due tax on the final consumer/retail sale price. There will be a minimum possibility of revenue leakage, since the tax credit will be given only if the proof of tax paid at an earlier stage is provided.

5 **VAT brings certainty:** in the context of VAT certainty means the amount of tax required to be paid is fixed. Prior to implementation of VAT in India, sales tax assessment was done by the department. It was not certain that tax will be on the actual sale price at which goods will be sold to the ultimate consumer. Tax paid on first stage could be more or less than the amount at which goods were sold to ultimate consumer.

After introduction of VAT it is now very much certain that tax will be charged only on actual sale price. Hence VAT system brings certainty of tax.

6. **Reduces the ultimate sale price:** VAT reduces the retail sale price as it tax credit is given at all stages, keeping the ultimate price at minimum. Although it is a multipoint tax where tax is imposed at each and every stage of sales but tax credit is given at all stages.

Therefore ultimately tax is charged only on last sale price for once only, which keeps the ultimate price at minimum. Under the old system there could be **cascading effect** of tax.

De-merits of VAT

1. **Increase in cost:** For complying with the VAT provisions, the accounting costs will increase. The burden of this may not commensurate with the benefits to traders and small firms.

On the other hand the administration cost to the state can increase significantly as the number of dealers to be administered will go up significantly.

2. **Increase in working capital:** VAT is to be paid or imposed at various stages and not on last stage @12.5% .This would increase the working capital requirements and the interest burden on the same.

Dealer will be making purchase after paying tax, therefore investment in stock will go up to the extent of tax paid.

In the last stage tax system, amount of tax is required only at the last stage. Therefore dealers can purchase goods without taxes, reducing their working capital.

3. **Non availability of credit of other taxes: Another** problem with the implementation of VAT is the non-availability of credit for following taxes:

a. **Excise Duty,**

b. **Custom duty**

c. **Service tax**

d. **VAT of other state.**

Small dealers and composition scheme

State laws to provide for composition scheme: As per white paper VAT Act should be so designed that high tax payers should not be spared and the small dealers should be free from hassles of compliance procedures.

Dealers with limited turnover would have an option to pay a lump sum amount based on its total turnover at the specified rate as low as 0.25%

Different scheme may be provided for different classes of dealers.

Composition scheme

Conditions for composition scheme:

Turnover of dealer should be within Rs 10 lakhs to RS 50 lakhs. Such a dealer would have an option to pay a composite amount of tax based on its annual gross turnover at the prescribed rates. However, the following are not eligible for the composition scheme:

- a. A manufacturer or a dealer who sells goods in course of inter state trade;
- b. A dealer transferring goods to the branch or for execution of works contract.
- c. A dealer who sells goods in the course of import or export out of India.

Advantages:

1. Simplifies calculation
2. Small tax will be payable
3. Simple return form to cover longer period
4. Simple records to be maintained

Disadvantages:

1. No input tax credit can be availed
2. Can not issue tax invoices

Stock transfer

Stock transfer i.e. transfer to branch does not amount to sale. Therefore they are not subject to VAT. On stock transfer consignment tax can be levied by the the state governments.

Composition scheme are not available in case of stock transfer. Because composition scheme are available only in case of VAT.

Purchases not eligible for input tax credit

Input tax credit shall not be allowed on the purchases of goods

- a. From unregistered dealers, because he can not issue VAT invoice
- b. Where the purchase invoice is not available
- c. Where invoices does not show the amount of tax separately
- d. Notified by the state government as not eligible for taking credit
- e. Which are being utilized in the manufacture of exempted goods
- f. Purchase for personal use
- g. Imported from outside the territory of India
- h. From other state/interstate purchases

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- i. From recognized dealer opting for composition scheme.

Eligible purchases for availing Input tax credit

Following are eligible purchases:

- a. Goods purchased from the state and sold within the same state;
- b. Goods purchased from one state and sold to other state (interstate sales)
- c. To be used as
 - (i) Containers or packing materials;
 - (ii) Consumable stores
 - (iii) Raw materials
- d. To be used as capital goods required for manufacturing or resale of taxable goods.

Administrative procedure under VAT

Registration

Registration is the process of obtaining certificate of registration from authorities under VAT Acts.

Eligibility: Gross annual turnover above Rs 10 lakhs (But this limit can be reduced by the state law). A new dealer will be allowed 30 days from the date of liability to get registered.

Voluntary Registration:

- A dealer not eligible may also obtain voluntary resignation
- Commissioner may impose terms and conditions.

Cancellation of Registration: the registration can be cancelled on discontinuance of business or selling of business or shifting of business to new location

TIN

- **It is** a registration number of the dealer and consists of 11 digit numerals.
- **First 2 will represent the state** code. If the state code for Delhi is 11 then all TINs allotted to the dealers in Delhi would start with 11.
- **Next 2 digits** will be check digit to ensure correctness of TINs
- **The remaining 7 digits will be used for unique identification** of any dealer in the state.
- **It facilitates cross** checking of information. Anyone can know through internet that whether TIN given by a dealer is genuine or not.

VAT invoice

The whole structure of input tax credit is based on tax invoice, without which credit can not be claimed.

Importance:

- a. Helps in determining the input tax credit
- b. Promotes assurance of invoices
- c. Assist in performing audit and investigation activities affectively

d. Checks evasion of tax

Records

Types of records: following records are mandatory under VAT

(i) Purchase records:

All purchase invoices details of amount of tax paid on each purchase.

(ii) Sales records: it includes all sales invoice in serial No. and detail of the amount of tax charged on each sale.

(iii) Vat account: total of the output tax input tax in each period and net tax payable

Declaration forms

A large number of forms were required to prove that tax has been paid at one stage. Most of the declaration forms that existed before the introduction of VAT have been removed.

Reasons for removal of forms:

Wastage of time in getting declaration forms from department

Forms could be forged.

No provision of exemption on subsequent sales in VAT system, hence, now there is no need for declaration forms, only invoice is required.

Returns

1. When returns are to be filed:

Monthly or

Quarterly or

Annually as per the provisions of the State Acts/Rules.

2. Required details:

Output tax liability

Value of input tax credit

Payment of vat etc

3. Scrutiny:

Selected returns shall be scrutinized

If any mistake is detected in scrutiny, the dealer shall be required to pay the deficit.

Assessment

Under VAT system, there is no compulsory assessment at the end of each year. The liability is self assessed by the dealer in terms of submission of returns. If no specific notice is issued proposing departmental audit, the dealer will be deemed to have been self assessed on the basis of returns submitted by him which is the major feature of VAT.

Audit under VAT is required due to :

- a. Lack of education among traders community.
- b. Lack of resources with taxation authorities
- c. Self-assessment under VAT system.

Since there is no regular assessment, checks will be by way of audit of accounts of dealers-

1. Internal audit: correctness of self-assessment will be checked through a system of departmental audit .Authorized officers of department will visit the business place of the dealer to conduct an audit. However, if evasion is detected in the course of audit, the previous records of the concerned dealer may be taken up.
2. External audit: Apart from departmental audit many states have also incorporated the concept of audit by CAs. A certain percentage of the dealers will be taken up for the audit in accordance with the criteria of size of dealers. For e.g. in Maharashtra and Rajsthan, the dealer whose turnover exceeds 40 lakhs in any year is required to get his accounts audited.

Penal provisions

Penal provisions are incorporated by state as per their requirements to discourage evasion of taxes:

Some of them which attract penalties are:

- i. Failure to keep records
- ii. Failure to get registered
- iii. Failure to furnish returns
- iv. Failure to deposit tax in time

Tax rates under VAT

There are two basic VAT rates of 4% and 12.5%

1. VAT rate of 1% for gold and silver and
2. A special category of exempted goods includes:
 - (i) About 50 commodities of natural and unprocessed products in unrecognized sector.
 - (ii) Items having social implications
3. Petrol ,diesel,liquor,lottery tickets and other motor spirits are kept outside VAT.

Role of CA in VAT

1. Record keeping: systematic records of input credit and its proper utilization is necessary for the success of VAT. CAs are well equipped to perform such task.
2. Tax planning: A Chartered Accountant is competent to analyse the impact of various alternatives and choose optimum method in order to minimize the tax impact.
3. External audit of VAT records: Chartered Accountant can play a vital role in ensuring tax compliance by audit of VAT accounts.
4. Dealing with departmental officers: The professional expertise of a CA will help in replying audit queries and sorting out audit objections.

Practical question of Service tax

1. A services Ltd. a service provider made an agreement on 16th May 2011 with R Ltd to provide different services covered under Business Auxiliary services at a price of Rs 80 lakhs (inclusive of service tax) per annum.

As per terms of contract executed an advance of 15% of contract price has been received for the services to be provided which would be adjusted against final bill in the end of the year. For the balance amount, bill will be raised according to the completion of different service.

The bill for raised and the the amounts received are given as follows:

- i. 1st bill for the month of June 2011 was raised for Rs 18 lacs, but the payment was made only on 5th July.
- ii. Next bill was raised on 5th Feb 2012 of Rs 50 lacs for which payment was made on 25th March 2012.
- iii. After this contract was terminated with mutual consent on 30th March 2012. A services Ltd. refunded the advance of Rs 12 lacs.

You are required to decide the following:

1. How much service tax should be deposited by which date?
 2. What procedure is required to be followed for the the refund of advance?
 3. What shall be treatment of the balance amount for which no bill was raised and no amount was received?
 4. The company has deposited the due amounts on the due date by cheque, but they were cleared in the bank after 3 days. How much interest is payable?
- 2.** Priyanka, a proprietress of Royal security Agency received Rs 1,00,000 by an account paye cheque, as advance while signing a contract from providing taxable service, she receives Rs 5,00,000 by credit card while providing the service and another Rs 500,000 by a pay order after completion of service on January 31, 2010. All three transaction took place during financial year 2011-12. She seeks your advice about her liability towards value of taxable service and the service tax payable by her.
- 3.** ABC & co. received the following amounts during the half year ended 31.03.2011.

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- i. For service performed prior to date of levy of service (assume 3,50,000 service tax was levied from a specified date by change of law)
 - ii. Advance amount received in march ,2010 (No service was rendered to customers, amount was refunded to to the client in July 2010) 75,000
 - iii. For free services rendered to customers, amount reimbursed by the 50,000
- The manufacturer of such product.(for the period after the imposition of service tax)
- iv. Amounts realized and on which service tax is payable 14,26,500 (excluding the items (i) to (iii) above)

Calculate the service tax liabilities duly considering the threshold limit.

4. X & co. ,is a service provider. It received Rs 19,80,000 during the financial year 2010-11 after deduction of tax at source under section 194J of the income tax act, 1961.

The rate of tax deduction being 10% (i.e. after deduction of Rs 2,20,000)

- i. Calculate the service tax liability of X & co.
 - ii. Can a multiple service provider use a single challan for payment of service tax for various service rendered by it?
5. Mrs. Priya rendered a taxable service to client, a bill of Rs 40,000 was raised on 29.4.2009; Rs 15,000 was received from the client on 1.5.2009 and the balance on 23.5.2009. No service tax was separately charged in the bill. The questions are:
 - i. Is Mrs. Priya liable to pay service tax, even though the same has not been charged by her?
 - ii. In case she is liable, what is the value of taxable service and the and the service tax payable?
 6. Chandan Ltd. has agreed to render services to Mr. Rahul. The following are the chronological events:

i. Payment received in Sep. 2010 towards all services	60,000
ii. Total value of services, billed in Feb.2010	210,000
iii. Above includes non-taxable services of	70,000
Balance amount is received in March,2010	

When does the liability to pay service tax arises and for what amount? Contract contains clear details of services, consideration and service tax are charged separately, as mutually agreed upon.

7. J. C. professionals , partnership firm, gives the following particulars relating to the services provided to various clients by them foe the half year ended on 30.09.09.

- a. Total bills raised for Rs 875,000 out of which bill for Rs,75,000 was raised on an approved international organization and payments of bills for Rs 1,00,000 were not received till 30.09.09
- b. Amount of Rs 50,000 was received as an advance from XYZ Ltd. on 25.09.09, to which the services were to be provided in October, 09.
You are required to work out the
 - i. Taxable value of services
 - ii. Amount of services tax payable

8. Service provider provides following details in respect of taxable services provided during the financial year 2009-10

Date	particulars	amount
30.6.2009	advance received from customer	1,00,000
30.9.2009	Part payment received against a bill of Rs 9,50,00 raised	
5,00,000		
	On a customer.	
31.02.2009	money received against taxable services provided during	
3,00,000		
	December,09.	
31.1.2010	taxable services rendered during January,10	
1,00,000		
31.3.2010	taxable service provided during March,10	2,00,000

The service tax provider complies with the provisions of registration and collection of service tax as per service tax laws. He received the money against the bills raised during the months January and March, 2010, in the year 09-10 themselves. Compute the service tax liability of service tax liability of service provider for the year 2009-10 considering the rate of service tax 10.30%

9. Virat Kohli & Co. a Partnership firm, is providing taxable legal consultancy services, for the second consecutive year. The firm furnishes the following information relating to the services rendered bills raised, amounts received relating ti this service, for the year ended 31.3.2010

- i. Free services rendered to poor people (value of the services computed on comparative basis) 40,000
- ii. Advances received from clients for which no taxable service has Been rendered so far 5,00,000
- iii. Services billed to clients, gross amount (service tax has been charged separately in all the bills, the firm follows mercantile system of accounting) 12,00,000
- iv. The firm has received the following amounts during the year relating to taxable services rendered in March,2009(excluding service tax at applicable rates and TDS under section 194-J of the IT act,1961 to the tune of Rs 45,320)
- v. Relating to taxable services rendered in current year 2009 (excluding

Service tax at applicable rates and TDS u/s 194-J of the IT act, 1961 to 9,80,000*

The tune of Rs 1,20,000)

(*Includes Rs 50,000 for appearance fee before Labour court received from another firm)

Service tax has been separately received for applicable items in (iv) above.

You are required to compute the value of taxable services for the year ended 31.3.2010 and the service tax payable, briefly explaining the treatment of each item above.

VAT

1. A manufacturer has purchased raw materials for Rs 1,04,000 (inclusive of vat @4%) and plant and machinery for Rs 2,25,000 (inclusive of [vat@12.5%](#)). The manufacturing and other expenses (excluding depreciation) are Rs 3,00,000. he sells the resultant products at 50% above cost (vat on sales is 4%).The plant and machinery is to be depreciated at 50% straight line. Compute the amount of vat payable in cash, as per the
 - i. gross product variant of vat
 - ii. income variant of vat
 - iii. consumption variant of vat.
2. compute VAT as per addition method (rate of is 12.5%)

	manufacturer	wholesaler	retailer	
total economy				
a. wages	150	300	200	650
b. rent	50	100	20	170
c. interest	25	75	20	120
d. profit	25	25	10	60

3. manufacturer tata extracted raw produce X and raw produce Y from mines and sold the same to manufacturer B for Rs 40000 and Rs 60000 respectively. Manufacturer B used X and Y raw materials and sold the resultant product to wholesaler for rs 3,00,000, wholesaler sold the same to retailer for Rs 450,000. The retailer sold the same to a consumer for Rs 5,00,000. Compute the vat at each stage under-
 - i invoice method
 - ii. subtraction method if
 - (i) manufacturer tata sells produce X for Rs 4,00,000 (vat 4%) & produce Y for Rs 60000 (vat 12.5%)
 - (ii) all other sales are liable to vat @ 4%, and all prices quoted are exclusive of vat.
4. Compute the VAT amount payable by Mr. A who purchases goods from a manufacturer on payment of Rs 2,25,000 (including VAT) and earn 10% profit on sale to retailers? VAT rate on purchase and sale is 12.5%

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- 5.** Compute the invoice value to be charged and amount of tax payable under VAT by a dealer who had purchased goods for Rs 1,20,000 and after adding for expenses of Rs 10,000 and of profits RS 15,000 had sold out the same. The rate of VAT on purchase and sales is 12.5%.
- 6.** Calculate the VAT liability for the period Jan1, 2010 to Jan31,2010 from the following particulars:
- Inputs worth RS 1,00,000 were purchased within the state . Inputs of Rs 50,000 were purchased from other states. Material of Rs 70,000 was purchased from a dealer following composition scheme. Goods worth Rs 90,000 were purchased from a registered dealer but without invoice.
- Rs 2,00,000 worth of finished goods were sold within the state and Rs 1,00,000 worth of goods were sold in the course of inter-state trade.
- VAT paid on procurement of capital goods worth Rs. 1,00,000 during the month was at 12.5% if the input and output tax rate in the state are 12.5% &4% respectively and the CST rate is 3%.
- Show the Input tax credit available, output tax, net tax payable under VAT and CST, credit to be carried forward, on the assumption those amounts given are exclusive of taxes.
- 7.** (a) calculate the VAT liability for the period 1st April 2010 to 31st March 2010 from the following particulars:
- i. Inputs worth RS 1,00,000 were purchased within the state.
 - ii. Inputs of Rs 20,000 purchased from a dealer following composition scheme.
 - iii. Inputs of RS 50,000 were purchased which are exempted under the state law.
 - iv. Rs 2,00,000 worth of finished goods were sold within the state.
 - v. Rs 1,00,000 worth of goods were sold in the course of inter –state trade.
 - vi. VAT paid on procurement of capital goods worth Rs. 1,00,000 during the year was at 12.5%
- If the input and output tax rate in the state was 12.5 % and 4% respectively and the central sales tax rate is 2%, show the input vat, output vat and Net VAT payable under the state VAT law.
- 8.** Raj & co. a manufacturer of product “X” sold to distributor at Rs 11,250 inclusive of tax. The Distributor sold the goods to wholesaler for Rs 13,500. The wholesaler sold the goods to a retailer for Rs 16875. The retailer sold the goods to consumer at Rs 22500. All the sales were inclusive of VAT @ 12.5%.
- Compute the total VAT payable under the subtraction method.
- 9.** Mr. Rajesh is a registered dealer and gives the following information. You are required to compute the next tax liability and total sales value under value added tax:
- Rajesh sells his products to dealers in his state and in other states
- The profit margin is 15% of the production and VAT rate is 12.5% of the sales.
- i. Intra state purchases of raw materials Rs 2,50,000 (excluding vat @4%)
 - ii. Purchases of raw material from an unregistered dealer Rs 80,000 (including vat @12.5%)

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- iii. High seas purchase of raw materials are Rs 1,85,000 (excluding custom duty @10% of Rs 18,500)
 - iv. Purchase of raw materials from other states (excluding CST @ 2%) Rs 50,000.
 - v. Transaction charges , wages and other manufacturing expenses excluding tax Rs 145000
 - vi. Interest paid on bank loan Rs 70,000.
- 10.** Compute the vat amount payable by Mr. Shyam, who , purchased goods from a manufacturer on payment of Rs 4,16,000 (including vat) and earned 20% profit on purchase price. VAT rate on both purchases and sales is 4%.
- 11.** Mr. X, a manufacturer sells goods to Mr. B, a distributor for Rs 2,000 (excluding vat) Mr B sells goods to Mr. K, a wholesale dealer for Rs 2400. The wholesale dealer sells the goods to a retailer for Rs 3000 who ultimately sells to the consumer for Rs 4000.
Compute the tax liability, input credit availed and tax payable by the manufacturer distributor, wholesale dealer and retailer under invoice method assuming VAT rate @ 12.5%.
- 12.** Mr. Goenka, a trader selling raw materials to manufacturer of finished products. He imports his stock in trade as well as purchases the same from the local markets. Following transaction took place during financial year 2008-09. Calculate the vat and invoice value charged by him to a manufacturer. Assume the rate of VAT @ 12.5%.
- a. Cost of imported materials (vat paid in other state) excluding tax
100,000
 - b. Cost of local materials including VAT
2,25,000
 - c. Other expenditure includes storage, transport, interest and Loading and unloading and profit earned by him 87500
- 13.** Mr X, a dealer in Mumbai dealing in consumer goods, submits the following information pertaining to the month of March, 2010
- i. Exempted goods “A” purchased for Rs 2,00,000 and sold for Rs 250000
 - ii. Goods “B” purchased for Rs 225,000 (including vat) and sold at a margin of 10% profit on purchases (vat rate 12.5%)
 - iii. Goods “C” purchased for Rs 1,00,000 (excluding vat) and sold for Rs 150,000 (vat rate 4%)
 - iv. His unutilized balance in vat input credit on 1.3.2010 was Rs 1500
- Compute the turnover, input vat, output vat and net vat payable by mr X.
- 14.** Mr R sells goods on retail basis. The transaction made by him during the year is that he purchase of goods Rs 52 lakh(vat @ 4%) and sale at inclusive of all taxes Rs 68 lakh (vat @ 4%)
He wants your suggestion that whether he should opt for composition scheme if composite tax is 1% of turnover as the expense he is already incurring for keeping detailed statutory records are required under the vat law is Rs 1,00,000 p.a. which shall get reduced to rs 40,000 if composition scheme is opted for.
Other expenses are Rs 6,00,000 p.a.
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EXAMINATION PREPARATION TIPS

1. First Time Study:(knowledge process)
 - ✓ Try to do home work on same day. Do not have back log of tasks. Remember you are having same no. of hours in day as any great person were having (may me Mother Teresa, Gandhi, Nehru)
 - ✓ Use always only one calculator of good quality, good quality copy and good quality pen, it will improve your interest in study and efficiency.
 - ✓ If any problem at home in home work, note it and ask in next class
2. First Revision:
 - ✓ Revise the notes given and check the solution of your assignment question in your copy with pencil, which you have already done at the time of coaching classes.
 - ✓ Solve the question, which were left at the time of coaching in same copy.
 - ✓ Identify questions or provisions, which you find tough or more conceptual.
3. Second Revision:
 - ✓ Revise the theoretical concept and Check 80% of your question in copy with pencil again
 - ✓ Balance 20% (particularly identified in first revision as tough) should be solved again on separate paper without seeing their solution, then tally with answer and find out the area of mistake or wrong presentation.
4. Final Touch:
 - ✓ Solve the past year questions from scanner.
 - ✓ Solve your May & Nov. 2010 suggested within 3 hours in exam condition & then tally with your answer.
5. In Examination hall:
 - ✓ Be on maximum alert level from beginning and see watch regularly.
 - ✓ Must attempt all questions
 - ✓ Be carefully for good handwriting, ir increase impression.
 - ✓ Always draw line with ruler.
 - ✓ Don't discuss any topic with fellow students in class room. It is wastage of time.
 - ✓ Never deposit copy before allotted time, try for corrections in language in balance time if any.
 - ✓ Never leave the exam of second & third paper even if first paper is not satisfactory, because it might be possible that question paper is really tough & evaluation will be liberal.

Yours truly
Jayendra Kumar Tiwary