



MBA 3.24 INCOME TAX LAW AND PRACTICE

**Uttar Pradesh Rajarshi Tandon
Open University, Prayagraj**

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UNIT 1: BASIC CONCEPTS

Learning Objectives

After studying this unit, you should be able to know:

- The evolution of tax system in India.
- Different types of Assessee by whom income tax or super tax or any other sum of money is payable under this Act.
- Different types and meaning of person include v/s 2(31)
- Ascertainment of previous year v/s 2(34) etc.

Structure

- 1.1 Introduction
- 1.2 Evolution of Tax system of India
- 1.3 Assessee [Section 2(7)]
- 1.4 Maximum Marginal Rate [Section 2(29c)]
- 1.5 Dividend [Section 2(22)]
- 1.6 Person [Section 2(31b)]
- 1.7 Previous year [Section 2(34) refer to section 3]
- 1.8 Concept of Tax
- 1.9 Let Us Sum Up
- 1.10 Review Questions

1.1 INTRODUCTION

Income tax is one of the direct taxes levied by the Central Government. It is considered direct as it is payable in the Assessment Year, directly by the Individual, Hindu Undivided Family, Firms and Corporate Bodies on the income earned during the previous year (Accounting /Financial Year). Therefore, any student of income tax must know the meaning of the terms income, previous year, assessment year, total income and who are the persons liable to income tax in India. In this unit we have traced the history of income tax in India and we have also defined all these terms as per the provisions of the Income Tax Act as amended up to date.

1.2 EVOLUTION OF TAX SYSTEM OF INDIA

The Mahabharata, Manusmriti, Arthasatra, and Sukranitikan can all be linked to India's tax system. To fill their rulers' treasuries, these books offer a thorough methodology. These treaties undoubtedly provide a model for taxation that covers tax rates, administration, manner of revenue collection, etc. Ancient Indian taxation was invented by individuals like Byasa, Manu, Koutilya, and Sukra.

The British India Government's financial stability was destroyed by the Sepoy Mutiny in 1857. From only 17 crores in 1856–57, the military budget climbed to 32 crores in 1858–59. The British Government established the first Income Tax Act in February, 1860, to address this severe financial

problem. The Act, designated Act No. XXXI of 1860, was approved by the Indian Legislative Council and obtained the Governor General's assent on July 24, 1860. This Act was sponsored by James Wilson, who eventually served as the first finance member of (British) India. India's first income tax went into effect.

The birth of India's tax system was attributed to the force of war. The British government experimented with several measures to fill its treasury and some of them were successful. British tax reforms were implemented to increase income rather than to advance the economy. With the adoption of the Income Tax Act of 1961, independent India drastically altered its income tax structure. The government then established various committees and implemented regular changes.

1.3 ASSESSEE [SECTION 2(7)]

Basic Concepts under Income Tax Act 1961

The section defines "assessee" as a *"person by whom income-tax or super-tax or any other sum of money is payable under this Act, and includes—*

- (a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;*
- (b) every person who is deemed to be an assessee under any provision of this Act;*
- (c) every person who is deemed to be an assessee in default under any provision of this Act;"*

The definition can be simplified and segregated as below:

(i) Ordinary Assessee/Normal Assessee

An ordinary assessee includes

- any person who is liable to pay taxes on his/her income of the current financial year or income of any prior financial years;
- Any person against whom any proceedings under the Act is going on irrespective payment of taxes;
- Any person who has filed return u/s 139(3) on losses;
- Any person against whom any penalty or interest or fees are payable under the Act;
- Any person who has claimed any refund as per the provisions of the Act.

(ii) Representative Assessee/Deemed Assessee

In some circumstances, a person is liable to pay taxes for the other person. As the person represents another person in regard to payment of taxes and will be assessed is called representative or deemed assessee. Like a guardian of a minor, financial caretaker of a lunatic, agent of a principal etc. Following are some circumstances where an assessee is treated as a representative assessee or deemed to be an assessee.

- In case of a person who dies after writing the will for the properties, the executor of the will is a deemed or representative assessee.
- In case of a person dies withing executing the will, the eldest son or other legal heirs will act as deemed or representative assesses.

- The guardian of a minor, lunatic or idiot are called deemed assesses if they are assessable for income tax.
- Similarly, an agent or any person acting on behalf of a non-resident is called deemed or representative assesses.

(iii) Assessee-in-default

An assessee-in-default is a person who failed to pay any taxes levied on him or failed to fulfil any statutory obligation as imposed by the Act. The employer is liable to deduct tax from the source of his employees and deposit it in the government treasury, if he failed to do so, he can be called as an assessee-in-default.

1.4 MAXIMUM MARGINAL RATE [SECTION 2(29C)]

Maximum Marginal Rate (MMR) is the highest rate of income tax including surcharge when applicable for individuals, AOPs or BoIs in a particular financial year as specified by the Finance Act. The MMR for an Individual assessee is presented below.

Table 1: Maximum Marginal Rates for Individual Assesses

Income Level	Surcharge and Health and Education Cess	MMR
Total Income $\leq$ ₹ 50 lakhs	Surcharge @ Nil and Health & Education Cess @ 4%	31.2%
Total Income ₹ >50 lakhs $\leq$ ₹1 crore	Surcharge @ 10% and Health & Education Cess @ 4%	34.32%
Total Income ₹ > 1 crore $\leq$ ₹2 crores	Surcharge @ 15% and Health & Education Cess @ 4%	35.88%
Total Income > 2 crores but $\leq$ ₹5 crores	Surcharge @ 25% and Health & Education Cess @ 4%	39%
Total Income > 5 crore	Surcharge @ 37% and Health & Education Cess @ 4%	42.74%

Source: Compiled

Note: 31.2% = 30%+ 4% of 30%;

34.32% = 30%+ 4% of 30% = 31.2% + 10% of 31.2%

Accordingly, 35.88%, 39% and 42.74% can also be computed.

1. Average Rate of Income Tax [Section 2 (10)]

As per Section 2(10), average rate of income-tax means “the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income”.

Average Rate Income Tax = (Total tax / Total Income) x 100

2. Average Rate of Super Tax [Section 2 (11)]

As per Section 2(10), the average rate of super-tax means “the rate arrived at by dividing the amount of super-tax calculated on the total income, by such total income”.

Average Rate of Super Tax = (Total super tax / Total Income) x 100

3. Business [Section 2(13)]

As per Section 2(13), the business can be defined as *"any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture"*.

4. Capital Asset [Section 2 (14)]

Capital assets include any kind of property held by the assessee to generate income, may or may not be connected with the business or profession. However, it does not include

- (i) Stock in trade, consumable stores, raw materials etc. held for manufacturing or selling.
- (ii) Property held for personal use like wearing apparel, jewellery, furniture etc.
- (iii) Agricultural income situated in India.

5. Charitable Purpose [Section 2(15)]

As per Section 2(15), charitable purpose includes *"relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit"*.

6. Company [Section 2(17)]

Company in general means an artificial person formed by the operation of law with a separate legal entity and perpetual succession. Section 2(17) of IT Act 1961 replicates company as

- (i) any Indian company
- (ii) any association whether Indian or not but assessable under the IT Act.

7. Co-operative Society (Section 2(19)).

As per the Section co-operative society is defined as a *"co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies"*.

1.5 DIVIDEND [SECTION 2(22)]

The meaning of dividend is summarised below.

- i. Any distribution by the company of accumulated profit whether capitalised or not when such distribution requires the release of all or a portion of assets to shareholders.
- ii. Any distribution of debentures, debenture-stock, or deposit certificates by a company to its shareholders, whether with or without interest and distribution of bonus shares to its preference shareholders, to the extent that the company has accumulated profits, whether capitalised or not;
- iii. Any distribution to the shareholders at the time of liquidation to the extent accumulated profits can be distributed whether capitalised or not prior to liquidation.
- iv. Any distribution to the shareholders by a company at the time of capital reduction whether the profit is capitalised or not.
- v. Any distribution to the shareholders in the way of advance or loan to the shareholders by the company in which the public are substantially interested.

However, dividend does not include the following distributions:

- i. Any distribution to the shareholders in the way of advance or loan to the shareholders by the company where such lending is part of the substantial operations of the company.
- ii. Any distribution to the shareholders in the way of the issue of shares in full cash consideration where such shareholder is not entitled to participate in the surplus at the time of liquidation.

- iii. Any distribution made in the name of dividend now being set off wholly or partly by the company against any sum paid earlier.

Firm, Partner and Partnership [Section 2(23)]

IT Act 1961 has referred to the Partnership Act, 1932 for the definition of “Firm”, “Partner” and “Partnership” however such Act allowed a minor as partner for the benefit of the partnership.

Income [Section 2(24)]

Income is the return or compensation of a person for the sacrifice in terms of work, services, investments, etc. It is also called revenue for business assesses which are earned by selling goods and services. Under Income Tax Act 1961, it is defined under section 2(24) as Income includes profits, gains, dividends, the value of any perquisite or profit in lieu of salary, any sum chargeable to income-tax, capital gains, etc.

1.6 PERSON [SECTION 2(31B)]

A person is not confined to an individual but a taxpayer or deemed to be a taxpayer or having any direct or indirect relationship with the government in regard to income tax. The term “Person” is broad in terms of its meaning and scope. As separate set of rules and rates are applicable to different persons for income tax purpose, determining and defining such a person become indefensible. Interestingly, the ambit of person includes both individual and non-individuals.

According to Section 2 (31) “person” includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses;

(i) Individual

An individual is a natural human being whether male or female, citizen or not. An individual is responsible to pay taxes on his or her income. Tax rates depend on the levels of income. Tax incentives, exemptions, and deductions are specified for such persons.

(ii) Hindu Undivided Family (HUF)

A HUF is a relationship between the members and the head of the family which was created by the virtue of Hindu Law. An HUF comprises of all members who are called *coparceners* and the head of the family is called the *Karta*. The coparceners include the descendants of a common ancestors and include their wives as well.

(iii) Companies

A company is an artificial and separate legal entity that is registered under Indian Companies, 2013 or any other law. Taxes are levied at a flat rate under different schemes for a corporate assessee.

(iv) Firm

A firm or partnership firm is a form of business that is created by an agreement between or among persons to carry the business and share profit. Income Tax Act 1961 treats partnership firm as a separate legal entity for the payment of tax purpose.

Under Income Tax Act, 1961, a partnership firm can be of two types which are as follows:

1. a firm that fulfils the conditions mentioned u/s 184.
2. A firm that does not fulfil the conditions prescribed u/s 184.

It is worth mentioning that a limited liability partnership (LLP) formed under the Limited Liability Partnership Act, 2008 is also treated as a firm in Income Tax Act 1961.

(v) Association of Persons (AoPs) or Body of Individuals (BoI)

AoPs or BoIs are in the nature of cooperative societies that are combined by persons to carry an enterprise jointly but cannot be connoted as a partnership firm. Members work for a common purpose other than profit and receive income jointly. Co-operative societies, MARKFED, NAFED etc. are examples of such persons.

As its name suggests firms, companies, and individuals can be a member of an AoP. But in BoI, nonindividuals cannot be its members. Only natural human beings can be its members. AoPs and BoIs are taxed as separate entities from its members.

(vi) Local Authority

Municipalities, Panchayats, Cantonment Boards, Port Trusts, etc. are entitled as local authorities.

(vii) Artificial Juridical Person

Artificial Judicial Persons are incorporated by virtue of a special Act of the legislature with a juristic personality. A University is a popular example of such kind of person. Taxes are levied on these persons at the same rates as applicable to individuals.

1.7 PREVIOUS YEAR [SECTION 2(34) REFER TO SECTION 3]

The concept of previous is quite pertinent and relevant for the assessee as it determines the scope of income and its taxability. Previous year is the financial year preceding the assessment year. The current assessment year ranges from 1st April 2023 to 31st March 2024 and the current previous has started from 1st April 2022 and ended on 31st March 2023. The income of the previous year is charged to tax in the assessment year.

It is not necessarily connoted that the previous should always consists of twelve months. In the following cases the previous years may not be having twelve months:

- i. A newly set up business could have started on any day of the previous year.
- ii. Similarly, a newly source of income, such income may be earned on any day of the previous year.

Examples

- If a business was set up on 1st December 2022, the previous year starts from 1st December and ended on 31st March consisting of only 4 months.
- Likewise, if a business discontinued from 31st January 2023, the previous year in this case ranges from 1st April 2022 to 31st January 2023 consisting of 10 months.

Exceptions to the rule of Previous Year

The rule of previous year substantiates that the income of the previous year is computed and charged to tax in the assessment year. However, in some circumstances, such rule is not applicable.

It infers that the income of the previous year is assessed to tax in the same previous year and not carried over to the assessment year for computation of tax in the following cases:

i. *Shipping business income of non-residents [Section 172]*

Non-resident shipping companies which have no representatives or agents in India when earn income by carrying passengers, goods or live stocks are not permitted to leave India without paying taxes on such income. A flat tax rate of 7.5% is levied on the amount received or levied by them.

ii. *In case of persons leaving India [Section 174]*

If the concern authorities of income tax department perceive in any manner that the assessee is leaving India with no intention to return, his/her income during the period of staying in India will be taxed in the same previous in which such income is generated.

iii. *Association of Persons, Body of Individuals or Artificial Juridical person formed or established only for a limited period [Section 174A]*

Any association of people, group of people, or artificial juridical person that has been formed or established only temporarily or for a specific purpose may be assessed in the same year if the Assessing Officer determines that it is likely to dissolve or cease operations in that year after the accomplishment of the intended purpose or event.

iv. *In case of persons who are likely to transfer their assets to avoid tax [Section-175]*

If the income tax officer has reason to believe that someone will likely sell, transfer, dispose of, or otherwise part with any of their assets in order to avoid paying any tax obligations, he may start proceedings to assess the income for the time period between the end of the previous fiscal year and the date of such proceedings.

v. *In case of discontinued business [Section-176]*

During an assessment year, a business or profession may be ceased. Depending on the circumstances, the assessing officer may decide to tax the revenue from the end of the preceding assessment year to the date of discontinuance in the current assessment year.

1.8 CONCEPT OF TAX

Tax is a compulsory levy on citizens of the country on their incomes or transactions. Tax is the major source of revenue for the government. Taxes are levied on individuals and corporations as a mandatory financial charge. According to Section 2(43) of Income Tax 1961, tax means "income-tax and super-tax chargeable under the provisions of this Act". In India, there are two types of taxes viz. Direct Tax and Indirect Tax.

Direct tax is paid directly to the government by the taxpayer. Incidence of income and levy of tax lie on the same person. In other words, tax is paid by the person who earns income, and tax liability arises only when income is earned or accrued. Income tax and corporate tax are examples of direct taxes.

On the other hand, in indirect tax, the incidence of income and arising tax liability does not lie on one person. Tax liability arises when goods or services are supplied. The supplier of goods and services pays such tax to the government. Such tax is consumption-based. In India, a dual model of Goods and Services Tax (GST) has been executed for the administration of indirect taxes.

1.9 LET US SUM UP

Income tax is a direct tax and is administered by the Government of India through the Ministry of Finance and Central Board of Direct Taxes. The student is expected to have firsthand knowledge of the Income Tax Act, 1961, Income Tax Rules, 1962, the latest Finance Act and the landmark decisions of the High Courts and Supreme Court. The term income is not exhaustively defined and the Act simply enumerates certain items which are included in the term 'income'. Similarly the term 'person' is also inclusively defined.

Assessment year is the current financial year in which income earned in the immediately preceding financial year (known as previous year) is put to tax.

However, there are certain situations when income earned in a particular financial year is put to tax in the same year and the ITO does not wait for the next financial year. Gross total income is arrived at by adding up taxable income from various heads. Out of gross total income certain deductions are allowed to arrive at Total Income which is put to tax. The assessee can adopt either cash or accrual basis of accounting. However once the method is adopted it cannot be changed without the satisfaction of the Assessing Officer.

1.10 REVIEW QUESTIONS

Q1) "The income of the previous year is taxed in the current year". Explain.

Q2) Distinguish between:

- i) Gross total income and total income.
- ii) Previous year and Assessment year.
- iii) Tax Avoidance and Tax Evasion

Q3) Are the following incomes as defined under the Income Tax Act, 1961:

- i) Pagdee realised by the landlord from tenants for letting out shops.
- ii) Prize received in a state lottery.
- iii) Stakes won in a horse race.
- iv) Tips received by a waiter in a hotel.
- v) Gift of a sum of Rs. 10,000 by a husband to his wife on her birthday.
- vi) Amount received on sale of old books.
- vii) Lump sum payment for supplying technical know-how.
- viii) Lump sum paid for waiver of royalty.
- ix) Lump sum payment in consideration of cancelling service agreement.
- x) Lump sum payment on reduction of remuneration.
- xi) Lump sum payment on termination of employment
- xii) Damages awarded by Court to company for breach of contract.
- xiii) Compensation for relinquishing the rights of a partner..
- xiv) Profit from a solitary transaction of purchase and sale of land.
- xv) Unclaimed balance distributed to partners.

(Answers)

- i) No ii) Yes iii) Yes iv) Yes v) No vi) No vii) Yes viii) Yes ix) Yes x) Yes xi) Yes
xii) Yes xiii) No xiv) Yes xv) No

UNIT 2: RESIDENTIAL STATUS AND TAX LIABILITY

Learning Objectives

After studying this unit, you should be able to :

- Identify categories of assessee on the basis of residential status,
- Determine the residential status of assessee,
- Explain different types of incomes and
- Determine the tax liability.

Structure

- 2.1 Introduction
- 2.2 Residential Status of an Individual
- 2.3 Residential Status of Hindu Undivided Family (HUF) Section 6(2)
- 2.4 Residential Status of a Company
- 2.5 Residential Status of a Firm and AOP, or BOI [Section 6(2)]
- 2.6 Residential Status of Every Other Person [Section 6(4)]
- 2.7 Incidence of Tax / Scope of Total Income [Section 5]
- 2.8 Let us sum up
- 2.9 Review Questions

2.1 INTRODUCTION

Determination of residential status is quite relevant as the tax liability solely depends on such status. According to IT Act 1961 “The tax liability of a person under the Act depends upon his residential status in the financial year in which the income accrues or arises to him or is received by him”. Residential status has no link with the domicile or citizenship. A citizen of India may not be a resident of India. Similarly, a foreign citizen may be a resident of India. Further, the concept of residential status under the IT Act 1961 is different from the concept of residential status under the Citizenship Act, FEMA, Aadhar Act, and other relevant Acts. A person may be a resident of different countries in the same financial year depending on the tax laws of the concerned country.

2.2 RESIDENTIAL STATUS OF AN INDIVIDUAL

The residential status of an Individual depends on the number of days of staying of the concerned individual within the geographical territory of the country. The physical presence of the individual is counted in terms of number of days. An individual in India enjoys three types of residential status which are as follows:

- 2.2.1 Resident
- 2.2.2 Resident and Ordinarily Resident/Not ordinarily Resident
- 2.2.3 Deemed to be a Resident
- 2.2.4 Non-resident

It is noteworthy that a particular type of income may not be equally taxable for the above three types of the status.



Fig 1: Resident and Non-resident Status of an Individual

Source: <https://incometaxindia.gov.in/>

2.2.1 Resident:

An individual is said to be a resident when he or she satisfies any one of the following two conditions.

- i. He has stayed in India for 182 days or more in the relevant previous year.
- Or
- ii. He has stayed 60 days or more in the relevant previous year and 365 days or more in four previous years preceding the relevant previous year.

The criteria for a person to be considered a resident, i.e., staying in India for 182 days or more in the relevant year, or staying for 60 days or more in the relevant year and 365 days in the four preceding years, is accurate as per the Act.

The additional provision for the financial year 2020-21, the period of 182 days in condition i above is reduced to 120 days for an individual who is a citizen of India and whose total income (except foreign sources) is less than 15 lakhs and leaves India only for employment.

2.2.2 Resident and Ordinarily Resident or Not Ordinarily Resident:

When the assessee qualifies as resident, then next step is to test whether the individual is ordinarily resident or not ordinarily resident.

The individual will be called resident and ordinarily resident only when both the following conditions are satisfied.

- i. He has been a resident of India in at least 2 out of 10 previous years immediately preceding the relevant previous year.
- And
- ii. He has stayed in India for at least 730 days in 7 previous years immediately preceding the relevant previous year.

If the individual fails to qualify any one of the above two conditions, he will be termed as a not ordinarily resident.

2.2.3 Deemed to be a Resident:

From the financial year 2020-21, if an individual who is a citizen of India, is not liable to pay taxes any other country except in India and whose total income (except foreign income) exceeds Rs 15 Lakh.

2.2.4 Non-resident:

If the individual failed to qualify as a resident, he is called as a non-resident. It implicates that the individual has stayed less than 60 days in the relevant previous year, he or she can be termed as non-resident of India.

2.3 RESIDENTIAL STATUS OF HINDU UNDIVIDED FAMILY (HUF) SECTION 6(2)

A HUF enjoys all three residential status like an Individual. A HUF can be a resident with ordinarily resident or not-ordinarily resident and non-resident.

2.3.1 Ordinary Resident [Section 6 (2) r.w. Section 6(6)(a) & (b)]

A HUF is said to be a resident when it is wholly or partially controlled from India. In other words, if the control and management of the HUF is governed from India, it is termed as a resident of India.

Control and management means the power to direct, influence and regulate the major affairs of the family.

Resident of HUF = Control and Management from India wholly or partially.

2.3.2 Ordinarily Resident

A resident HUF can be termed as an ordinarily resident if the Karta of the HUF satisfies the following two conditions.

- i. The Karta must be a resident of India in at least 2 out of 10 previous years immediately preceding the relevant previous year.
- And
- ii. The Karta must have stayed in India for at least 730 days in 7 previous years immediately preceding the relevant previous year.

Ordinary Resident of HUF = Control and Management from India wholly or partially.

+

Fulfilment both the conditions [Section 6 (2) r.w. Section 6(6)(a) & (b)]

2.3.3 Not-ordinarily Resident [Section 6 (2) r.w. Section 6(6)(a) & (b)]

The HUF can claim the not-ordinarily resident status if the Karta

- i. The Karta has not been a resident of India in at least 2 out of 10 previous years immediately preceding the relevant previous year.

And

- ii. The Karta has not stayed in India for at least 730 days in 7 previous years immediately preceding the relevant previous year.

Non-resident [Section 2(30)]

A HUF is considered as a non-resident if the control and management of affairs wholly situated outside India.

2.4 RESIDENTIAL STATUS OF A COMPANY

A company form of organisation can only be resident or non-resident. Ordinarily resident or not ordinarily resident is not applicable to it. The provisions are as follows.

2.4.1 Resident [Section 6(3)]

An Indian company is always termed as a resident. A company is said to be Indian when it is registered under the Companies Act of India or under any other such Acts. A foreign company can also enjoy the resident status if its turnover is more than ₹ 50 cr and its Place of Effective Management (POEM) is from India.

2.4.2 Non-Resident [Section 2(30)]

A foreign company having a turnover of less than ₹ 50 crores is always deduced as a non-resident. In addition, if the POEM of a foreign company is outside of India, the company only can avail of non-residential status.

The residential status of a company is summarised below.

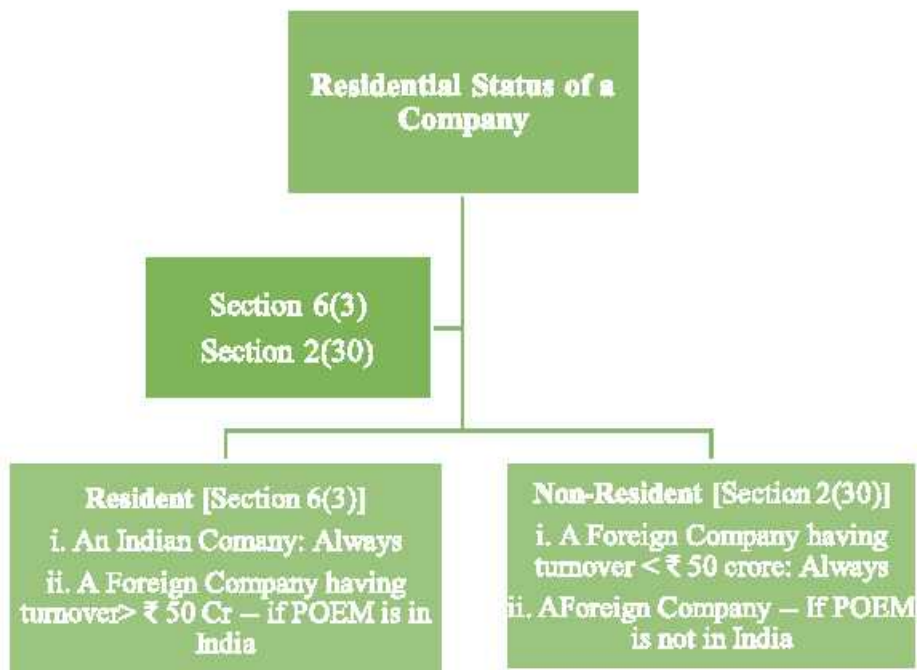


Fig 1: Residential Status of a Company

Source: Compiled

Place of Effective Management (POEM)

It is defined as a location where important management and commercial decisions that are necessary for the conduct of an entity's business as a whole are, in substance, made.

2.5 RESIDENTIAL STATUS OF A FIRM AND AOP, OR BOI [SECTION 6(2)]

A firm, an Association of Persons (AoP), and a Body of Individuals (BoI) can avail resident or Non-resident [Section 2(30)]

- i. A firm can be a resident if the control and management of affairs in India wholly or partially.
- ii. Similarly, a firm can be a non-resident if the control and management of affairs are situated outside of India.

2.6 RESIDENTIAL STATUS OF EVERY OTHER PERSON [SECTION 6(4)]

Every other person includes local authority, artificial judicial person, etc. They can claim either resident or non-resident by the following provisions.

- i. Resident: If Control and management is wholly or partially located in India, they can avail resident as their status.
- ii. Non-resident: If control and management is situated outside India, they can claim non-resident as their status.

2.7 INCIDENCE OF TAX / SCOPE OF TOTAL INCOME [SECTION 5]

Meaning of Incidence of Tax

The calculation of a person's tax liability, which is subject to the final tax assessment is known as the incidence of tax. When taxable income arises or the income level crosses the exemption limit, tax will be levied on the income of the person, and tax liability arises. Then, the assessment procedure begins for the assessee. It is the process of assessment of income computation of tax thereon. Such computation and assessment solely depend on the residential status and scope of total income. Hence, the scope of total income for resident, ordinarily resident, and not ordinarily resident is the essence of the determination of tax liability which is discussed below:

(A). Scope of total income of a Resident in India (resident and ordinarily resident in case of individual or HUF) [Section 5(1)]:

- i. any income received or deemed to have been received by or on behalf of such a person in India in the relevant previous year. The date and place of the accrual of the income is immaterial.
- ii. any income accrued or arising or being deemed to have arisen in India during the relevant previous year. The date and place of the accrual of the income is immaterial.
- iii. any income accruing or arising outside of India during the relevant previous year whether it is remitted to India or not.

(B) Scope of total income of a Resident but not Ordinarily Resident in India (In the case of individuals and HUF only) [Section 5(1) and its proviso]:

- i. any income which is received or is deemed to be received in India in the relevant previous year by or on behalf of such person. The date and place of the accrual of the income is immaterial.
- ii. any income which accrues or arises or is deemed to accrue or arise to him during the relevant previous year. The date and place of the accrual of the income is immaterial.
- iii. any income which accrues or arises to him outside India during the relevant previous year if it is derived from a business controlled in or a profession set up in India.

(C) In the case of Non-Resident [Section 5(2)]:

- i. any income which is received or is deemed to be received in India during the relevant previous year by or on behalf of such person. The date and place of the accrual of the income is immaterial.
- ii. any income which accrues or arises or is deemed to accrue or arise to him in India during the relevant previous year.

The provisions regarding the incidence of tax are replicated in the following table:

Table 1: Incidence of Income

Particulars of Income	Taxability		
	Resident and Ordinarily Resident	Not-Ordinarily Resident	Non-Resident
1. Income received or deemed to be received in India whether earned in India whether accrued in India or not.	Yes	Yes	Yes
2. Income which accrues or arises or is deemed to accrue or arise in India during the previous year, whether received in India or outside India.	Yes	Yes	Yes
3. Income that accrues or arises or earns from outside India and is received outside India from a business controlled from India or a profession set up in India..	Yes	Yes	No
4. Income which accrued or arises outside India and received outside India in the previous year from any other source. (Except Point 3)	Yes	No	No
5. Income which accrues or arises outside India and is received outside India during any previous years preceding the previous year and the same is remitted to India during the previous year.	No	No	No

Source: Compiled

Illustration 1

Calculate the income of Mr X from the following information by treating him Resident, Not Ordinarily Resident and Non-resident.

Particulars	Amount (₹)
Income from sale of a property in Singapore and received there	21000
Income from house property in Dubai	9000
Income from agricultural land in Tokyo	17000
Income from a profession in China which was set up in India	19000
Dividend income from Indian Company	7000
Income from a business in New Delhi which is managed from USA	24000

Solution

Amount in ₹

Types of Incomes	Resident	Not-ordinarily Resident	Non-resident
Income from sale of a property in Singapore and received there	21000	NIL	NIL
Income from house property in Dubai	9000	NIL	NIL
Income from agricultural land in Tokyo	17000	NIL	NIL
Income from a profession in China which was set up in India	19000	19000	
Dividend income from Indian Company	7000	7000	7000
Income from a business in New Delhi which is managed from USA	24000	24000	24000
Total Income	97000	50000	31000

Illustration 2

Mr Abakash has furnished following information for the assessment year 2023-24.

Particulars	Amount (₹)
Profit from business from America but received in India	100000
Profit from business in Kolkata	30000
Dividend from Indian Company	10000
Interest received from a non-resident	15000
Income from house property in India but received in Japan	24000
Income earned in Singapore and received there	21000
Share of profit from a partnership firm	8000

Compute his income as (a) Resident (b) Not Ordinarily Resident and (c) Non-resident

Solution

Amount in ₹

Types of Incomes	Resident	Not-ordinarily Resident	Non-resident
Profit from business from America but received in India	100000	100000	100000
Profit from business in Kolkata	30000	30000	30000
Dividend from Indian Company	10000	10000	10000
Interest received from a non-resident	15000	15000	15000
Income from house property in India but received in Japan	24000	24000	24000
Income earned in Singapore and received there	21000	NIL	NIL

Share of profit from a partnership firm	Exempted	Exempted	Exempted
Total Income	200000	179000	179000

Illustration 3

Particulars	Amount (₹)
Income from house property in Sri Lanka and received there	18000
Salary from Indian company received in UK. Out of which 1/3 is paid for rendering services in India.	90000
Profit on sale of building in Japan. Out of which 1/2 is received in India.	100000
Interest on USA Govt Bonds and received there	25000
Rental income from China and deposited there	12000

The above particulars are furnished by Mr Jojo. Compute his income by treating him (a) Resident (b) Not Ordinarily Resident (c) Non-resident

Solution

Types of Incomes	Amount in ₹		
	Resident	Not Ordinarily Resident	Non-resident
Income from house property in Sri Lanka and received there	18000	NIL	NIL
Salary of Indian company received in UK	30000	30000	30000
1/3 services rendered in India	60000	NIL	NIL
2/3 services rendered in UK			
Profit on sale of building in Japan	50000	50000	50000
1/2 received in India	50000	NIL	NIL
1/2 received in Japan			
Interest on USA Govt Bonds and received there	25000	NIL	NIL
Rental income from China and deposited there	12000	NIL	NIL
Total Income	245000	80000	80000

2.8 LET US SUM UP

On the basis of residence, the persons are divided into three categories 'namely' (a) Resident (b) Not ordinarily resident (c) Non-resident. Further the categories of persons for tax liability have been classified into four groups 'namely' (a) Individual (b) Noncompany plural entities (c) Company (d) Any other person. The rules for determining the residential status are not the same for all the groups. Different conditions are to be satisfied by the concerned assessee to be a resident in India.

An Individual and a Hindu Undivided Family can be resident, not ordinarily resident and non-resident. A firm and other association of persons, a company and any other person can never be a not ordinarily resident. They can only be either resident or nonresident.

The incidence of tax depends on the residential status of an assessee. In case of a resident except income earned and received outside India but later on remitted to India, every other income attracts tax, and the tax incidence is the highest. On the other hand, tax incidence is the lowest in the case of non-resident, as only income which is accrued or received or deemed to accrue or deemed to be received in India, is liable to tax.

Not ordinarily resident in India attracts tax on every income except on 'Income received and accrued outside India from a business controlled from outside India or a profession set up outside India' and on 'Income earned and received outside India but later on remitted to India'. The incidence of tax is relatively higher when compared with 'nonresident'.

2.9 REVIEW QUESTIONS

Q1) Explain the provisions of income tax act for an individual if he is a

a) resident b) not ordinarily resident c) non-resident

Q2) What are the different categories into which the assessee are divided on the basis of residence?

Q3) State the conditions which a Hindu Undivided Family has to fulfill in order to be called a resident in India.

Q4) Explain the scope of total income under the income-tax 1961.

Q5) What are the criteria for determining the residence of a firm and a company?

Q6) What is the basis of charge of income tax? Give the rules for determining this?

Q7) Mr. Ram, an Indian citizen, left India on 22.09.2022 for the first time to work as an officer of a company in Germany. Determine the residential status of Ram for the assessment year 2023-24.

UNIT 3: EXEMPTED INCOME UNDER SECTION 10

Learning Objectives

After studying this unit, you should be able to

- Explain what is exempted income and give reasons for the same,
- Prepare the list of exempted incomes under Section 10,

Structure

- 3.1 Introduction
- 3.2 Exempted Incomes (Tax Free Incomes)
- 3.3 Let Us Sum Up
- 3.4 Review Questions

3.1 INTRODUCTION

In the earlier lessons you have been familiarised with the important concepts that are commonly used in income tax. You have seen the impact of residential status on the scope of total income of the assessee. The nature of income also has an impact on the total income because certain incomes are exempt under the Income Tax Act. The exemption is granted with various objectives in mind. Some incomes are exempted for social reasons, others to attract foreign investment and foreign exchange earnings, still others are granted to encourage talent, braver etc. certain incomes are excluded because their inclusion would amount to taxing the same income twice. In this unit you will study the incomes which are exempted from income tax. You will also learn in detail the exempted incomes of an individual and the provisions regarding the income of charitable and religious trust and political parties.

3.2 EXEMPTED INCOMES (TAX-FREE) UNDER SECTION 10

Exemptions are allowed under Section 10 of the Income Tax Act 1961 subject to the fulfilment of some conditions. Such exemptions help the assesses to make better tax planning to reduce the tax. Some exemptions are specifically mentioned in this chapter whereas some of the exemptions are discussed in the corresponding chapter.

1. Agricultural Income [Section 10(1)]

A taxpayer's agricultural income earned in India is free from taxation according to section 10(1).

2. Amount received by a member of the HUF from the income of the HUF, or in case of the impartible estate out of the income of family estate [Section 10(2)]

According to section 10(2), any money obtained from family income or, in the event of an impartible estate, money received from family estate income is free from taxation for any member of such a HUF.

3. Share of profit received by a partner from the firm [Section 10(2A)]

According to section 10(2A), a partner's share of the firm's profits is not subject to tax in the partner's hands. Additionally, the portion of profits received by an LLP partner from the LLP

will be tax-free in that partner's hands. This exemption only applies to the partner's share of profits; it does not include interest on capital or compensation received from the firm/LLP.

4. Certain interest to non-residents [Section 10(4)]

According to section 10(4)(i), any income from interest on specified notified securities or bonds (including income from premiums on the redemption of such bonds) is free from taxation in the case of a non-resident.

According to section 10(4)(ii), an individual is free from paying taxes on any interest income earned on funds held to his credit in a non-resident (external) account at any bank in India in compliance with the Foreign Exchange Management Act, 1999, and the rules promulgated thereunder.

Only those who fall under the definition of "person resident outside India" found in section 2's clause (w) or who have been given permission by the Reserve Bank of India to keep the aforementioned Account are eligible for exemption under section 10(4)(ii).

5. Interest on notified savings certificates [Section 10(4B)]

According to section 10(4B), any income received in the form of interest on notified savings certificates issued by the Central Government prior to the first day of June 2002 and subscribed in convertible foreign currency is exempt from taxation for individuals who are Indian citizens or persons of Indian ancestry and who are non-residents.

6. Interest on Rupee Denominated bonds [(Section 10(4C)]

Any interest received or due by a non-resident or foreign firm in connection with a rupee-denominated bond (as defined in Section 194LC) issued by an Indian company or business trust between September 17, 2018, and March 31, 2019, is exempt from tax.

7. Income from transfer of GDRs, Rupee Denominated Bonds or Derivatives by Category-III AIFs [(Section 10(4D)]

In relation to income accruing, arising, or received by it that is attributable to units held by a non-resident (not being a PE in India) or to the investment division of offshore banking unit, certain funds shall be eligible to claim exemption. Following incomes are exempted in this regard:

- i. Income from the sale of a capital asset as defined in Section 47(viiab) on a recognised stock exchange housed in an international financial services centre (IFSC), where the purchase price was paid in "convertible foreign exchange";
- ii. Income from a securitization trust that is chargeable under the heading "Profits and gains from business or profession,"
- iii. Income from a securitization trust that is chargeable under the head "Income attributable to the investment division of offshore banking unit,"
- iv. Income from a transfer of securities (other than shares in a company resident in India); Income from securities issued by a non-resident (not being a PE of a non-resident in India);

8. Income of a non-resident from transfer of non-deliverable forward contracts, offshore derivative instrument, over-the-counter derivatives or income distributed on the offshore derivative instruments [Section 10(4E)]

Any income accrued or arisen to, or received by a non-resident as a result of: (a) The transfer of non-deliverable forward contracts or offshore derivative instruments or over – the counter

derivative; or (b) Distribution of income on offshore derivative instruments, entered into with an offshore banking unit of an IFSC referred to in Section 80LA(1) shall be exempt from tax.

9. Royalty income of non-resident on leasing of aircraft to an IFSC unit [Section 10(4F)]

If an IFSC unit qualifies for a deduction under section 80LA in that year and started operating on or before the 31st March 2024 as a business or profession, royalties received by a non-resident on account of leasing an aircraft or ship to that unit in a prior year are exempt from tax.

10. Income of non-resident from Portfolio Services and specified activities [Section 10(4G)]

Any income, a non-resident receives through a portfolio of assets, financial products, or funds that a portfolio manager manages or oversees on their behalf. Only if income is generated in an account held with an offshore banking unit in any international financial services centre will qualify for this exemption. The CBDT may also give notice of a specific activity carried out by a specific individual that will qualify for the exemption under section 10(4G).

11. Remuneration received by specified diplomats and their staff [Section 10(6)(ii)]

In accordance with section 10(6)(ii), compensation earned by a person who is not an Indian citizen while serving as an official (by whatever title named) of an embassy, high Commission, legation, Commission, consulate, or trade representative of a foreign State, or as a member of the staff of any of these institutions,

If a comparable Indian official in the foreign country receives a tax exemption, that official is exempt from paying taxes.

12. Salary of a foreign employee and non-resident member of crew [Section 10(6)(vi), (viii)]

According to section 10(6)(vi), remuneration received by a foreign national while working for a foreign enterprise is exempt from tax as long as the following criteria are met: (a) the foreign enterprise is not involved in any trade or business in India; (b) his stay in India does not exceed 90 days in total during that year; and (c) such remuneration is not liable to be deducted from the income tax.

13. Tax paid on behalf of foreign company deriving income by way of royalty or fees for technical services [Section 10(6A)]

If a foreign company receives royalties or fees for technical services in accordance with an agreement made after March 31, 1976, but before June 1, 2002, tax paid by the Central Government, a State Government, or an Indian concern on behalf of the foreign company will be exempt from tax in the hands of the foreign company provided the agreement is in line with the industrial policy of the Indian Government or it is approved by the Central Government.

14. Tax paid on behalf of foreign company or non-resident in respect of other income [Section 10(6B)]

If any income (other than salaries, royalties, or fees for technical services) is received in accordance with an agreement entered into before June 1, 2002 by the Central Government with the Government of a foreign State, or, any tax paid by Central Government, State

Government, or an Indian concern on behalf of a foreign company or non-resident in respect of such income will be exempt from tax in the hands of such foreign company or non-resident.

15. Tax paid on behalf of foreign Government or foreign enterprise deriving income by way of lease of aircraft or aircraft engine [Section 10(6BB)]

If the lease rental is received under a contract that is approved by the Central Government and entered into during the period from 31-3-1997 to 1-4-1999, or after 31-3-2007, then the foreign government or foreign enterprise receiving the benefit of the lease rental will not be subject to taxation in the hands of that foreign government or foreign enterprise.

16. Technical fees received by a notified foreign company [Section 10(6C)]

According to Section 10(6C), a notified foreign company is exempt from tax on income derived from royalties or fees for technical services received in accordance with an agreement entered into with that Government for the provision of services inside or outside of India in projects related to the security of India.

17. Allowance/perquisites to Government employee outside India [Section 10(7)]

Any allowances or perquisites granted or permitted as such outside India by the Government to an Indian citizen doing service outside India are exempt from tax, according to section 10(7).

18. Income of foreign Government employee under co-operative technical assistance programme [Section 10(8)]

According to Section 10(8), any compensation that a person receives directly or indirectly from a foreign government in connection with a project or programme that is part of a cooperative technical assistance agreement between the Central Government and the foreign government in question is exempt from taxation. Additionally, if a person is compelled to pay income tax or social security tax to a foreign government, they are excluded from paying taxes on any additional income they may have that is earned or derived outside of India and is not considered to be earned or derived in India.

19. Income of a family member of an employee serving under co-operative technical assistance programme [Section 10(9)]

According to section 10(9), the income of any family member of any such individual as is described in sections 10(8), (8A), or (8B) accompanying him to India, which accrues or arises outside India and is not deemed to accrue or arise in India, and in relation to which such member is required to pay any income or social security tax to the Government of that foreign State or country of origin of such member, as the case may be, is exempt from tax.

20. Compensation for Bhopal Gas Leak Disaster [Section 10(10BB)]

The victims of the Bhopal gas leak catastrophe are not required to pay taxes on the compensation they receive [under the Bhopal Gas Leak catastrophe (Processing of Claims) Act, 1985]. However, money received in exchange for expenses that can be deducted from taxable income is not exempt.

21. Compensation on account of any disaster [Section 10(10BC)]

An individual or his legal successors are not required to pay taxes on any compensation they get from the federal, state, or local governments or a local authority due to a disaster.

To the extent that such a person or his legal heirs have already been granted a deduction under the Act for loss or damage incurred as a result of such disaster, however, no deduction is available in relation to the amount received or due. Disaster in this context refers to any event that results in a significant loss of life, damage to property, or degradation of the environment and whose scope exceeds the capacity of the affected community to cope with it. It can be caused by natural disasters, human-made disasters, accidents, or human error.

22. Tax on perquisites paid by the employer [Section 10(10CC)]

The term "perquisites to employees" refers to any facility provided by the employer to the employees; there are two types of perquisites, namely, monetary and non-monetary. The value of a perquisite is subject to tax in the hands of the employees, but the employer may, at his discretion, pay tax (on behalf of employees) on such perquisites. In such a case, the amount of tax paid by the employer on behalf of the employees will be considered income of the employees

23. Payment from account opened in accordance with the Sukanya Samriddhi Account Rules, 2014 [Section 10(11A)]

Any payment made under the Government Savings Bank Act of 1873 from an account formed in line with the Sukanya Samriddhi Account Rules, 2014 is exempt from tax under section 10(11A). In other words, under section 10(11A), interest and withdrawals from such an account will not be subject to taxation.

24. Payment from the National Pension System Trust to an employee [Section 10(12A)]

Any payment made by the National Pension System Trust to an assessee in connection with the closure of an account or his decision to leave the pension plan covered by section 80CCD is exempt from taxes insofar as it does not exceed 40% of the total amount due to him at the time of closure or his decision to leave the plan.

With effect from April 01, 2020, 60 % of the amount payable shall be exempt from tax.

25. Partial withdrawal from NPS [Section 10(12B)]

To offer help to a worker who is taking a partial withdrawal from the National Pension System (NPS) Trust. With effect from assessment year 2018–19, a new clause (12B) is added to section 10 to state that the withdrawal from NPS will not be subject to tax if the following criteria are met: 1. The withdrawal amount cannot be more than 25% of an employee's total NPS contributions.

2. Partial withdrawals must be conducted in accordance with the requirements outlined in the Pension Fund Regulatory and Development Authority Act, 2013, and any regulations adopted in compliance with that act.

26. Lease rent of an aircraft [Section 10(15A)]

If the payment is made in accordance with an agreement (approved by the Central Government) made before April 1, 1997 or after March 31, 1999 but before April 1, 2007, then the lease rent of an aircraft or an aircraft engine paid to a foreign government or to a foreign enterprise by an Indian company engaged in the business of operating aircraft is not taxable in the hands of such foreign government or non-resident concern. This agreement is not exempt under section 10(15A) if it was signed between April 1, 1997, and March 31, 1999, or after March 31, 2007. However, if the payer is responsible for paying the tax associated with such payments, the tax is excluded in this situation.

27. Educational scholarship [Section 10(16)]

Any money obtained as a scholarship for education (i.e., a scholarship to cover the expense of education) free from tax in the recipient's possession).

28. Daily allowance to a Member of Parliament [Section 10(17)]

The following benefits are free from taxes in the hands of members of the state legislature and of parliament:

- Daily allowance received by members of the state legislature or of parliament, or by members of any committee thereof.
- Any other payment obtained by a Member of Parliament under the Members of Parliament (Constituency payment) Rules, 1986.
- Any Constituency allowance received by a Member of State Legislature.

29. Awards [Section 10(17A)]

Cash or in-kind payments made in accordance with the following are tax-exempt: any prize created in the public interest by the federal government, a state government, or another organisation with the central government's blessing.

Finance Act of 2023 amendments apply.

Any reward by the Central Government or any State Government for a cause that may be approved in this regard by the Central Government in the interest of the public.

30. Pension to gallantry award winner [Section 10(18)]

Pension payments made to someone who worked for the federal government or a state government and who received the Param Vir Chakra, Maha Vir Chakra, Vir Chakra, or any other recognised gallantry medal are tax-exempt.

Any member of such an individual who receives family pension is also excluded.

31. Family pension received by the family members of armed forces [Section 10(19)]

From the assessment year 2005–2006, family pension received by the widow, children, or designated heirs of a member of the Union's armed forces (including paramilitary forces) is exempt from tax in their possession if the death of the member of the armed forces occurred during the performance of operational duty under prescribed circumstances and subject to prescribed conditions (see rule 2BBA for a list of the prescribed circumstances and conditions).

32. Annual value of one palace [Section 10(19A)]

Section 10(19A) exempts any one palace that was occupied by a former tsar from taxation.

33. Income of a news agency [Section 10(22B)]

A local government may not charge taxes on the following income:

Income from a trade or business carried out by it that accrues or arises from the supply of a good or service (other than water or electricity) within its own jurisdictional area, or b) Income from business of supply of water or electricity within or outside its own jurisdictional area. Income that is chargeable under the head "Income from house property," "Capital gains," or "Income from other sources."

34. Income of research association [Section 10(21)]

Any income earned by a notified news organisation established in India with the sole purpose of gathering and disseminating news is exempt from taxation, provided that the

organisation uses or accumulates its income exclusively for gathering and disseminating news and does not distribute it in any way to its members.

However, as of now, there will be no exceptions. Assessment Year 2024-25

35. Income of a professional association [Section 10(23A)]

If the following criteria are met, any income of a professional institution or association is exempt from taxation (apart from revenue from real estate and income from performing any specialised service or income by way of interest or dividend on investments).

1) In India, a professional institution has been created with the goal of regulating, promoting, or directing the practise of law, medicine, accounting, engineering, or any other notified profession.

2) The institution uses its income exclusively for the purposes for which it was founded, or accumulates it for those purposes.

3) The Central Government has given the institution its general or specific approval.

36. Income received on behalf of Regimental Fund [Section 10(23AA)]

Any income that a person receives on behalf of a Regimental Fund or Non-Public Fund that the Union's military forces created for the benefit of former and current members of those forces or their dependents is free from taxes.

37. Income of a fund established for welfare of employees [Section 10(23AAA)]

Any income received on behalf of a fund established for the welfare of employees or their dependents and of which those employees are members is exempt from tax if the fund applies or accumulates its income for exclusive application towards its objects, invests its funds in the ways specified in section 11(5), and the fund is approved by the Principal Commissioner.

38. Income of pension fund [Section 10(23AAB)]

Any income earned by a fund established by the Life Insurance Corporation of India on or after August 1, 1996, or by another insurer to which a contribution is made by a person in exchange for receiving a pension from such a fund, and which has been approved by the Controller of Insurance or the Insurance Regulatory and Development Authority, is exempt from tax.

39. Income from Khadi or village industry [Section 10(23B)]

If the following criteria are met, income of an organisation founded as a public charitable trust or society that is created for the development of khadi and village industries (not for profit purpose) is exempt from tax:

1) Khadi or other items from village industries are produced, sold, or marketed in order to generate income.

2) Institution uses its money, or saves it up for use, exclusively for the growth of the khadi or village industries, or both.

3) The Khadi and Village Industries Commission has given the institution its approval.

40. Income of European Economic Community [Section 10(23BBB)]

Any income from investments made with its funds under a notified programme that the European Economic Community receives in India in the form of interest, dividends, or capital gains is tax-exempt.

3.3 LET US SUM UP

Exempted income is that income on which income tax is not chargeable. There are

- Agricultural income is exempt under section 10(1).
- Since the HUF is taxed in respect of its income, the share income is exempt from tax in the hands of the member. u/s 10(2)
- The partner's share in the total income of the firm or LLP is exempt from tax. 10(2A)
- Income by way of interest on moneys standing to his credit in a Non-resident (External) Account (NRE A/c), is exempt in the hands of an individual, being a person resident outside India as per the FEMA, 1999 or in the hands of an individual who has been permitted by the RBI to maintain such account 10(4)
- Remuneration received by an individual, who is not a citizen of India, as an official of an embassy, high commission, legation, consulate or the trade representation of a foreign State or as a member of the staff of any of these officials would be exempt 10 (6)
- Income arising to non-corporate non-resident and foreign companies, by way of royalty from or fees from technical services rendered in or outside India to, the National Technical Research Organisation (NTRO) is exempt 10(6D)
- Payment to Bhopal Gas Victims is exempt. 10(10BB) Compensation received or receivable from the Central Government, State Government or local authority by an individual or his legal heir on account of any disaster is exempt except to the extent of loss or damage allowed as deduction under the Act. 10(10BC)
- Any payment from Sukanya Samriddhi Account 10(11A) The value of scholarship granted to meet the cost of education would be exempt from tax in the hands of the recipient irrespective of the amount or source of scholarship. 10(16)
- Daily allowance received by any Member of Parliament or of State Legislatures or any Committee thereof are exempt. 10(17)
- Awards for literary, scientific and artistic works and other awards by the Government are exempted. u/s 10(17A)
- Pension received by individual who has been in service of Central or State Government and has awarded "ParamVir Chakra" or "MahaVir Chakra" or "Vir Chakra" such other gallantry award as the Central Government notifies is exempt from tax. 10(18)
- Income from any source in the specified areas or States in which member of a Scheduled Tribe is residing or income by way of dividend or interest on securities is exempt in the hands of member of the Scheduled Tribe. 10(26)
- Income from any source in the state of Sikkim, dividend income and interest on securities is exempt in the hands of a Sikkimese individual. This exemption is not available to a Sikkimese woman who, on or after 1st April, 2008, marries a non-Sikkimese individual. 10(26AAA)
- The amount of any subsidy received by any assessee engaged in the business of growing and manufacturing tea in India through or from the Tea Board will be wholly exempt from tax. 10(30)

- The amount of any subsidy received by an assessee engaged in the business of growing and manufacturing rubber, coffee, cardamom or other specified commodity in India from or through the Rubber Board, Coffee Board, Spices Board or any other will be exempt. 10(31)
- Any income received in respect of units from the Administrator of the specified undertaking/ specified company/ Mutual Fund shall be exempt. However, income arising from transfer of such units would not be exempt. 10 (35)

3.4 REVIEW QUESTIONS

Q1: Explain the following briefly

- a) Provisions of Sec. 10 (2)
- b) Exempted incomes in the hands of non-residents.

Q2: Discuss the provisions of Income Tax Act dealing with the exemption of income of compensation received from central /state government.

Q3: Explain the provisions of Income Tax Act applicable to amount received from HUF.

Q4: What do you mean by exempted income? List the incomes which don not form a part of total income.

UNIT 4: AGRICULTURAL INCOME

Learning Objectives

After studying this unit, you should be able to know:

- The meaning agricultural income,
- The ways agricultural income may arise and
- Taxability of Agricultural Income

Structure

- 4.1 Introduction
- 4.2 Definition of Agricultural Income
- 4.3 Examples of Agricultural Incomes
- 4.4 Segmentation in Certain Operations Under Rule 7,7a,7b and 8
- 4.5 Assessment of Agricultural Income (Integration Scheme)
- 4.6 Let Us Sum Up
- 4.7 Review Questions

4.1 INTRODUCTION

Agricultural income is not taxed under the Income Tax Act, 1961 because agriculture being a State subject, it is the State Government alone which is competent to tax income there from. The exemption to this income is provided under Section 10 (1) of the Act. Since it is not taxed, the definition thereof has assumed significance. The assessee would naturally be interested in classifying his income as agricultural, incomes how so ever distantly it might have been related to agriculture. On the other hand, the tax authorities would like to interpret the term conservatively and thus there is a possibility of some dispute between the parties as regards the meaning of the term. The Income Tax Act, 1961, has defined the term 'agricultural income' under Section 2(1A) exhaustively.

Agriculture income is the entire income derived from sources such as land farming, commercial production from horticultural land, and structures on designated agricultural property.

4.2 DEFINITION OF AGRICULTURAL INCOME

As per section 2(1A) of the Income Tax Act 1961, **agricultural income is replicated as:**

- i. Any rent or income from land located in India that is used for agricultural purposes.
- ii. Any income generated from agricultural activities on the land, such as the selling of agricultural products or processing them to make them marketable.
- iii. Any revenue related to a farmhouse, provided the requirements outlined in section 2(1A) are met.
- iv. Any money earned from saplings or seedlings raised in nurseries is regarded as agricultural income.

Agricultural income in India is exempted from tax under section 10(1).

4.3 EXAMPLES OF AGRICULTURAL INCOMES

Table 1: Examples of Agricultural Incomes and Non-Agricultural Incomes

Agricultural Income	Non-Agricultural Income
- Income from the sale of seeds. - Income from the sale of replanted trees. - Interest on capital received by a partner from a firm engaged in agricultural operations. - Income from growing flowers and creepers. - Rent received for agricultural land.	- Income from poultry farming - Income from agricultural income held for stock in trade - Any dividend paid from an organisation's agricultural income - Income from dairy farming - Income from bee hiving - Income from cutting and selling timber trees - Income from butter and cheese making - Income from shooting of TV serial in the farmhouse.

Source: <https://cleartax.in/s/agricultural-income>

4.4 SEGMENTATION IN CERTAIN OPERATIONS UNDER RULE 7,7A,7B AND 8

In certain industries, both agricultural and non-agricultural operations are carried out. In such industries, agricultural output is used as industrial input or raw material. Like in sugar manufacturing industry, sugar cane is used as raw material which is an agricultural output. Thus, separation becomes essential for the levy of tax on non-agricultural income and exempts the agricultural income.

The Act specifies the share of Agricultural Income from Non-Agricultural Income from composite income in regard to the growing and manufacturing of Tea, Rubber, and Coffee. Splitting up of such incomes from the composite income is specified under rules 7, 7A, 7B, and 8.

3.1 Rule 7: General Rule (Applicable to all cases except Tea, Coffee, and, Rubber)

$$\text{Non-agricultural Income} = \text{Sale proceeds of industrial products} - \text{Market Value of agricultural produce used as raw material} - \text{Industrial expenses}$$

$$\text{Agricultural Income} = \text{Market Value of Agricultural Produce} - \text{Cost of cultivation used as raw material.}$$

3.2 Rule 7A: Growing and Manufacturing of Rubber in India

$$\text{Composite Income/Total Income} = \text{Sale proceeds of Rubber (Industrial products)} - \text{Cost of Cultivation (Agricultural expenses)} - \text{Industrial expenses}$$

Out of the composite income, Agricultural Income = 65% of the composite income

Non-agricultural Income = 35% of the composite income

Such non-agricultural income is charged to tax under the head "Profit and Gains of Business and Profession."

3.3 Rule 7A: Growing and Manufacturing of Coffee in India

$$\begin{array}{rclclcl} \text{Composite} & & \text{Sale proceeds of} & & \text{Cost of Cultivation} & & \\ \text{Income/Total} & = & \text{Coffee (Industrial} & - & \text{(Agricultural} & - & \text{Industrial} \\ \text{Income} & & \text{products)} & & \text{expenses)} & & \text{expenses} \end{array}$$

The above total income is segmented in the following manner.

Case 1: Rule 7B(I): If Coffee is grown by the seller

Out of the composite income, Agricultural Income = 75% of the composite income

Non-agricultural Income = 25% of the composite income

Case 2: Rule 7B(IA): If Coffee is grown, cured, roasted, and grinded by the seller with or without mixing or other flavoring ingredients.

Out of the composite income, Agricultural Income = 60% of the composite income

Non-agricultural Income = 40% of the composite income

The 25% of the composite income in case 1 and 40% of the composite income in case 2 are levied to tax under the head "Profit and Gains of Business and Profession."

3.4 Growing and Manufacturing of Tea in India.

$$\begin{array}{rclclcl} \text{Composite} & & \text{Sale proceeds of Tea} & & \text{Cost of Cultivation} & & \\ \text{Income/Total} & = & \text{(Industrial products)} & - & \text{(Agricultural} & - & \text{Industrial} \\ \text{Income} & & & & \text{expenses)} & & \text{expenses} \end{array}$$

Out of the composite income, Agricultural Income = 60% of the composite income

Non-agricultural Income = 40% of the composite income

The 40% of the composite income is levied to tax under the head "Profit and Gains of Business and Profession."

Table 2: Share of agricultural and non-agricultural Income in certain operations

Operation	Rules	Agricultural Income	Non-agricultural Income
Growing and Manufacturing Tea	8	60%	40%
Manufacturing Rubber	7A	65%	35%
Growing and curing Coffee	7B(I)	75%	25%
Coffee grown, cured, roasted, and grounded with or without mixing chicory or other	7B(IA)	60%	40%

Source: Compiled

Illustration 1

Mention whether the following incomes are agricultural income or non-agricultural income.

1. Sale of standing crops by a cultivator.
2. Interest on capital of a partner engaged in agricultural activities.
3. Income from sale of wild grass.
4. Income from fisheries.
5. Income from growing flowers.
6. Royalty income from mines or brick making.
7. Interest received by a money lender by way of agricultural produce.
8. Remuneration received for managing a business related to agricultural activities.
9. Interests on arrears of rent of agricultural land.
10. Income from the sale of fruits of trees spontaneously grown.

Solution

1. Agricultural Income
2. Agricultural Income
3. Non-agricultural Income
4. Non-agricultural Income
5. Agricultural Income
6. Non-agricultural Income
7. Non-agricultural Income
8. Non-agricultural Income
9. Non-agricultural Income
10. Agricultural Income

4.5 ASSESSMENT OF AGRICULTURAL INCOME (INTEGRATION SCHEME)

An integration scheme for the assessment of the agricultural income was proposed in the assessment year 1974-75 when the assessee has both agricultural and non-agricultural income.

Table 3: Application and non-application of Integration Scheme

Application of the Integration Scheme	Non-Application of the Integration Scheme
1. The scheme is applicable to (i) Individuals, (ii) Hindu Undivided Families, (iii) Associations of Persons, (iv) Bodies of Individuals, and (v) Artificial Judicial Persons. 2. Integration is allowed when the non-agricultural income of the eligible persons exceeds the exemption limit of ₹ 2,50,000, ₹ 3,00,000 or ₹ 5,00,000 lakh in the case may be.	1. The scheme is not applicable to (i) firms, (ii) Companies (iii) Cooperative societies, and (iv) local authorities. 2. Such a scheme is not allowed if the non-agricultural income of the persons does not exceed the exemption limit of ₹ 2,50,000, ₹ 3,00,000 or ₹ 5,00,000 lakh in the case may be. 3. No integration is allowed when the net agricultural income of the persons does not exceed ₹ 5000.

3. Integration is allowed only when the net agricultural income of the persons exceeds ₹ 5000.

Source: Complied

Such an integration process is undertaken in the following steps.

Table 4: Process of Integration

Steps	Particulars
Step 1	Calculating an income by adding of Net Agricultural income with Non-agricultural Income by verifying the applicability of the scheme
Step 2	Calculation of Tax on the above income as per the current rates
Step 3	Calculating an income by adding the Net Agricultural Income with the exempted limit i.e., ₹ 2,50,000, ₹ 3,00,000, or ₹ 5,00,000 lakh in the case may be
Step 4	Calculation of Tax on the above income as per the current rates
Step 5	The tax calculated in Step 4 is deducted from the tax calculated in Step 2
Step 6	Less: Rebate u/s 87
Step 7	Add: Surcharge on the tax as per the rates
Step 8	Add: Health and Education cess @4% on tax and surcharge
Step 9	The total tax payable is arrived.
Step 10	Such tax can be rounded off to the nearest multiple of ten

Source: Complied

Illustration 2

Mr. Xen furnished the following information:

Agricultural Income	₹ 50,000
Non-agricultural Income	₹ 5,00,000

Calculate the tax liability of Mr. X for the assessment year 2023-24.

Solution

1. Addition of Agricultural Income with Non-agricultural Income	(50,000 + 5,00,000)	5,50,000	
2. Tax on 5,50,000	Up to 2,50,000	Nil	
	2, 50,000 to 5,00,000 @ 5%	12,500	
	On balance 50,000 @ 20%	<u>10,000</u>	22,500
3. Addition of Net Agricultural Income with Exempted Limit	(50,000 + 2,50,000)	3,00,000	
4. Tax on 3,00,000	Up to 2,50,000	Nil	2,500
	On balance 50,000 @ 5%	2500	

5. Deduct tax at step 4 from tax at step 2	22,500 - 2500	22,250
6. Less: Rebate	12500	<u>12500</u>
		9750
7. Add: Cess	NA	NIL
8. Add: Health and Education Cess	9750 @ 4%	390
9. Tax Payable		<u>10,140</u>

4.6 LET US SUM UP

Agricultural income exempt from tax, it is necessary to comprehend the meaning correctly. Section 2(1) of the Income Tax Act defines it as any rent or revenue derived from land which is situated in India and which is being used For agricultural purposes, Income from house property situated on or in the immediate vicinity of agricultural land is also treated as agricultural income provided the house is being used by the agriculturist as outhouse, or for storing of agricultural produce, agricultural implements or cattle etc. It is exempted from tax u/s 10 (1) of the Income Tax Act because agriculture being a State subject, Central Government cannot impose tax on income. derived there from. Income from manufacture of sugar will be partly agricultural in nature if the sugar mill grows sugarcane on its own farms. similarly income from sale of tea will also be partly agricultural in nature where the tea company grows its own tea. Rules 7 and 8 of the Income Tax Rules describe the method of determination of exempted and taxable portions of such incomes.

4.7 REVIEW QUESTIONS

Q1: Define agricultural income and give examples.

Q2: Distinguish between agricultural income and partly agricultural income with examples.

Q3: What do you mean by tax liability of agricultural income? Write the steps to calculate tax on agricultural income.

Q4: What are the incomes which are connected with land but not agricultural income?



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MBA 3.24 INCOME TAX LAW AND PRACTICE

Brief Contents

Block No.	Block	Unit No.	Unit	
2	Heads of Income	5	Income from Salary	41
		6	Income from House Property	58
		7	Profits and Gains of Business and Profession	65
		8	Capital Gains and Income from Other Sources	92

Bird's Eye View: Chargeability of Various Heads of Income			
Income Head	Chapter under Income Tax Act	Sections	Charging Section
1. Income from Salary	IV-A	15-17	15
2. Income from House Property	IV-C	22-27	22
3. Profit & Gains from Business & Profession	IV-D	28-44D	28
4. Capital Gain	IV-E	45-55A	45 & 46(2)
5. Income from Other Sources	IV-F	56-59	56

UNIT 5: INCOME FROM SALARY

Learning Objectives

After studying this unit, you should be able to know:

- Understand the meaning and scope of income from salary.
- Taxability of various allowances and perquisites.
- Taxability of various retirement benefits
- Deduction under the head of Salary
- Calculation procedure of Taxable Salary.

Structure

- 5.1 Introduction
- 5.2 Meaning
- 5.3 Section 15: Charging Section
- 5.4 Rebate U/S 89 For Arrears of Salary
- 5.5 Rule 9D: Calculation of taxable interest relating to contribution in a SPF or RPF exceeding the specified limit
- 5.6 Taxability of Employee Stock Option Plans (ESOPs)
- 5.7 Let Us Sum Up
- 5.8 Review Questions

5.1 INTRODUCTION

A person has to pay tax on the income earned by him in the previous year on the basis of his residential status. 'Income from Salary' is one of the main heads of income. In this unit you will learn the definition of the term salary and the items included in the salary income. You will also learn the calculation of the items to be included in salary for tax purposes. Any remuneration paid by an employer to an employee for the services rendered by him is called salary. Salary for income tax purposes not only includes the cash received. It also includes the value of facilities and benefits provided to the employee: The incomes taxable under the head salaries include.

- 1) any salary due from an employer, or former employer in the previous year, whether paid or not
- 2) any salary paid or allowed to an employee in the previous year by or on behalf of an employer though not due or before it becomes due to him.

5.2 MEANING

As per Section 15, Salary consists of the following:

- a) Normal salary: any salary due from an employer or former employer to an assessee in the previous year, whether actually paid or not.*
- b) Advance Salary any salary paid to him in the previous year by an employer or a former employer though not due or before it became due to him.*
- c) Arrears of Salary any arrears of salary paid to him by employer or former employer, if not charged to income tax for any earlier previous year.*

5.3 SECTION 15- CHARGING SECTION: BASIS OF CHARGE

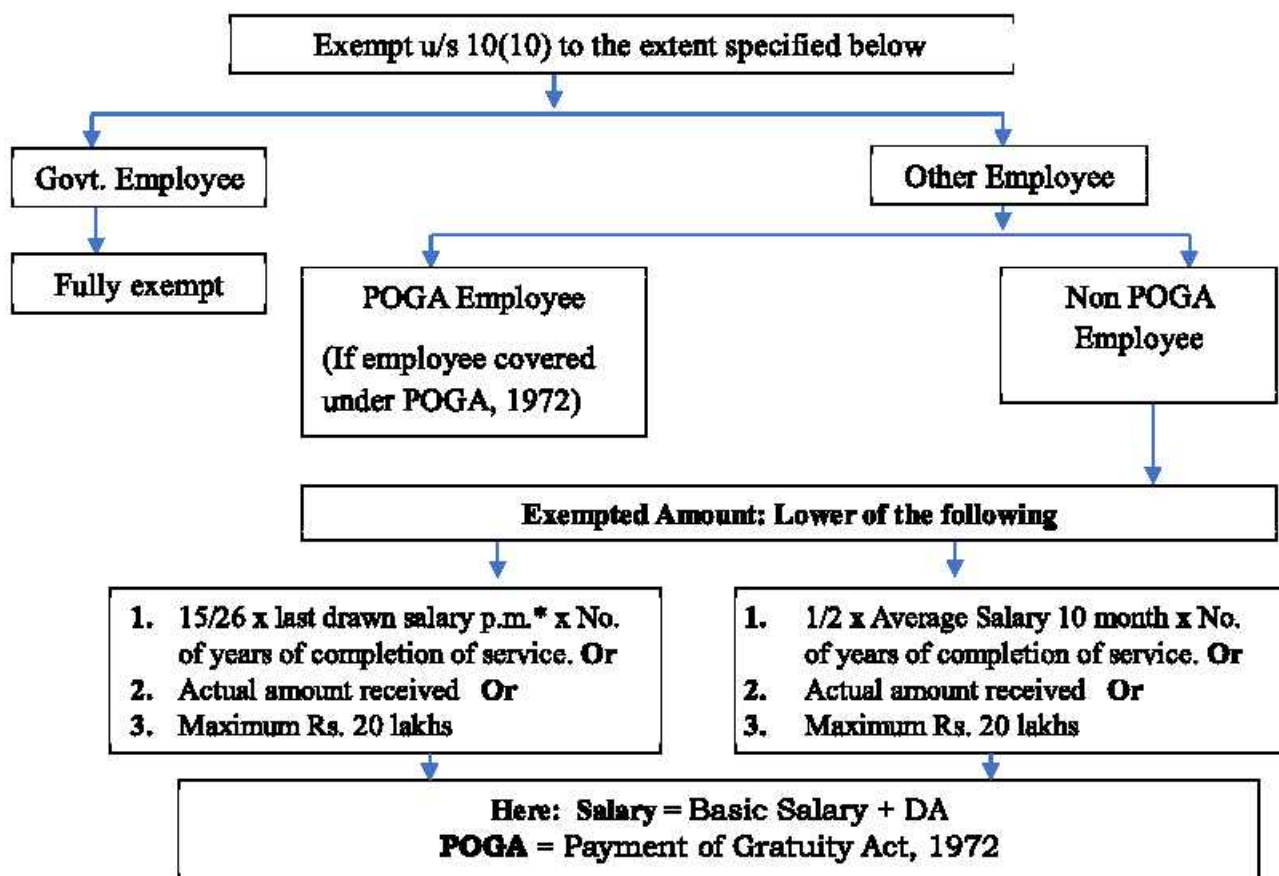
- Income is taxable under the head salary if there is employee – employer relationship. (master – servant relation).
- Salary is taxable even in case of part time job like employee work with 2 employer's simultaneously.
- Salary is taxable on the basis of due or received whichever is earlier.
- Salary received by partner from partnership firm shall be taxable under the head “profit & gains from business and profession”.
- Salary received by MP, MLA, MLC shall be taxable under the head “Income from Other Sources”.
- Salary forgone is always taxable since it is merely application of income. Salary surrendered to central government, shall not be treated as salary.
- Salary earned in India, even if it is paid outside of India, is deemed to accrue or arise in India.
- Any amount received before joining employment or after cessation of employment with that person is treated as “Profit in Lieu” of salary & it is taxable.

5.3.1 STATEMENT OF SALARY

Statement of salary:

Particulars	₹
Basic salary (Note - 1)	XXX
Dearness Allowances (D.A.) (Note – 2)	XXX
Commission (Note - 3)	XXX
Bonus (Note - 4)	XXX
Advance salary / Arrears salary (Note - 5)	XXX
Gratuity (Note - 6)	XXX
Pension (Note - 7)	XXX
Leave salary (Note - 8)	XXX
Allowances (Note – 9)	XXX
Provident fund (Note - 10)	XXX
Voluntary Retirement Compensation (VRS) (Note - 11)	XXX
Super Annuation Fund (Note - 12)	XXX
Retrenchment Compensation (Note - 13)	XXX
Perquisite (Note - 14)	XXX
Gross salary	XXX
Less: Deductions u/s 16	XXX
1. Professional Tax (Note - 15)	XXX
2. Entertainment Allowances (Note - 16)	XXX
3. Standard Deductions (Note - 17)	XXX
Net salary	XXX

- **Note – 1: Basic Salary**
 - It is fully taxable.
- **Note – 2: Dearness Allowances (D.A.)**
 - Dearness Allowance (D.A.) is fully taxable whether it is 'in terms' or 'not in terms'.
 - 'D.A. in terms' means D.A. which is forming part of retirement benefit calculation. In all the formula, D.A. is considered only if it is 'in terms' If nothing is given about D.A., then assume it is 'not in terms.'
- **Note – 3: Fees or Commission**
 - Fees, perquisites, and profit in lieu of salary or wages are fully taxable.
 - Commission is fully taxable whether it is Turnover Commission or any other commission.
- **Note – 4: Bonus**
 - It is taxable on a receipt basis.
- **Note – 5: Advance salary / Arrears salary**
 - Advance salary: Advance salary is taxable on receipt basis. If advance against salary is given or only advance is given then it should be ignored because it is treated as loan.
 - Arrears salary: It means salary under dispute or increase of salary retrospectively. It is taxable in the year in which it is received.
- **Note – 6: Gratuity**
 - Gratuity received during the employment – Fully taxable for all employees (Government as well as Non-Government employees).
 - Gratuity received at the time of retirement – Please refer the table below:



Salary Per Month*

Latest basic salary per month	xx
Add: Latest D.A. (both)	xx
	xx

Average salary per month**

Average basic salary of last 10 months	xx
Add: Average D.A. of last 10 months	xx
Average turnover commission of last 10 months	xx
	xx

Gratuity Fully Exempted:

- Any death cum retirement gratuity to employees of central govt./Member of civil service/local authority employee.
- Retirement gratuity received under pension code or regulation applicable to members of defense service.

- Note – 7: Annuity or Pension**

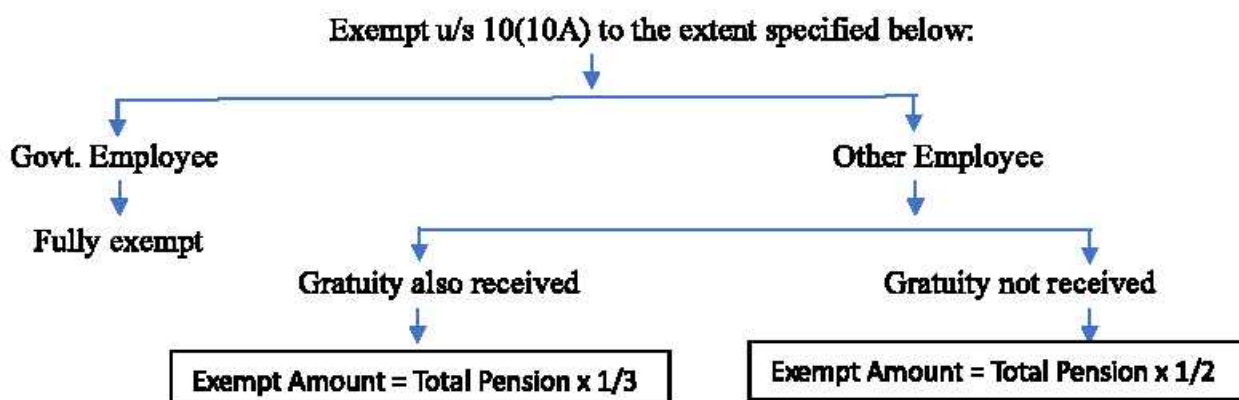
Annuity:

- Annuity received by a present employer is to be taxed as salary.
- Annuity received from a past employer is taxable as profit in lieu of salary.
- Annuity received from a person other than an employer is taxable as “income from other sources.”

Pension:

Uncommuted pension (monthly pension) – Taxable for All employees

Commuted pension (lump sum pension) – Please refer table below:



Total pension = Full value of pension

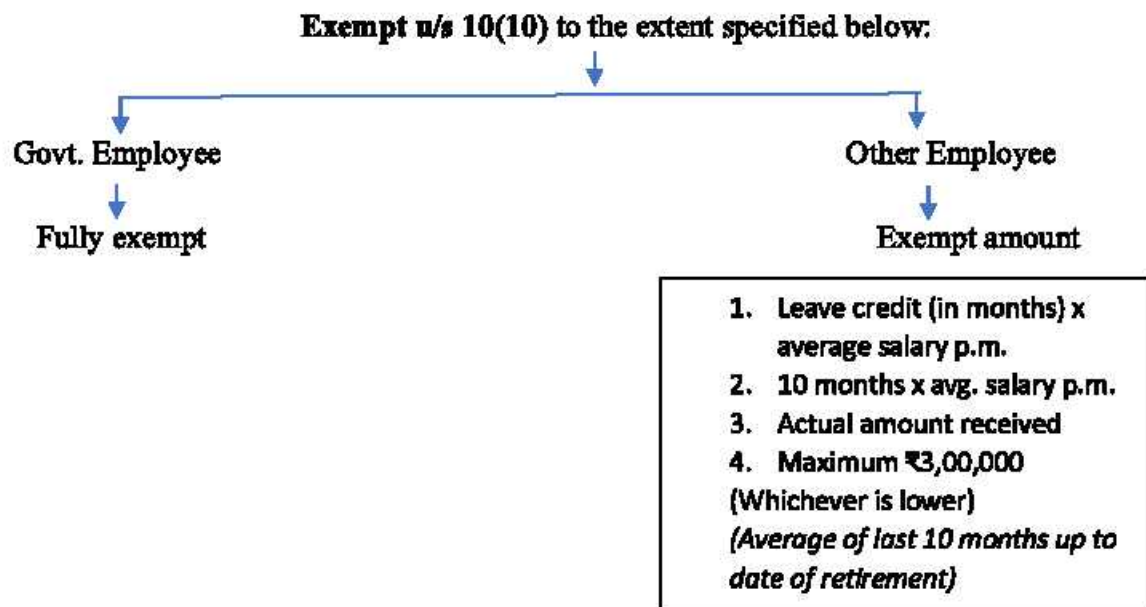
➤ Pension Fully Exempted:

- Judges of the Supreme Court and High Court will be entitled to exemption of the entire commuted portion.
- Commuted pension received by individual out of annuity plan of LIC.

• **Note – 8: Leave Salary or Leave Encashment**

It means encashment of unutilized leave.

1. Leave salary during employment – fully taxable for all employees
2. Leave salary at the time of retirement – Please refer the table below:



• **Calculation of average salary per month**

Avg. basic salary of last 10 months	xx
Avg. D.A. (in terms) of last 10 months	xx
Avg. turnover commission of last 10 months	xx
	xx

• **Calculation of leave credit:**

Leave credit = Leave Allowed – leave taken

↓

Max. 30 days for every completed year

- **Note – 9: Allowances:** employee received several allowances which are
- Fully taxable,
 - Partly taxable,
 - Fully exempted.

Fully Exempted	
1	Allowances to high court judges.
2	Compensatory allowance received by a judge.
3	Allowance paid by the United Nations Organization.

4	Sumptuary allowance granted to High Court or Supreme Court judges.
5	Allowance granted to government employees outside India.

Fully Taxable Allowance			
1	Entertainment Allowance (explained in Note 16)	8	Project Allowance
2	Dearness Allowance (explained in Note 2)	9	Tiffin/Lunch/Dinner Allowance
3	Overtime Allowance	10	Any other Cash Allowance
4	Fixed Medical Allowance	11	Warden Allowance
5	City Compensatory Allowance	12	Non-practicing Allowance
6	Interim Allowance	13	Transport Allowance (except blind & deaf)
7	Servant Allowance		

Partly Taxable Allowance		
Allowances		Exempt Amount u/s 10(14)
1	Commutation / Transport allowance	Maximum ₹3200 p.m. (in case of blind, deaf, dumb, or handicapped)
2	Children education Allowances	Maximum ₹100p.m. per child (Max 2 Child)
3	Children Hostel Allowances	Maximum ₹300p.m. per child (Max 2 Child)
4	Underground Allowances (mines)	Maximum ₹800p.m.
5	Special Compensatory (Tribal areas/ Schedule Areas/Agency Areas) Allowance	Maximum ₹200p.m.
6	Allowances to employees of transport undertaking	Amount received x 70% or ₹10,000 p.m.
7	Special Compensatory (Hilly Areas) Allowance	Maximum ₹800p.m. or ₹300p.m. depending upon specified location or ₹7000p.m. at Siachen (J&K)
8	Special Compensatory (Border/Remote/Disturbed Area) Allowance	Maximum ₹1300 or ₹1100 or ₹1050 or ₹750 or 300, or 200p.m., depending upon specified location.
9	Compensatory Field Area Allowance	Maximum ₹2600p.m.
10	Compensatory Modified Field Area Allowance	Maximum ₹1000p.m.
11	Counter Insurgency Allowance	Maximum ₹3900p.m.
12	High Altitude Allowance	9000 to 15000 feet: Maximum ₹1060p.m. For above 15000 feet: Maximum ₹1600p.m.

13	Travelling allowances (Cost of travel on Tour or on Transfer)	Exempt Amount = Amount Spent
14	Conveyance allowances	
15	Uniform Allowances	
16	Daily allowances	
17	Helper allowances (for office Purpose)	
18	Research allowances or Academy Allowances	
19	HRA- House Rent Allowances - Exempt u/s 10(13A) (<i>Lower of the following</i>) i. 40% / 50% of salary (basic salary + DA(Terms) + Turnover Commission) - 50% if metro cities (Mumbai, Delhi, Chennai, Kolkata) - 40% for other cities ii. Actual amount received iii. Rent paid – 10% of salary (basic salary + DA(T) + T/O Commission)	

• **Note – 10: Provident Fund**

a. Statutory Provident Fund (SPF)

- Employee Contribution: Deduction u/s 80C
- Employer's Contribution: Exempt
- Interest Credit: Exempt
- Lump sum amount received by Employee on retirement: Exempt u/s 10(11)

b. Recognized Provident Fund (RPF)

- Employee Contribution: Deduction u/s 80C
- Employer's Contribution: Exempt up to 12% of salary*
- Interest Credit: Exempt up to 9.5%
- Lump sum amount received by Employee on retirement: Exempt u/s 10(12)
(*basic salary + DA(T) + T/O Commission)

Note: Lump sum amount received from Recognized PF is exempt u/s 10(12) if the employee has rendered service of 5 years or more.

If an employee has rendered service for less than 5 years, the exemption allowed in respect of the employer's contribution and interest shall be withdrawn.

However, in the following 3 cases, the exemption shall not be withdrawn even though service is less than 5 years.

1. Employee retired due to ill health.
2. Employee retired due to shut down of employer's business.
3. Employee has retired with the instruction that his balance in RPF should be transferred to the new employer or to NPS A/c referred u/s 80CCD.

Amendment by Finance Act 2021: Interest on Employee's contribution towards SPF or RPF:

- Exemption under section 10 (11) or 10 (12) not available for interest accrued during the previous year to the extent it relates to the contribution made by that person or employee exceeding rupees 250000 in any previous year in that fund, on or after 1/04/2021.
- If in that fund employer has not made any contribution then a higher limit of rupees 500000 would be applicable.
- It may be noted that interest accrued on contribution to such funds up to 31/03/2021 would be exempt without any limit even if the accrual of income is after that date. (Also refer rule 9D at the end of topic)

c. Un-Recognized Provident fund (URPF)

- Employee Contribution: No deduction
- Accumulated Employee's contribution is not taxable.
- Accumulated Employer's contribution + Interest on Employer's contribution is taxable as profit in lieu of salary.
- Interest on Employees Contribution is taxable u/h IFOS
- Employer's contribution & Interest on provident fund are not taxable/deductible in the year of payment or credit of interest. It becomes taxable when accumulated balance is withdrawn by employee.

d. Public Provident Fund (PPF)

- Employee Contribution: Deduction u/s 80C
- Employer's Contribution: N.A. as there is only assessee's own contribution
- Interest Credit: Fully Exempt
- Lump sum amount received by Employee on retirement: Fully Exempt u/s 10(11)

• **Note – 11: Voluntary Retirement Compensation (VRS)**

Exempt u/s 10(10C) to the extent whichever is lower:

- i. Salary* per month x 3 months x no. of years of completion of service (fraction ignored)
- ii. Salary per month x no. of remaining months of service.
- iii. Actual amount received
- iv. Maximum ₹5,00,000

(*Salary per month = basic salary + D.A. (T) + T/o commission)

• **Note – 12: Super Annuation Fund**

a. Approved Annuation Fund (ASF)

- Employee Contribution: Deduction u/s 80C
- Employer's Contribution: Exempt up to ₹1,50,000
- Interest Credit: Fully Exempt
- Lump sum amount received by Employee on retirement: Fully Exempt u/s 10(13)

b. Unapproved Annuation Fund – Treatment same as Unrecognised Provident Fund.

- **Note – 13: Retrenchment Compensation –**
Exempt u/s 10(10B) – lower of the following -

- Actual Amount Received**
- Compensation as per Industrial Disputes Act, 1947**
[15/26 x (average salary of last 3 months/4 weeks/12 days) x No. of years of completion of service]
- Maximum ₹5,00,000**

Exemption: Above limit will not be applicable if compensation is paid under any scheme of central govt. for special protection of workmen.

- **Note – 14: Perquisites [Section 17(2)]**

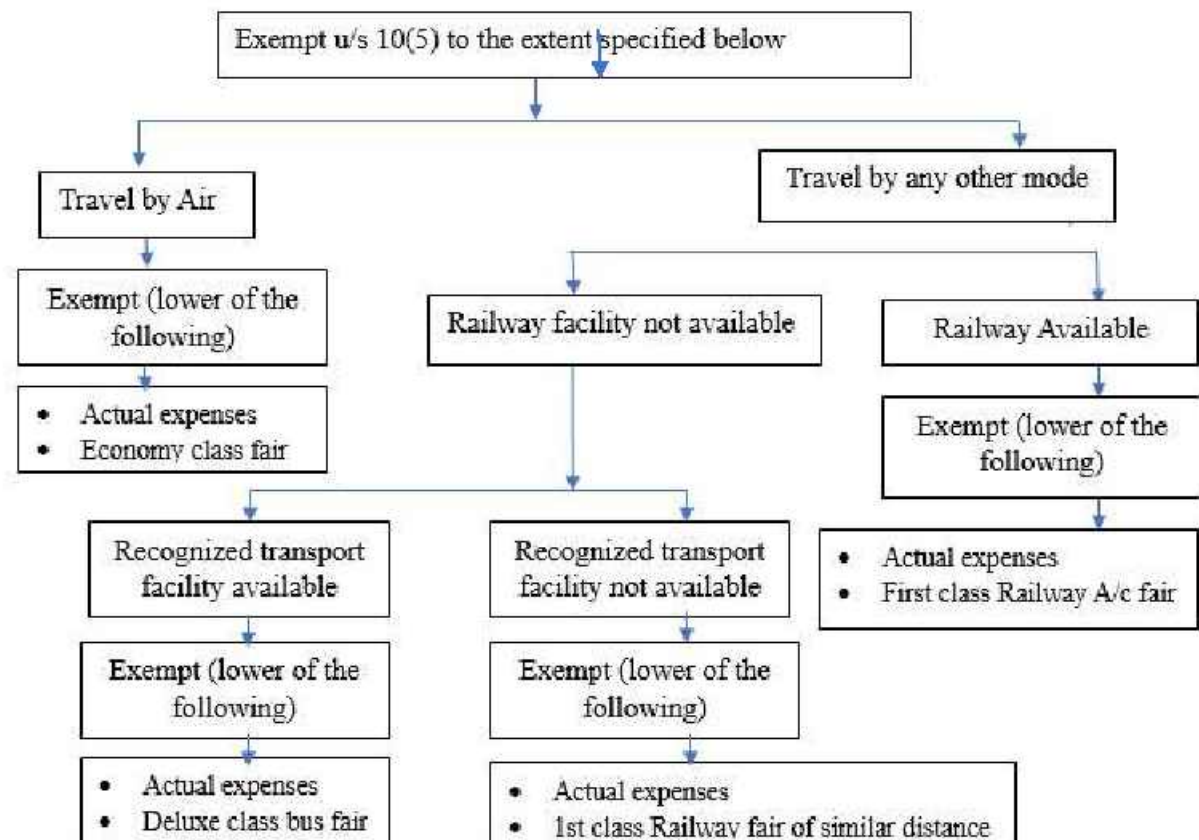
It means extra benefits offered by employers to employees. It may be monetary or non-monetary.

Difference between allowance and perquisite

Allowance: it means monthly fixed amount received by employee from employer whether actual expenditure is incurred or not. It is part of salary e.g. HRA, medical allowances etc.

Perquisites: it means benefits or facility provided by employer. It is received when actual expenditure is incurred e.g. medical facility, car facility etc.

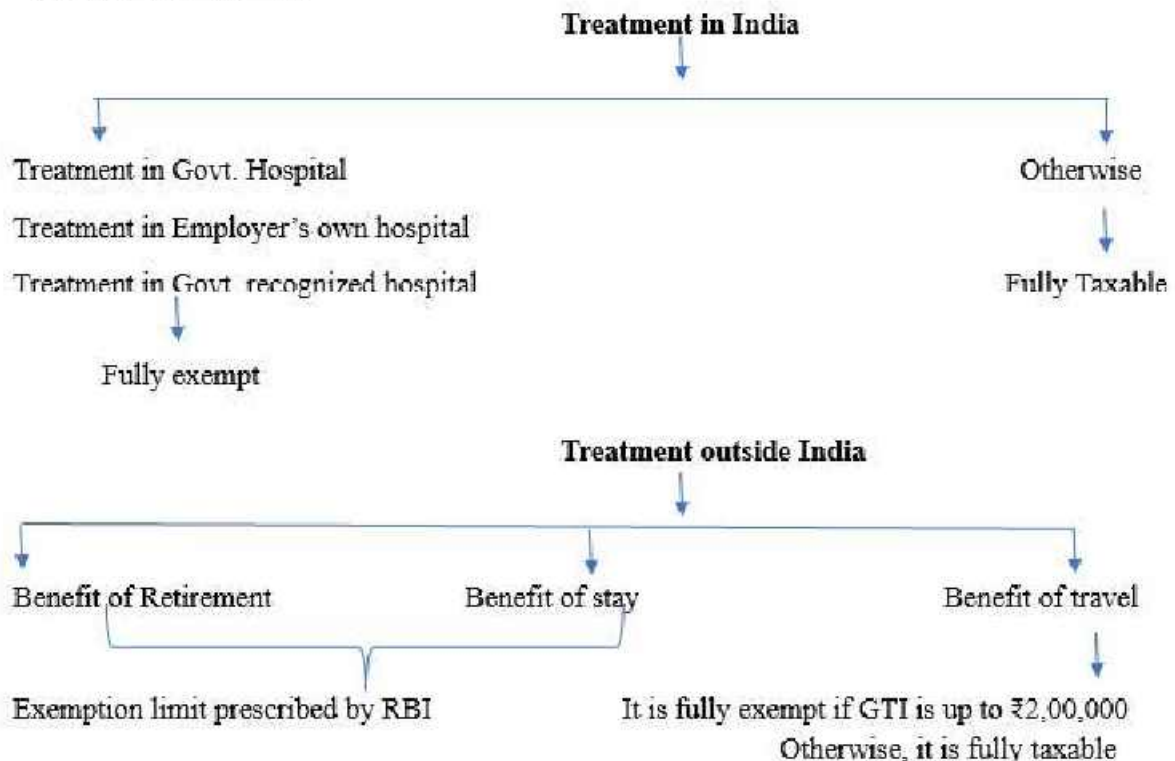
1. Leave Travel Concession (LTC)



Note:

1. LTC exemption is available for the travel of employee, his spouse, children* & dependent relative -(mother, father, brother, sister)
*Exemption of LTC is available only for 2 children born or after 1/10/1998.
2. LTC exemption is available for 2 years during the block of 4 years. (Current block is 2022 – 25)

2. Medical Facility



Note:

- Medical insurance premium is fully exempt.
- Exemption for treatment is allowed for employee, spouse, children & dependent relative - (mother, father, brother, sister)
- Exemption of stay and travel is allowed only for one patient & one attendant.

3. LOAN

"Loan" given by employer to employee at concessional rates of interest or without rates of interest.

Taxable amount = loan amount x (SBI interest rate - Actual interest rate)

Notes:

- I. If loan amount is up to rupees 20000 then interest benefit is not taxable.
- II. If loan is taken for treatment of specified disease, then interest benefit is not taxable even loan amount is more than ₹ 20,000.

4. Gift

a. Gift in cash = Taxable

b. Gift in kind = If FMV of gift is less than rupees 5000 then it is fully exempt otherwise fully taxable.

5. ESOP - Employee Stock Option Plan

It means a company offers shares to employee at concessional rates.

Taxable amount = Fair market value of shares (-) issue price

Fair market value should be taken on the date on which option is exercised by employee.

6. Use of movable assets

a. Computer or laptop - Fully exempt.

b. Other assets:

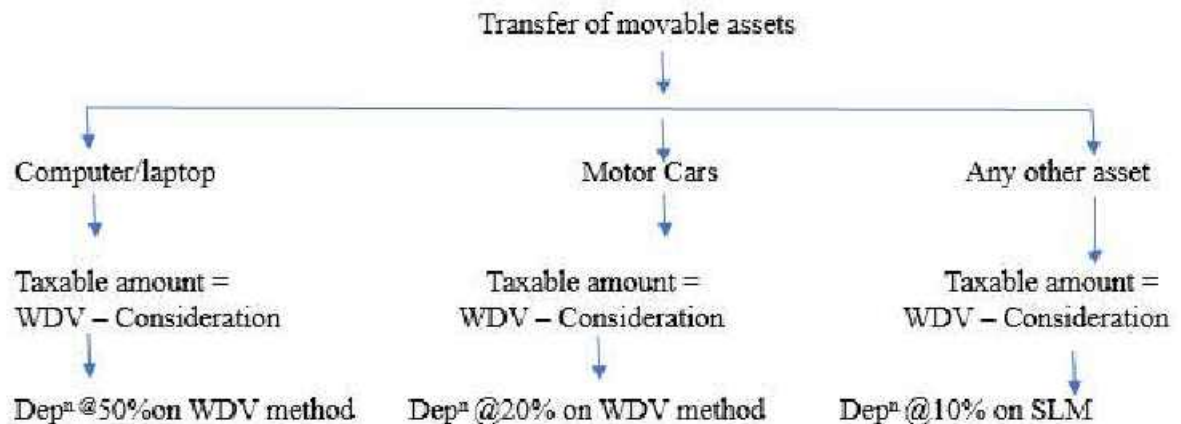
Owned by employer

Taxable amount = 10% of cost

Hired by employer

Taxable amount = Hire charges Paid by employer

7. Transfer of movable assets



8. Lunch facility

It is exempt up to rupees 50 per mail if lunch is provided in office premises or through paid voucher.

Note

i. Tea coffee or breakfast provided in office is not taxable.

ii. Lunch provided in remote areas is not taxable.

9. Section 17 (2) (vii): employee contribution towards Recognized Provident Fund (RPF), New Pension Scheme (NPS) referred under section 80CCD, Approved Super Annuation Fund (ASF) in excess of 750000 is treated as perquisite in hands of employee and hence taxable.

10. Section 17(2) (viii): annual accretion by way of interest/dividend/similar amount on contribution of more than 7,50,000 by employer also treated as perquisites in hands of employee and taxable.

11. Rent free accommodation (House Facility):

Accommodation' includes a house, flat, farm house (or part), or accommodation in a hotel, motel, service apartment, guest-house, caravan, mobile home, ship or other floating structure.

Employee	Value of perquisites
a) CG or SG employees	License fee determined by CG or SG
b) Other than Government Employee	
◆ Accommodation owned by Employer	Population of place of Accommodation and value of Perquisite Less than 10 lacs: 7.5% of salary 10 lacs – 25 lacs: 10% of salary More than 25 lacs: 15% of salary
◆ Accommodation is taken on rent/lease by the employer	Lower of: (i) 15% of salary or (ii) Actual lease rent paid by employer for the occupied period.
c) Accommodation Provided in Hotel (Gov/Non-Government Employer)	Lower of (i) 24% of salary or (ii) Actual Hotel charges paid by employer.

Notes:

1. If a hotel facility is provided at the time of transfer of employee and if it is up to 15 days, then it is not taxable.
2. In-house facility and hotel facility, if employer recover any rent from employee then such rent should be deducted from above taxable amount.
3. If any employee has been transferred & employer has provided him accommodation at the new place also, in such cases only one of the accommodation having lower perquisite value shall be taxable upto 90 days (3 months) & after 90 days, both of the accommodations shall be taxable as perquisite.
4. **Valuation of Furnished Accommodation:** Valuation shall be done as if employer has provided unfurnished accommodation.

Add: 10% p.a of original cost of furniture (if furniture is owned by employer).

Add: Lease charges/Rent paid for hiring furniture (If furniture is hired by employer).

11. Hotel benefit

Taxable amount = (i) 24% of salary (BDBACM)

(ii) Hire charges paid by employer

Notes:

5. If hotel facility is provided at the time of transfer of employee and if it is up to 15 days, then it is not taxable.
6. In house facility and hotel facility if employer recover any rent from employee then such rent should be deducted from above taxable amount.

12. Car Facility

Sl. No.	Owned by	Expenses by	Purpose of use	Taxable Prerequisite
1.	Employer	Employer	Fully Official	No Prerequisite
2.	Employer	Employer	Fully Personal	(a) Actual expenditure on car + (b) Remuneration to driver + (c) Depreciation @ 10% p.a on the actual cost
Expenses recovered from employees are deductible.				
3.	Employer	Employer	Partly official & Partly Personal	• Upto 1600 CC: 1,800 p.m + 900 p.m for driver = Rs 2,700 p.m • Above 1600 CC: 2,400 p.m + 900 p.m for driver = Rs 3,300 p.m
Expenses recovered from employees are NOT deductible.				
4.	Employer	Employee	Partly official & Partly Personal	• Upto 1600 CC: 600 p.m + 900 p.m for driver = Rs 1,500 p.m • Above 1600 CC: 900 p.m + 900 p.m for driver = Rs 1,800 p.m
Expenses recovered from employees are NOT deductible.				
5.	Employee	Employer	Partly official & Partly Personal	• Upto 1600 CC: 1,800 p.m + 900 p.m for driver = Rs 2,700 p.m • Above 1600 CC: 2,400 p.m + 900 p.m for driver = Rs 3,300 p.m
Expenses recovered from employees are NOT deductible.				
6.	Employee	Employer	Partly official	Not a perquisites
7.	Employee owns other conveyance but not car	Employer	Partly official & Partly Personal	Actual Expenditure incurred by Employer Less: Rs. 900 p.m
8.	Employer	Employee	fully Personal	10% p.a on the actual cost of Car/hire charges
Note: 1. If the employer also provided a driver, then rupees 900 p.m. should be added to the above taxable amount. 2. If more than one car is provided for Partly official & Partly Personal, then one car is taxable according to the above standard amount, and the other car shall be taxable on the assumption that it is fully used for personal purposes.				

13. Transport Facility for Transport Employee (Free Tickets)

- i) For airlines and railway employees - airlines and railway facility is fully exempted.
- ii) For other employees - it is fully taxable.

14. Education facility

- i) For employee - fully exempt
- ii) For children - it is exempted if value of education is up to rupees 1000 per month per child and education is provided in employers own institution or institutions where employer have tie-ups, otherwise fully taxable.
- iii) For other relatives - fully taxable

15. Gas, Electricity and Water supply - fully taxable

16. Free servant - fully taxable

17. Any other perquisite - fully taxable

The following perquisites are **fully exempt**:

- 1. Telephone or mobile bill paid or reimbursed by employer
- 2. Scholarship to employee's children.
- 3. Goods sold by employer to employee at reasonable price.
- 4. Tax on non-monetary perquisites paid by employer.

- **Note – 15: Standard Deductions [Section 16(ia)]**

Standard deduction of rupees 50000 or the amount of salary - whichever is lower.

- **Note – 16: Entertainment Allowances [Section 16(ii)]**

It is fully taxable for all employees. But deduction is allowed to Government employees under section 16 as follows: whichever is lower

- i) 20% of basic salary
- ii) Actual amount received
- ii) Maximum rupees 5000

- **Note – 17: Professional Tax [Section 16(iii)]**

It means tax on employment. If it is paid by employer on behalf of employee, then first it should be taxable and there after deduction allowed under section 16. If it is paid by employee then only deduction is allowed.

5.3 REBATE U/S 89 FOR ARREARS OF SALARY

To calculate the relief, the following steps should be taken:

Step 1: Firstly, calculate the tax due in the current year by including the arrears in your total income.

Step 2: Now calculate the tax due in the current year by excluding the arrears from your total income.

Step 3: Compute the difference of the two figures of Step 1 & 2 and let's call that difference as 'X'.

Step 4: Now Calculate your tax due in the year for which the arrears have been received by including the arrears in your total income.

Step 5: Then Calculate your tax due in the year for which the arrears have been received by excluding the arrears from your total income.

Step 6: After that compute the difference of the two figures of Step 4 & 5 and let's call the difference as y.

Step 7: Lastly subtract X (Step 3) from Y (Step 6) and you will get the relief amount

5.4 RULE 9D

Rule 9D: Calculation of taxable interest relating to contribution in a SPF or RPF exceeding specified limit

Separate accounts within the PF account shall be maintained during the previous year and subsequent previous years for taxable contribution and non-taxable contribution made by person.

a. Non-taxable contribution account shall be the aggregate of the following, namely:

- i) Closing balance in the account as on the end of the previous year.
- ii) Any contribution made by the person in the account during the previous year and subsequent previous years which is not included in the taxable contribution account and
- iii) Interest accrued on (i) (ii), as reduced by the withdrawal, if any, from such account.

b. Taxable contribution account shall be the aggregate of the following namely:

- i) Contribution made by the person in a previous year in the account during the previous year and subsequent previous years, which is in excess of 2,50,000 / 5,00,000, and
- ii) Interest accrued on sub clause (i)

5.5 TAXABILITY OF EMPLOYEE STOCK OPTION PLANS (ESOPs)

As per section 17(2) ESOPs or sweat equity shares are taxable, as perquisites in hands of employee in the year in which shares are allotted to employee.

Taxable amount = fair market value of shares on the date on which option exercised - amount paid by employee for ESOPs

Calculation of FMV as per rule 3(8):

(i) in case where, on the date of exercising of the option, the shares in the company is listed on a recognized Stock exchange, the FMV shall be the average of the opening price and closing price of the share on that date on the said Stock exchange

Provided that where, on the date of exercising of the option, the shares is listed on more than one Recognized Stock exchange, the FMV shall be average of opening price and closing price of the share on the recognized stock exchange which records the highest volume of trading in the share.

Provided for that where on the date of exercising of the option, there is no trading in the share on any recognized Stock exchange, the fair market value shall be as under-

a) The closing price of the share on any recognized stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or

b) The closing date of the share on a recognized Stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized Stock exchange.

ii) In a case where, on the date of exercising of the option, the share in the company is not listed on a recognized Stock exchange, the FMV shall be such value of the share in the company as determined by a merchant banker on the specified date.

• **Sale of shares by employee:**

At the time of sale of shares, capital gain will be applicable in hands of employee as follows

Full value of consideration	Sale value
Less: cost of acquisition	Share market value of shares as per rule 3(8)
 LTCG/STCG	 XXXX

In this case, period of holding shall be considered from the date of allotment of ESOPs till the date of transfer of shares by employee.

5.6 LET US SUM UP

Income from salary is one of the main heads of income. Salary means any remuneration paid by the employer to the employee for services rendered. The meaning of salary for tax purposes is very wide. It not only includes the cash received but also the monetary value of facilities and benefits attached with the office of employment. It includes salary or wages, bonus, pension, annuity, gratuity, leave encashment, advance, fees, contribution to provident fund, profit in lieu of salary.

In order to calculate the taxable salary of an individual the taxable amount of all the above items is to be calculated and added together. The term salary is not only wide it has many meanings. 'Salary' includes different items for different purposes. For example while calculating the encashment of earned leave 'salary' means basic salary, dearness allowance if terms of employment so provide and commission if based on fixed percentage of turnover. For calculating gratuity and HRA 'salary' includes basic salary, DA if terms of employment so provide, Dearness pay and commission if based on fixed percentage of turnover.

Apart from cash payment an employee also receives certain benefits in kind which can be converted into cash. These are called perquisites. Perquisites may be tax-free, taxable for specified employees, taxable for all employees.

After the value of perquisites is calculated and included in the salaried income: certain deductions are available from the gross salary. They are i) Standard deduction ii) Entertainment Allowance iii) Tax on Employment. Provident fund is the main fund in which a person contributes a certain sum and saves money for future benefits. Provident Fund scheme is prevalent in most of the organisations whereby the employer and the employee contribute some amount every month. This amount earns some interest and keeps accumulating over a period of time. At the time of retirement or resignation the total balance in the provident fund account is given to the employee.

5.7 REVIEW QUESTIONS

Q1: What are the provisions of Income Tax Act regarding commutation of pension?

Q2: What do you mean by 'profits in lieu of salary'?

Q3: What is not included in 'salary' for calculating the value of rent-free accommodation for a public employee?

Q4: Following particulars are furnished by Muhammed Labeeb, a citizen and resident in India:

- Basic salary after deduction of contribution to RPF Rs: 2,40,000
- Own contribution to RPF Rs:20,000 Interest credited to RPF @9.5% Rs:3,600
- HRA (house is at Kolar and rent paid amount to Rs:30,000) Rs: 14,400
- Unit-linked insurance plan contribution paid by employer Rs: 2,000.
- Compute taxable income from salary of Muhammed Labeeb

UNIT 6: INCOME FROM HOUSE PROPERTY

Learning Objectives

After studying this unit, you should be able to know:

- List the incomes chargeable under the head house property,
- List the exempted income from house property,
- Determine the annual value of house property of different categories,
- Explain the deductions available in respect of income from house property, and
- Compute the income chargeable under the head house property.

Structure

- 6.1 Introduction
- 6.2 Section 22 - Charging Section
- 6.3 Types of House Property
- 6.4 Computation of Income of House Property
- 6.5 Rent Amount
- 6.6 Concept of Partly Let Out Property
- 6.7 Deemed Owner
- 6.8 Amendment
- 6.9 Let Us Sum Up
- 6.10 Review Question

6.1 INTRODUCTION

The provisions of Income Tax Act, 1961 regarding computation of taxable income from house property are contained in Sections 23 to 27. The taxable income from house property is not the income actually received as rent but is calculated after making many deductions. In this unit you will study the incomes chargeable and incomes exempted under the head income from house property. You will also study how the annual value of the houses of different categories is calculated and what deductions are allowed to compute the income chargeable under the head income from house property.

The annual value of a property, consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head 'Income from house property'. However, if a house property, or any portion thereof, is occupied by the assessee, for the purpose of any business or profession, carried on by him, the profits of which are chargeable to income-tax, the value of such property is not chargeable to tax under this head. Thus, three conditions are to be satisfied for property income to be taxable under this head:

1. The property should consist of buildings or lands appurtenant thereto.
2. The assessee should be the owner of the property.
3. 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.

Ownership of house property It is only the owner (or deemed owner) of house property who is liable to tax on income under this head. Owner may be an individual, firm, company, co-operative

society or association of persons. The property may be let out to a third party either for residential purposes or for business purposes. Annual value of property is assessed to tax in the hands of the owner even if he is not in receipt of the income. For tax purposes, the assessee is required to be the owner in the previous year only.

6.2 SECTION 22 - CHARGING SECTION

Rental income (Annual value) is taxable under the head "Income from House Property" if following two conditions are satisfied:

- a. There should be House property (building or land appurtenant thereto)
- b. Assessee should be owner of that house property

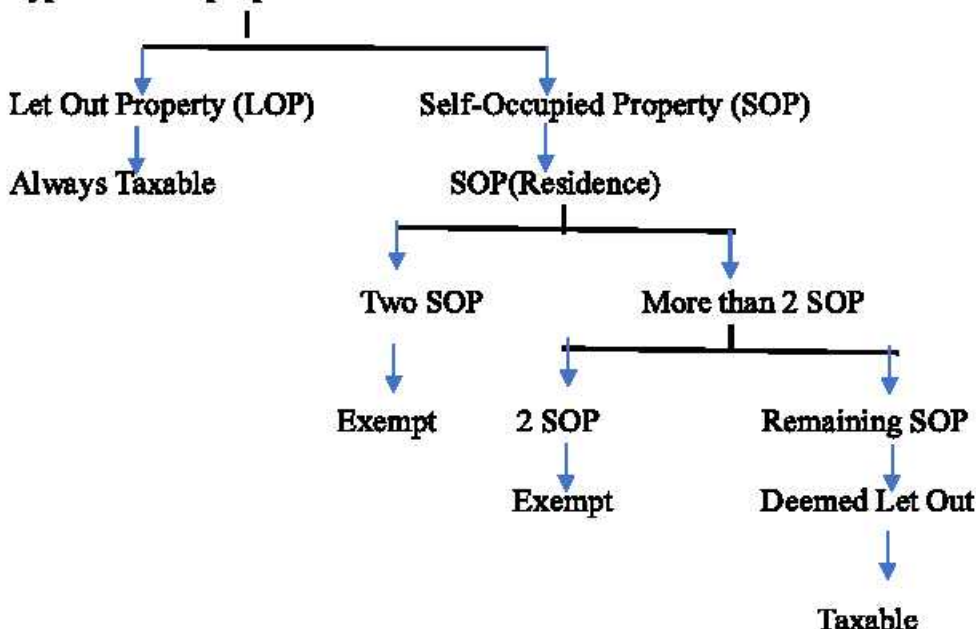
Exceptions:

Annual value of the following properties is chargeable under the head "Profits and gains of business or profession" -

- a. Portions of property occupied by the assessee for the purpose of any business or profession carried on by him
- b. Properties of an assessee engaged in the business of letting out of properties.

6.3 TYPES OF HOUSE PROPERTY

Type of house properties:



6.4 COMPUTATION OF INCOME FROM HOUSE PROPERTY

Computation of income from house property

	SOP(Res)	LOP	DLOP
Municipal value (A)	-	xx	xx
Fair Rent (B)	-	xx	xx
Value 1 (A or B, whichever is higher) (C)	-	xx	xx
Standard rent (D)	-	xx	xx
Expected rent (C or D, whichever is lower) (E)	-	xx	xx
Actual rent (F)	-	xx	xx
Gross annual value (GAV) (E or F, whichever is higher)	-	xx	xx
(-) municipal taxes paid	-	xx	xx
Net annual value (NAV)	-	xx	xx
(-) Deduction u/s 24			
(i) standard deduction @30% of NAV	-	(xx)	(xx)
(ii) interest on loan	(xx)	(xx)	(xx)
Income from house property	(xx)	xx	xx

1. Municipal value: It means value of property as per municipality record.

2. Fair Rent: It means rent of similar property in same locality. It is also known as reasonable rent/reasonable letting value.

3. Standard Rent: It means rent as per rent control Act. It is the maximum amount of rent that can be legally recovered by Owner from tenant.

4. Actual Rent: Actual Rent = Rent received (+) Rent receivable (-) unrealised rent.

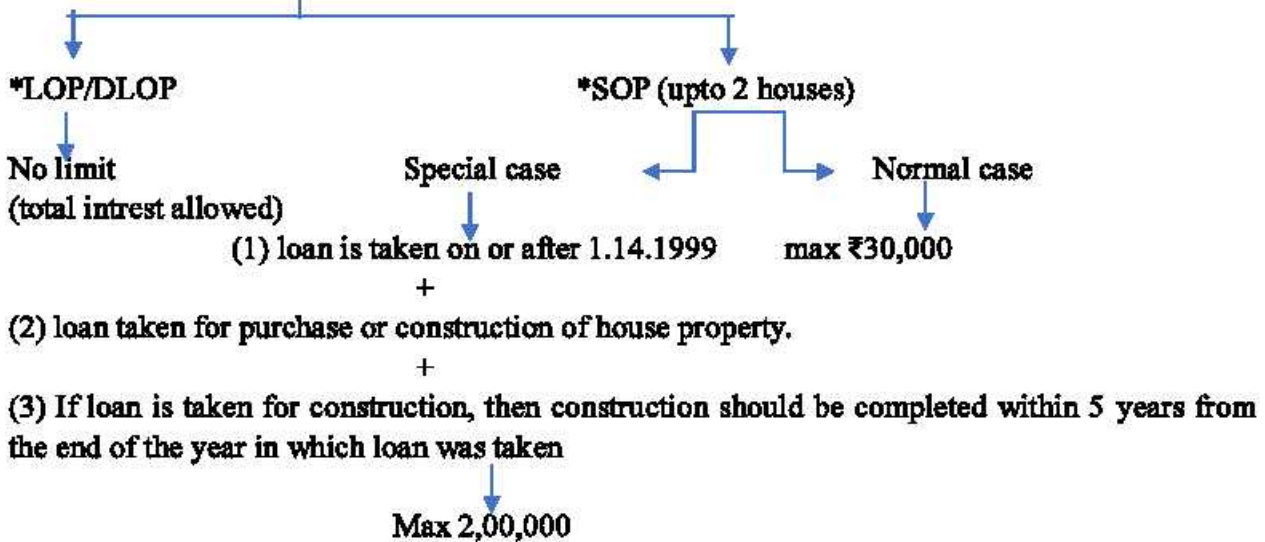
5. Municipal Taxes.

- It means tax which is recovered by Municipality, local Authority gram panchayat.
- It is also known as house Tax, property tax, local tax etc.
- It is allowed on payment basis [paid-Allowed: o/s-Not allowed].
- It is allowed only if it is paid by owner.
- If municipal taxes are given on % age basis then it should be calculated on municipal value.

6. Interest on Loan

- Interest on loan is allowed as deduction, if loan is taken for the purpose of house property i.e. purpose, construction, repair, renovation.
- Loan may be taken from banks, financial institutions, trusts, friends, family etc.
- Interest is allowed on due basis (paid-Allowed, o/s Allowed).
- Interest on Interest (Penal interest) is not allowed as deduction.

e. Limit of deduction:



6. Any fresh loan is taken for repayment of earlier loan & earlier loan was taken for the purpose of house property then interest of fresh loan shall be allowed as deduction.

7. Interest paid outside India shall not be allowed as deduction if TDS not deducted on such interest.

8. Pre-construction/Acquisition interest: It means interest paid before the year in which construction was completed. It is allowed in Five equal instalments from the year in which construction was completed.

* LOP – Let Out Property

*DLOP- Deemed Let Out Property

*SOP- Self Occupied Property

6.5 RENT AMOUNT

UN-REALISED RENT AND RECOVERY OF UN-REALISED RENT

- **Actual Rent= Rent received + Receivable-unrealised rent.**

Unrealised rent: It means rent which is not recovered by owner from tenant. It is like Bad debts of rent, it is deductible while calculating actual rent if following four conditions of Rule 4 are satisfied.

1. Tenancy should be bonafide.
2. Tenant should have vacated that house property.
3. Such tenant should not occupy any other house property of same assessee
4. Reasonable step should have been taken for recovery of unrealised rent.

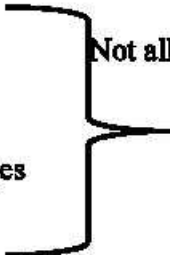
Arrears of rent: It means rent under dispute.

SEC 25A RECOVERY OF UN-REALISED RENT & ARREARS OF RENT

Recovery is taxable in the year in which it is recovered, under the head house property, whether the assessee is the OWNER of the property or not in that financial year. Any expenditure incurred for such recovery shall be ignored.

Taxable Amt= Recovery x 70% [30% std deduction).

OTHER EXPENSES

Repair & Maintenance		Not allowed because 30% Standard deduction on NAV is allowed
Society charges		
Parking charges		
Insurance charges		
Electricity & water charges		
Lift charges, etc		

6.6 CONCEPT OF PARTLY LET OUT PROPERTY

CONCEPT OF PARTLY LET OUT PROPERTY (AREA WISE)

If some area of House property is let out & remaining is self occupied then let out portion is treated as LOP & self occupied portion is treated as SOP. In this case, Municipal value, fair rent, standard rent, municipal taxes, interest on loan should be divided between SOP & LOP on area basis. **Actual rent should never divided because it is always for LOP.**

CONCEPT OF PARTLY LET OUT PROPERTY (TIME WISE)

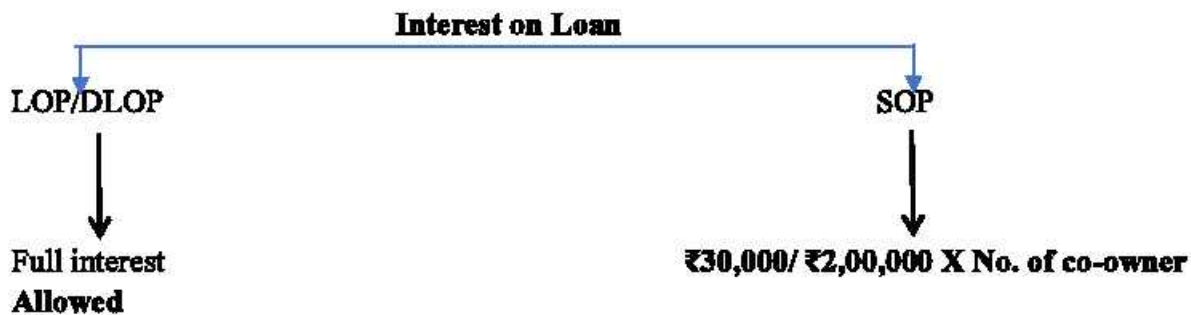
If property is let out for some period of time & self-occupied for remaining time then such property is treated as LOP only. If property is let out for even 1 day then, also that property is treated as LOP

ASSESSEE OWNS MORE THAN TWO SOP

Two of such house properties (at the option of Assessee) treated as SOP & remaining be treated as DLOP

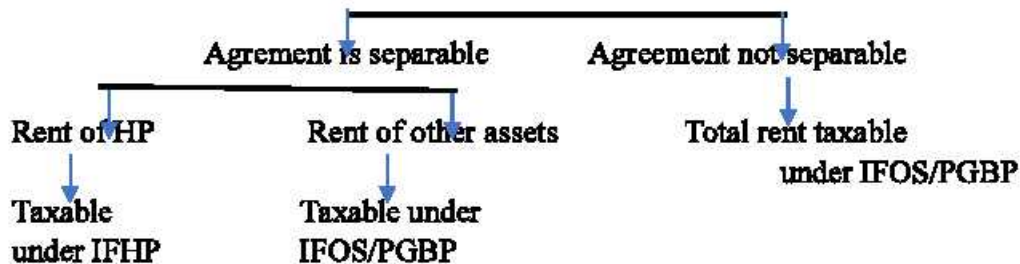
CONCEPT OF JOINT OWNERSHIP

Joint ownership (co-ownership) means property is owned by more than one owner, in this case, income from house property is calculated normally & thereafter it should be divided between co-owners in their ownership ratio.



CONCEPT OF COMPOSITE RENT

Composite rent = Rent of House property + Rent of other assets & amenities.



Note: If let out of property not feasible without other asset then total rent is taxable under the head income from Business / Profession or income from other sources whether agreement is separable or not. Eg. Hotel.

6.7 SECTION 27: DEEMED OWNER

1. If any individual transfers any house property to his/her spouse for without consideration or inadequate consideration then such individual is treated as Deemed owner of such property

Exception: Transfer in connection of live apart.

2. If any individual transfers any house property to a minor child (other than minor married daughter) for without consideration or inadequate consideration then such individual is treated as deemed owner.

3. In case of a co-operative society, shareholder is treated as deemed owner of such property

4. Holder of an impartible estate.

6.8 AMENDMENT

Section 23 to provide that if assessee owns 2 houses or more than he can claim annual value of any of the two house properties as NIL. Thus, if assessee has more than two house properties, he can claim that the annual value of any two house properties shall be nil which:

(a) are in occupation of the owner for the purpose of his own residence, or

(b) cannot actually be occupied by the owner owing to his employment, business or profession carried on at any other place and he has to reside at that other place in a building not belonging to him.

Hence, with effect from AY 22-23, a person will be able to take annual value as nil in respect of two house properties instead of one if aforesaid conditions are satisfied.

The consequential amendment has also been made to section 24 (b) that the aggregate amount of deduction of interest on loan taken in respect of two residential house properties, whose annual value is treated as nil as per section 23(2), shall not exceed ₹30,000 or ₹2,00,000, as the case may be.

6.9 LET US SUM UP

Income from house property is second major head of income. Income from house property is the annual value of any property which consists of building and land apartment thereto, is owned by the assessee and is not used for assessee's business or profession. Annual value of the property is not the rent received but the reasonable rent, but where actual rent is higher than the reasonable rent the annual value is the actual rent received as reduced by the municipal taxes borne by the owner of the house. For the purposes of computation of annual value the house property is divided into two:

- i) Let out house
- ii) Self-occupied house.

A house which is let out can either be under Rent Control Act or not. When it is not under Rent Control Act the annual value is actual rent, reasonable rent or municipal value whichever is higher as reduced by municipal taxes paid by the owner. When it is under Rent Control Act the annual value is actual rent or standard rent (as fixed by rent controller) whichever is higher as reduced by municipal taxes paid by the owner.

A self-occupied house can be divided into:

- i) Self-occupied house for full year-annual value is nil.
- ii) Part of the house is self-occupied and a part is let out for full year-annual value is calculated as: Annual value of the full house for full year less annual value of self-occupied house for full year.
- iii) Full house self-occupied for a part of year and let out for the remaining part of the year. Then, annual value is calculated as follows.

6.10 REVIEW QUESTIONS

Q1: Define annual value and state the deductions that are allowed from the annual value in computing the income from house property.

Q2: Write short notes :

- Vacancy Allowance
- Unrealised Rent
- Repair Allowance
- Income from House Property in foreign country
- Standard Rent.

Q3: How would you determine the annual value of house property, which is self occupied for a part of the year only and let out for the remaining part?

UNIT 7: PROFITS AND GAINS OF BUSINESS AND PROFESSION

Learning Objectives

After studying this chapter, you would be able to know :

- The meaning of “business” and “profession” and the scope of income chargeable to tax under this head;
- The meaning of speculative transaction and the tax treatment of loss incurred in speculative business;
- The expenditures/ payments which are admissible as deduction,
- The deductions available while computing business income applying the relevant provisions;
- The expenditures / payments which are not admissible as deduction;

Structure

- 7.1 Introduction
- 7.2 Meaning of ‘Business’ And ‘Profession’
- 7.3 Section 28: Charging Section
- 7.4 Section 29: How to Compute PGBP
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- 7.12 Inadmissible Deductions [Section 40]
- 7.13 Let us sum up
- 7.14 Review Questions

7.1 INTRODUCTION

Third important head of the income is ‘Profit and gains of business or profession. Major part of the revenue is collected by income tax department from the tax payers engaged in business activities. Meaning of Business- Sec. 2 (13) Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

“Profession” includes ‘Vocation’ Sec. 2 (36) Profession- The expression Profession involves the idea of an occupation requiring Purely intellectual skill or manual Skill controlled by the operator as distinguished from an occupation or business which is substantially the production/ sale/ arrangements for the production or sale of commodities.

Vocation: In the act, It implies natural ability of person for some particular work. In the other words by the way in which a man passes his life.

Profits and Gains of business/ Profession include - Profit from trading activities, Compensation, Receipts from Profession, Profit from speculation business, Brokerage, Commission Import-export Incentives, Income of trade Associations, Royalty etc.

The tax payable by an assessee on his income under this head is in respect of the profits and gains of any business or profession, carried on by him or on his behalf during the previous year.

7.2 MEANING OF 'BUSINESS' AND 'PROFESSION'

Business Profession The term "business" has been defined in section 2(13) to "include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture".

The term "profession" has not been defined in the Act. It means an occupation requiring some degree of learning. The term 'profession' includes vocation as well [Section 2(36)] Thus, a painter, a sculptor, an author, an auditor, a lawyer, a doctor, an architect and even an astrologer are persons who can be said to be carrying on a profession but not business.

However, it is not material whether a person is carrying on a 'business' or 'profession' or 'vocation' since for purposes of assessment, profits from all these sources are treated and taxed alike. Business necessarily means a continuous exercise of an activity; nevertheless, profit from a single venture in the nature of trade may also be treated as business.

7.3 SECTION 28: CHARGING SECTION

Following income shall be taxable under the head PGBP

1. Any profit or gain of any Business/Profession
2. Profit on sale of import entitlement licence.
3. Cash compensatory support or duty drawback.
4. Profit on sale of duty entitlement passbook scheme or Duty Free Replenishment certification [DFRC].
5. Any amount received under Key-Man insurance policy.
6. Any gift/ benefit/perquisite arising due to business or profession.
7. Any interest, salary, bonus, commission received by partner from partnership firm [to the extent allowed u/s 40(b) to firm).
8. Non-compete Fees [not carrying out any activity in relation to any business or
10. profession or not sharing any know-how, patent, copyright, trade-mark etc.].
11. Income derived by a trade, professional or similar association from specific service perform for its member.
12. FMV of inventory as on the date on which it is converted into Capital asset. Any compensation or other payment due to or received by, any person, at or in connection with the termination or modification of the terms and conditions, of any contract relating to his business.

Accordingly, any compensation received or receivable, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income.

❖ Speculation Business

It means a transaction in which a contract for the purchase or sales of any commodity including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips.

Transaction not deemed to be speculative transaction.

a. Hedging contract in respect of raw materials or merchandise or stocks and shares

b Forward contract

c. Trading in derivatives through recognised stock exchange

d. Trading in commodity derivatives through recognized association, which is charged to commodities transaction tax (CTT) However, the requirement of chargeable of commodities transaction tax is not applicable in respect of trading in agricultural commodity derivatives from AY 2019-20.

Note: Speculative business shall be treated as separate and distinct business

7.4 SECTION 29: HOW TO COMPUTE PGBP

PGBP are to be computed in accordance with the provisions contained in sec.30 to 43D

Sample Format

Net profit as per Profit & Loss Account	xxx
Add: Non-allowable expenses debited to Profit & Loss Account (P&L)	xxx
Add: Expenses allowable under any other head or Capital Exp./Personal Exp.	xxx
Add: Income chargeable under this head but not credited to P/L	xxx
Less: Expenses allowable under this head but not debited to P&L	xxx
Less: Income credited to P & L A/c but not chargeable under this head	xxx
Profits & Gains from Business or Profession	xxx

7.5 SECTION 30: RENT RATES, TAXES, REPAIRS & INSURANCE OF BUILDING

Section 30 allows deduction in respect of the rent, rates, taxes, repairs and insurance of buildings used by the assessee for the purpose of his business or profession.

However, where the premises are used partly for business and partly for other purposes, only a proportionate part of the expenses attributable to that part of the premises used for purposes of business will be allowed as a deduction.

- **Notional Rent:** Rent paid to proprietor is disallowed but rent paid by firm to its partner for using his premises is an allowed expenditure.
- **Current Repairs Vs Capital Repair:** This section allows deductions in respect of expenses incurred on account of current repairs [Revenue in Nature] to building in case where (i) the assessee is the owner of the building or (ii) the assessee is a tenant who has undertaken to bear the cost of repairs to the premises.

But if capital Expenditure is incurred on repair:

→ By the owner: then, it shall be added to the cost of building & Depn. shall be allowed u/s. 32(1)(ii)

→ By the tenant: then, the depreciation shall be allowed as per Explan. 1 to Section 32(1).

- **Municipal Taxes:** By virtue of section 43B, rates and taxes are deductible on cash basis.

7.6 SECTION 31: REPAIRS AND INSURANCE OF MACHINERY, PLANT AND FURNITURE

→ **Business Use of Asset:** Section 31 allows deduction in respect of the expenses on current repairs (not being capital expenditure) and insurance of machinery, plant and furniture used for the purposes of business or profession carried on by the assessee.

→ **Capital Expenditure** incurred on repair shall be added to the cost of plant & machinery or furniture and depreciation shall be allowed under Section 32.

→ **Rent payable** for use of above assets is not covered by section 31 but shall be allowed as deduction under section 37(1).

→ **Replacement of old frames** for efficient functioning of machines without breakdowns, is allowable as deduction u/s 37 and not u/s 31 because it is not current repairs, but accumulated repairs.

Note: 1. Expenses u/s 30 & 31 allowed only if asset used for business or profession

2. Capital repair by tenant is treated as Deemed Building & depreciation allowed to Tenant.

7.7 SECTION 32: DEPRECIATION

The assets in respect of which depreciation is claimed must belong to either of the following categories, namely:

(a) buildings, machinery, plant or furniture, being tangible assets; (b) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets not being goodwill of a business or profession

No depreciation is allowable on the cost of the land.

➤ Goodwill is now NOT eligible for Depreciation as Intangible Assets.

A. Conditions to claim depreciation.

1. Asset should be used for business/profession purposes (active or passive)

2. Assessee should be Owner of such asset (wholly or partly)

Note: 1. Deprecation is allowed if assessee is beneficial owner.

2. In case of Lease, Depreciation is always claimed by lessor whether it is financial lease or Operating lease [CBDT circular].

3. In case of Hire Purchase, assessee gets the ownership only after payment of last instalment, but he can claim depreciation from beginning, assuming assessee is the owner from beginning.

4. Depreciation on asset partially owned by the assessee shall be allowed to him to the extent of his share in asset.

5. In case of stand by machinery and emergency spares, the depreciation shall be allowed even if they are ready for use & not put to use.

B. Classification of Depreciable assets

Broadly assets are classified under two categories for claiming depreciation

1. Tangible Assets-Building, Furniture and plant and machinery

2.Intangible Assets

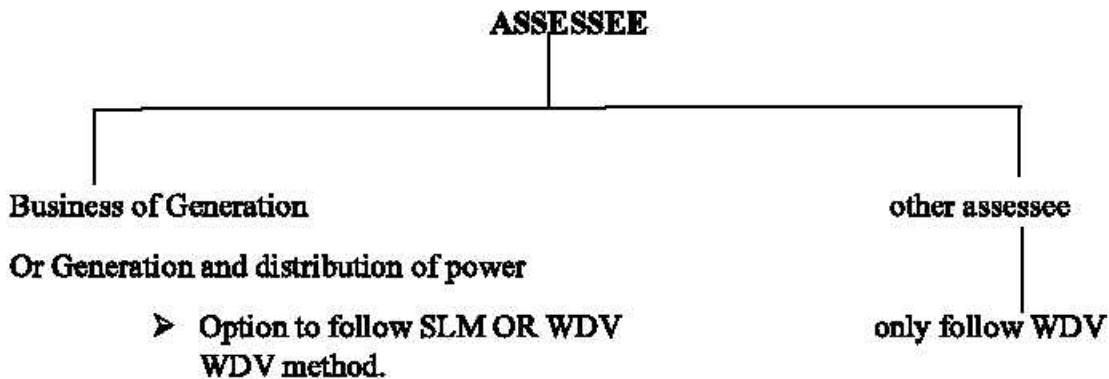
C. Rates of Depreciation

Assets	Rate (%)
1. Building	
i. Residential	5
ii. General	10
iii. Temporary Structure	40
2.Furniture & Fittings	10
3.Plant & Machinery	
i. Motor Vehicles	
a) Used in a business of running them on Hire	30
- Acquired & put to use between 23.08.19 to 31.03.20	45
b) Other motor vehicles	15
- Acquired & put to use between 23.08.19 to 31.03.20	30
ii. Ships	20
iii. Aircraft	40
iv. Computer/Laptop	40
v. Books	
a) owned by assessee carrying on a profession (annual publications or other than annual publications)	40
b) Libraries business	40
vi. Windmills & its equipment	
a) Installed before 01/04/2014	15
b) Installed on or after 01/04/2014	40
vii. Pollution control equipment	40
viii. Other plant & machinery	15
ix. Oil wells	15
4.Intangible Assets	25

• Notes

1. Mandatory to claim depreciation for all assessee
2. EPABX & Mobile phone are not computers hence Depreciation @ 40% is NOT eligible
3. Depreciation is allowed even if cost is less than 5,000/-
4. Intangible assets include know-how, patents, copyrights trademarks franchises or any other business or commercial rights of similar nature but other than goodwill of business and profession
5. Depreciation rate for computers accessories is 40% is UPS printer, scanners, etc.
6. Depreciation allowed when asset actually put to use & not ready to us
7. As per Sec. 43(3) plant includes ships, vehicles, books, scientific apparatus and surgical equipment used for business or profession but does not include Tea bushes, live stock, building furniture & fitting.

D. Method of Depreciation



E. Significance of date of purchase (effect of time on depreciation)

Where-

- (a) an asset is acquired by the assessee during the previous year, and
 - (b) is put to use in the same previous year for less than 180 days,
- the depreciation in respect of such asset is **restricted to 50%** of the normal depreciation. [Both conditions should be satisfied together]

F. Depreciation for undertakings other than power generating units

In respect of-

- (a) buildings, machinery, plant or furniture, being tangible assets.
 - (b) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets not being goodwill of a business or profession,
- owned, wholly or partly, by the assessee and used for the purpose of the business or profession, depreciation shall be allowed on the Written Down Value of the block of assets at such percentage as may be prescribed [Section 32(1)(ii)]**
- Block of Assets [Section 2(11)]:**

A "block of assets" is defined as a group of assets falling within a class of assets comprising:

- (a) **tangible assets** being buildings, machinery, plant or furniture;
- (b) **intangible assets** being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, not being goodwill of a business or profession,

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

G. Depreciation for power generating undertakings

Assessee is in the business of generation or generation & distribution of power have the option to claim depreciation on

- **Straight Line Method on each asset or**
- **WDV method on Block of Assets.**

Depreciation under Straight Line Method (SLM) [Section 32(1)(i)]

An assessee in the business of generation or generation & distribution of power will be allowed Depreciation in respect of

- building, machinery, plant or furniture being tangible assets;
- Know-how, patents, copyrights, trademarks etc. being intangible assets not being goodwill of a business or profession (added by Finance Act 2021, effective from AY 2021-22) owned wholly or partly by the assessee and used for the purposes of business at the prescribed rates on actual cost of each asset on the basis of Straight Line Method of depreciation.

Note:

1. Assessee has to exercise such option before the due date of furnishing the ROI relevant to the Previous Year in which they begin to generate power.
2. The option once exercised shall be FINAL for all subsequent assessment years.
3. The aggregate depreciation u/s. 32(1)(i) shall not exceed the actual cost of the assets
4. Restriction of 50% of Depreciation shall apply if the asset is put to use for less than 180 days in the year of acquisition.
5. Additional depreciation under section 32(1)(ia) is also available to power generating undertakings following WDV methods.

Terminal Depreciation [Section 32(1)(iii)]

In the case of any building, machinery, plant or furniture or intangible assets

- on which depreciation has been claimed and allowed u/s. 32(1)(i) i.e. under SLM and
- which is sold, discarded etc. in the Previous Year, and moneys payable for such assets is less than the WDV, then
- TERMINAL DEPRECIATION i.e. WDV of such asset (-) Moneys Payable for such assets,
- shall be allowed as deduction only if such loss is actually written off in the books.
- However, If asset is sold in the same Previous Year in which it was acquired, then there will be STCL under section 45(1)

Balancing Charge [Section 41(2)]

In the case of any building, machinery, plant or furniture or intangible assets

- in respect of which depreciation is claimed and allowed under section 32(1)(i) i.e. under SLM and
- which is sold, discarded etc. in the Previous Year and moneys payable for such assets is more than the WDV, then
- BALANCE AMOUNT shall be chargeable to tax as PGBP to the extent it does not exceed the amount of depreciation already allowed.
- Even if business is no longer in existence, the above provisions shall apply.
- If asset is sold in the same Previous Year in which it was acquired, then there will be STCG under section 45(1)

Special provision for COA in case of Depreciable Assets under SLM [Section 50A]

- If an asset on which depreciation is allowed under SLM u/s. 32(1)(i) is sold during the Previous Year,
- then for computing Capital Gain, the WDV as adjustment is taken as COA.

WDV as adjusted should mean:

WDV of asset	xxx
Add: Income assessed under section 41(2)	xxx

H. Additional depreciation [on plant & machinery acquired by an industrial undertaking] - section 32(1)(iia)

Additional depreciation is allowed on any **new machinery or plant** (other than ships and aircraft) acquired and **installed after 31.3.2005** by an assessee engaged in the business of manufacture or production of any article or thing at the rate of **20% of the actual cost of such machinery or plant**.

Additional Depreciation will be restricted to 50% in case the asset is put to use for less than 180 days during the previous year.

Further, the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days, shall be allowed in the immediately succeeding previous year.

Such additional depreciation will not be available in respect of:

- (a) any machinery or plant which, before its installation by the assessee, was used within or outside India by any other person; or
- (b) any machinery or plant installed in office premises, residential accommodation, or in any guest house; or
- (c) office appliances or road transport vehicles; or
- (d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise)
- (e) Ships and Aircrafts.

Note:

1. Additional depreciation is allowed even if the block has NIL value.
2. Additional depreciation is not available if the new plant and machinery is sold in the year of acquisition
3. Additional depreciation shall be subtracted while computing next year opening WDV.
4. An assessee engaged in the business of **Generation, Transmission or Distribution of power** shall also be allowed additional depreciation at the rate of 20% of actual cost of eligible new machinery or plant (other than ships and aircrafts) acquired and installed in a previous year. [Only in WDV Method]

5. The CBDT has clarified that the business of printing or printing and publishing amounts to manufacture or production of an article or thing and is, therefore, eligible for additional depreciation under section 32(1)(iia).

SECTION 43(1): Actual Cost

The expression “actual cost” means the actual cost of the asset to the assessee as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

PURCHASE PRICE	xxx
Add: Interest on loan borrowed for period up to the date of put to use [Sec. 36(1)(iii)]	xxx
Add: Expenses incurred for freight/insurance/loading/Unloading	xxx
Add: Trial Run Expenses, if any	xxx
Less: Amount met by any authority or other person by way of subsidy etc. Section 43(1)	xxx
Less: Adjustment as per explanation 1 to 13 to Sec. 43(1), if applicable	xxx
ACTUAL COST TO BE ADDED IN THE RELEVANT BLOCK OF ASSETS	xxx

Where an assessee incurs any expenditure for acquisition of any asset in respect which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through such other prescribed electronic mode, exceeds ₹ 10,000, such payment shall be ignored for the purposes of determination of “Actual Cost” of such asset.

Consequently, Depreciation/Additional Depreciation under Section 32 pertaining to such payment is not available. Moreover, such expenditure will not be considered for the purpose of Section 50.

The prescribed electronic modes are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay

Actual cost in certain special situations [Explanations to section 43(1)]

- 1. Asset used for business after it ceases to be used for scientific research:** Where an asset is used for the purposes of business after it ceases to be used for scientific research related to that business, the actual cost to the assessee for depreciation purposes shall be the actual cost to the assessee as reduced by any deduction allowed under section 35(1)(iv)(i.e. NIL) [Explanation 1].
- 2. Inventory converted into capital asset and used for business or profession:** Where inventory is converted or treated as a capital asset and is used for the purpose of business or profession, the fair market value of such inventory as on the date of its conversion into capital asset determined in the prescribed manner, shall be the actual cost of such capital asset to the assessee [Explanation 1A]
- 3. Asset is acquired by way of gift or inheritance:** Where an asset is acquired by way of gift or inheritance, its actual cost shall be the actual cost to the previous owner minus

depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets [Explanation 2].

Further, any expenditure incurred by the assessee such as expenditure on freight, installation etc. of such asset would also be includible in the actual cost.

- 4. Second hand asset:** Where, before the date of its acquisition by the assessee, the asset was at any time used by any other person for the purposes of his business or profession, and the Assessing Officer is satisfied that the main purpose of the transfer of the asset directly or indirectly to the assessee was the reduction of liability of income-tax directly or indirectly to the assessee (by claiming depreciation with reference to an enhanced cost) **the actual cost to the assessee shall be taken to be such an amount which the Assessing Officer may, with the previous approval of the Joint Commissioner, determine, having regard to all the circumstances of the case [Explanation 3].**
- 5. Re-acquisition of asset:** Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him, **the actual cost to the assessee shall be a. the actual cost when he first acquired the asset minus depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets; or b. the actual price for which the asset is re-acquired by him whichever is less [Explanation 4].**
- 6. Acquisition of asset previously owned by any person to whom such asset is given on lease, hire or otherwise:** Where before the date of acquisition by the assessee say, Mr. A, the assets were at any time used by any other person, say Mr. B, for the purposes of his business or profession and depreciation allowance has been claimed in respect of such assets in the case of Mr. B and such person acquires on lease, hire or otherwise, assets from Mr. A, then, **the actual cost of the transferred assets, in the case of Mr. A, shall be the same as the written down value of the said assets at the time of transfer thereof by Mr. B [Explanation 4A]. Here, Explanation 4A overrides Explanation 3.**
- 7. Building previously the property of the assessee:** Where a building which was previously the property of the assessee is brought into use for the purposes of the business or profession, **its actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rates in force on that date that would have been allowable had the building been used for the purposes of the business or profession since the date of its acquisition by the assessee [Explanation 5].**
- 8. Asset is acquired outside India by an assessee, being a non-resident and such asset is brought by him to India:** Where an asset is acquired outside India by an assessee, being a nonresident and such asset is brought by him to India and used for the purposes of his business or profession, **the actual cost of asset to the assessee shall be the actual cost the asset to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee [Explanation 11].**
- 9. Capital asset on which deduction is allowable under section 35AD:** Explanation 13 to section 43(1) provides that the actual cost of any capital asset, on which deduction has been allowed or is allowable to the assessee (or previous owner in case of gift, death, amalgamation etc) under section 35AD, **shall be nil.**

However, where an asset, in respect of which deduction is claimed and allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of section 35AD(7B) (on account of asset, being used for a purpose other than specified business under section 35AD), the actual cost of the asset to the assessee shall be actual cost to assessee **as reduced** by the amount of depreciation allowable had the asset been used for the purpose of business, calculated at the rate in force, since the date of its acquisition

- 10. Subsidy or grant or reimbursement:** Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee.

Example: Compute the amount of depreciation allowable in the following cases –

Dr. Jolly purchased a house property on 1-12-2022 for ₹ 10,00,000. Till 1-6-2024, the same was self-occupied as a residence. On this date, the building was brought into use for his medical profession. Rate of depreciation on buildings at the time of purchase of house property was 15 %.

Solution: Explanation 5 to section 43(1) provides mode of computation of actual cost when a building initially used for personal purposes is brought into business use. The rate of depreciation to be applied is the rate in force in the year in which building is brought into business use i.e. 10%. Computation of the amount of depreciation allowable (amounts in ₹)

WDV as on 31.3.2023	10,00,000
Less: Depreciation @ (10% x 50%) of ₹ 10,00,000 (use for less than 180 days)	50,000
WDV as on 1.04.2023	9,50,000
Less: Depreciation (10% of ₹ 9,50,000)	95,000
WDV as on 1.4.2024 (Actual cost of building)	855,000
Depreciation for the current year (10% of ₹ 8,55,000).	85,500

TREATMENT OF EXCHANGE RATE FLUCTUATIONS IN CASE OF PURCHASE OF AN ASSET FROM OUTSIDE INDIA [SECTION 43A]

- The assessee has acquired any capital asset from abroad on credit or on deferred payment or from money representing in foreign currency
- subsequently, after the date of acquisition, there is an **increase or reduction in the liability at the time of making the payment** towards the cost of the asset or repayment of money borrowed in any foreign currency along with interest due to foreign exchange rate fluctuation
- Such increase or reduction shall be added to or reduced from the cost of the assets.

7.8 SECTION 35: EXPENDITURE ON SCIENTIFIC RESEARCH**[Section 35] EXPENDITURE ON SCIENTIFIC RESEARCH**

SEC.35	EXPENDITURE INCURRED	DEDUCTION	CONDITIONS
(1)(i)	1. Revenue expenditure on scientific research incurred after commencement of business. 2. Subject to conditions, Expenditure on scientific research before commencement of business by way of a. Purchase of materials; or b. Salary (except perquisite) of employees	Amount of expenditure incurred [100%]	<u>Expenditure incurred within 3 years immediately preceding the date of commencement of business</u> is allowed as deduction in the year of commencement of business to the extent certified by the prescribed authority
(1)(ii)	Sum paid to a Research Association, University, College or Institution whose object is undertaking of scientific research	00% x Sum paid	-Such association, university college or institution must be approved and notified by the CG. - Deduction is allowed even if research is not related to business.
(1) (ia)	Sum paid to a company to be used by it for scientific research	100% x Sum paid	Such company is registered in India, is approved by prescribed authority and has the main object of 'scientific research and development'
(1)(iii)	Sum paid for Social Science or Statistical Research to a Research	100% x Sum paid	-Such association, university

	Association which has as its object the undertaking of research in social science or statistical science or to a University, College or Institution		college or institution must be approved and notified by the CG. - Deduction is allowed even if research is not related to business.
(1)(iv) & (2)	- Capital expenditure (except expenditure on the purchase of land) on scientific research related to business.- Capital expenditure (except expenditure on the purchase of land) incurred within 3 years immediately preceding the date of commencement of business.	Amount of expenditure incurred	-Pre-commencement expenditure is allowed in the year of the commencement of the business. -No depreciation is allowable.
(2AA)	Sum paid to – a. a National Laboratory; b. a University; or c. an Indian Institute of technology; or d. a specified person	100% x Sum paid	Sum is paid with a specific direction that it shall be used for scientific research undertaken under a programme approved in this behalf by prescribed authority.
(2AB)	Expenditure (not being in nature of cost of any land or buildings) incurred on scientific research on in-house research and development facility incurred by a company engaged in the business of biotechnology, or, any business of manufacture or production of any article or thing, not	Amount of expenditure incurred	-Such Research and development facility is approved by prescribed authority. -Such assessee should enter into an agreement with prescribed authority for co-operation in

	being an article or thing specified in the list of the Eleventh Schedule [Cost of building shall be allowed u/s 35(1)(iv) @100%		such Research and development facility and audit of accounts maintained for that facility. - No deduction shall be allowed in respect of such sum under any other provision of the Act. - No deduction shall be allowed in this sub-section to a company approved u/s 35(1)(ia)
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Other points:

1. Deduction not to be denied even if approval withdrawn subsequently : The deduction allowable under this section shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee-

(a) the approval granted to association, university, college, other institution referred to u/s 35(1)(ii)/ (iii), or to a company referred to u/s 35(1)(ia) (effective from AY 2022-23) or, the Laboratory or specified person referred to u/s 35(2AA) has been withdrawn; or

(b) the approval granted to the programme undertaken by the National Laboratory, University, Indian Institute of Technology or specified person, has been withdrawn.

2. Actual use for scientific research during the previous year - not necessary: Deduction under section 35(1)(iv) is available only if the asset was acquired during the previous year for the purposes of scientific research. There is no further requirement that asset must be put to use in the relevant previous year.

3. In case of sale of assets used for research purpose & on which deduction is allowed u/s 35, money payable on sale will be considered as deemed income u/s 41(3) u/h PGBP to the extent deduction is allowed. Amount in excess of Cost of such asset will be liable for Capital Gain.

4. SET OFF OF UNABSORBED CAPITAL EXPENDITURE:

The treatment for Set off and carry forward of unabsorbed scientific research capital expenditure shall be done in the same manner as that of unabsorbed depreciation.

5. Deduction under Section 35(1)(ii), 35(1)(ia), 35(1)(iii) & 35(2AA) is not available to Individual & HUF in case they opts for Section 115BAC.

SECTION 35AD - DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS

“Deduction under Section 35AD is not available to Ind./HUF in case they opts for Sec 115BAC”

A. Specified business – Deduction u/s 35AD is available only in the case of a “specified business”: W.e.f 01/04/2009

- (1) Setting up and operating a cold chain facility
- (2) setting up and operating a warehousing facility for storage of agriculture produce;
- (3) laying and operating a cross-country natural gas (w.e.f.01/04/2007) or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network (only Company)

W.e.f 01/04/2010

- (4) building and operating, anywhere in India, a hotel of two-star or above category; [Owner of Hotel is eligible for deduction even if owner transfers the operation of the hotel to another person]
- (5) building and operating, anywhere in India, a hospital with atleast 100 beds for patients;
- (6) developing and building a housing project under a scheme for slum redevelopment or rehabilitation;

W.e.f 01/04/2011

- (7) developing and building a housing project under a scheme for affordable housing
- (8) Production of fertilizer in India

W.e.f 01/04/2012

- (9) Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962
- (10) Bee-keeping and production and production of honey and beeswax; and
- (11) Setting up and operating a warehousing facility for storage of sugar

W.e.f 01/04/2014

- (12) Laying & Operating a slurry pipeline for the transportation of iron ore
- (13) Setting up and operating a semiconductor wafer fabrication manufacturing unit, if notified **W.e.f 01/04/2017 [AY 18-19]**
- (14) Developing or Operating & Maintaining or Developing, Operating & Maintaining any Infrastructure facility (Port, Airport, Rail system, Road, Highway Projects, Water Supply, Sewerage system, Solid waste management system etc) [Approved company assessee or Govt bodies]

B. Specified business should be new business:

(1) The specified business should not be set up **by splitting up, or the reconstruction, of a business already in existence.**

(2) It should not be set up by the **transfer of old plant and machinery.**

(a) **20% old machinery is permitted:**

If the value of the transferred assets does not exceed 20% of the total value of the machinery or plant used in the business, this condition is deemed to have been satisfied.

(b) Second-hand imported machinery is treated as new:

Any machinery or plant which was used outside India by any person (other than the assessee) shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled-

- (i) Such machinery or plant was never used in India.
- (ii) Such machinery or plant is imported into India from any other Country.
- (iii) No deduction on account of depreciation in respect of such machinery or plant has been allowed to any assessee previously

C. Audit of the books of account – Books of account of the assessee should be audited by an accountant before the specified date referred to in Section 44AB & the assessee furnishes by that date, the report in prescribed form.

D. AMOUNT OF DEDUCTION:

1. 100% of capital expenditure is deductible if assessee is opting for deduction under Section 35AD.
2. Any expenditure in respect of which payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through such other prescribed electronic mode, exceeds ₹ 10,000, no deduction shall be allowed in respect of such payment under section 35AD. The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.
3. Expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction u/s 35AD.
4. Expenditure incurred prior to the commencement of operation, wholly and exclusively, for the purpose of any specified business, shall be allowed as deduction during the previous year in which the assessee commences the operation of his specified business, if the amount is capitalized in the books of account of the assessee on the date of commencement of operation.

CONSEQUENCES OF CLAIMING DEDUCTION U/S 35AD:

- (i) If deduction is claimed and allowed u/s 35AD, the assessee shall not be allowed any deduction in respect of the specified business under Section 10AA or under the provisions of Chapter VIA [u/s 80-IA to 80RRB] for the same or any other assessment year.
- (ii) **No deduction allowable under the Act in respect of expenditure for which deduction allowed under this section:** The assessee cannot claim deduction in respect of such expenditure incurred for specified business under any other provision of the Income-tax Act, 1961 in the current year or under this section for any other year, **if the deduction has been claimed or opted by him and allowed to him under section 35AD.**

- (iii) Any **loss computed in respect of the specified business u/s 35AD** shall not to be set off except against profits and gains, if any, of other specified business u/s 73A (whether or not eligible for deduction u/s 35AD). To the extent the loss is unabsorbed, the same will be carried forward for set off against profits and gains from any specified business in the following assessment year and so on (no time-limit for carry forward such loss)
- (iv) **Any sum received or receivable on account of any capital asset**, in respect of which deduction has been allowed u/s 35AD, being demolished, destroyed, discarded, or transferred shall be treated as income of the assessee and chargeable to income tax under the head "Profits and gains of business or profession".
- (v) Section 35AD(7A) provides that any asset in respect of which a deduction is **claimed and allowed** under section 35AD shall be used only for the specified business for **a period of 8 years** beginning with the previous year in which such asset is acquired or constructed.
- (vi) **Sub-section (7B) has been inserted** to provide that if such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, **as reduced by** the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used.

[section 35D]: AMORTISATION OF PRELIMINARY EXPENSES

- (a) Section 35D provides for the amortisation of preliminary expenses incurred by **Indian companies and other resident non-corporate taxpayers** for the establishment of business concerns or the expansion of the business of existing concerns.
- (b) This section applies **in the case of new companies**, to expenses incurred before the commencement of the **business or in the case of extension of an existing undertaking**, to expenses incurred till the extension is completed or till the setting up a new unit
- (c) Such preliminary expenditure incurred shall be **amortised over a period of 5 successive PYs** beginning with the PY in which the business commences or, the PY in which the extension of the undertaking is completed or new unit commences production
- (d) Eligible expenses - **The following expenditure are eligible for amortisation**
Eligible expenses - The following expenditure are eligible for amortisation:
 - (a) the preparation of feasibility report / project report;
 - (b) conducting market survey or any other business survey
 - (c) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up to conduct the business of assessee

Provided the above work must be carried out by the assessee himself or by a concern which is for the time being approved in this behalf by the Board.

- (e) **Maximum Expenditure allowed to be amortized:**

In case of Indian companies	Higher of the following: (a) 5% of the Capital Employed, or (b) 5% of the Cost of project.
Other assessee	5% of the cost of the project

(f) 'Cost of the project' means: Actual cost of the fixed assets shown in the books as on the last day of the previous year.

(g) "Capital Employed" means: Issued share capital + Debentures + Long-term borrowings (7 years or more) as on the last day of the previous year

(h) Audit of accounts: In cases where the assessee is a person other than a company or a co-operative society, the deduction would be allowable only if the accounts of the assessee for the year or years in which the expenditure is incurred have been audited by a Chartered Accountant before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1); and the assessee has, by that date, furnished for the first year in which the deduction is claimed, the report of such audit in the prescribed form duly signed and verified by the auditor and setting forth such other particulars as may be prescribed.

(i) No other deduction under any provision of the Act: It has been clarified that in case where a deduction under this section is claimed and allowed for any assessment year in respect of any item of expenditure, the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of the Act for the same or any other assessment year.

AMORTISATION OF EXPENSES FOR AMALGAMATION/DEMERGER [Section 35DD]

An Indian company, incurred expenditure wholly and exclusively for the purpose of amalgamation or demerger, shall be allowed a deduction equal to one-fifth of such expenditure for 5 successive previous years beginning with the previous year in which amalgamation or demerger takes place

7.9 ALLOWABLE DEDUCTION IN COMPUTING PGBP

PREMIUM PAID FOR INSURANCE OF STOCK IN TRADE [Section 36(1)(i)]

If insurance policy has been taken out against risk, damage or destruction of the stock of the business or profession, the premium paid is deductible.

Insurance premia paid by a Federal Milk Co-operative Society [Section 36(1)(ia)]

Deduction is allowed in respect of the amount of premium paid by a Federal Milk Co-operative Society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supply of milk raised by its members to such Federal Milk Co-operative Society. The deduction is admissible without any monetary or other limits.

PREMIUM PAID BY EMPLOYER FOR HEALTH INSURANCE OF EMPLOYEES [SECTION 36(1)(ib)]

- A deduction is allowed to an employer in respect of premium paid by him by any mode of payment other than cash to effect or to keep in force an insurance on the health of his employees in accordance with a scheme framed by (i) the GIC and approved by the CG; or (ii) any other insurer and approved by the IRDA.

7.10 BONUS & COMMISSION [SECTION 36(1)(II)]

Deduction is allowed in respect of the sum paid to the employees as bonus or commission (Other than in lieu of profit or dividend)

Note:

1. Deduction is subject to the provisions of Section 43B & 40A(2).
2. Voluntary payments are deductible if it is for service rendered.
3. Any bonus exceeding the statutory amount is allowed if such excess payment has been made on account of commercial expediency.

INTEREST ON BORROWED CAPITAL [Section 36(1)(iii)]-

Amount of interest paid in respect of capital borrowed for the purposes of business or profession shall be allowed as deduction

Conditions:

1. The assessee must have borrowed money
2. The money so borrowed must have been used for business or profession
3. The assessee must have incurred interest on borrowed amount.

Other Points:

1. Capital may be borrowed either to incur revenue expenditure or to incur capital expenditure
2. . 2. The scope of the expression 'for the purposes of business' is very wide. Capital may be borrowed in the course of the existing business as well as for acquiring assets for extension of existing business.
3. 3. As per proviso to section 36(1)(iii), deduction in respect of any amount of interest paid, in respect of capital borrowed for acquisition of new asset (whether capitalised in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use shall not be allowed.
4. 4. Section 43(1) clarifies that interest relatable to a period after the asset is first put to use cannot be capitalised. Interest in respect of capital borrowed for any period from the date of borrowing to the date on which the asset was first put to use should, therefore, be capitalised.
5. Interest on own capital is not deductible. Interest to member in case of AOP is not deductible. However, Interest to partner's are deductible.

DEDUCTIONS IN RESPECT OF BAD DEBTS [Section 36(1)(vii) and sub-section (2)]

These can be deducted subject to the following conditions:

- a. The debts or loans should be in respect of a business which was carried on by the assessee during the relevant previous year.
- b. The debt should have been taken into account in computing the income of the assessee of the previous year in which such debt is written off or of an earlier previous year or should represent money lent by the assessee in the ordinary course of his business of banking or money lending.

I. Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable

(i) Under section 36(1)(vii), deduction is allowed in respect of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.

(ii) Therefore, write off in the books of account is an essential condition for claim of bad debts under section 36(1)(vii).

(iii) Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable.

If a debt, which has not been recognized in the books of account as per the requirement of the accounting standards but has been taken into account in the computation of income as per the notified ICDSs, has become irrecoverable, it can still be claimed as bad debts under section 36(1)(vii) since it shall be deemed that the debt has been written off as irrecoverable in the books of account by virtue of the second proviso to section 36(1)(vii).

This is because some ICDSs require recognition of income at an earlier point of time (prior to the point of time such income is recognised in the books of account). Consequently, if the whole or part of such income recognised at an earlier point of time for tax purposes becomes irrecoverable, it can be claimed as bad debts.

II. Deduction of differential amount of debts due as bad debts in the year of recovery, to the extent of deficiency in recovery

If on the final settlement the amount recovered in respect of any debt, where deduction had already been allowed, falls short of the difference between the debt due and the amount of debt allowed, the deficiency can be claimed as a deduction from the income of the previous year in which the ultimate recovery out of the debt is made.

It is permissible for the Assessing Officer to allow deduction in respect of a bad debt or any part thereof in the assessment of a particular year and subsequently to allow the balance of the amount, if any, in the year in which the ultimate recovery is made, that is to say, when the final result of the process of recovery comes to be known.

III. Recovery of a bad debt subsequently [Section 41(4)]

If a deduction has been allowed in respect of a bad debt under section 36, and subsequently the amount recovered in respect of such debt is more than the amount due after the allowance had been made, the excess shall be deemed to be the profits and gains of business or profession and will be chargeable as income of the previous year in which it is recovered, whether or not the business or profession in respect of which the deduction has been allowed is in existence at the time.

IV. Provisions for bad debt are not allowed as deduction

V. Bad debt is not allowed as deduction to the assessee who maintains accounts on cash basis.

VI. Successor of Business: The Successor to the business is entitled to deduction in respect of the debt incurred by the predecessor if the business is not dissolved and the identity of business

after succession remains the same. Deduction for bad debt is allowed business wise and not the assessee-wise.

EXPENSES ON FAMILY PLANNING [Section 36(1)(ix)] – ADMISSABLE ONLY TO COMPANIES

- ✓ Any expenditure of revenue nature bona fide incurred by a company for the purpose of promoting family planning amongst its employees will be allowed as a deduction in computing the company's business income; \
- ✓ Where the expenditure is of a capital nature, one-fifth of such expenditure will be deducted in the previous year in which it was incurred and in each of the four immediately succeeding previous years.
- ✓ This deduction is allowable only to companies and not to other assessees.
- ✓ The assessee would be entitled to carry forward and set off the unabsorbed part of the allowance in the same way as unabsorbed depreciation.
- ✓ The capital expenditure on promoting family planning will be treated in the same way as capital expenditure for scientific research for purposes of dealing with the profit or loss on the sale or transfer of the asset including a transfer on amalgamation.

DEDUCTION OF BANKING CASH TRANSACTION TAX PAID [Section 36(1)(xiii)]

Any amount of Banking Cash Transaction Tax paid by assessee during the previous year on the taxable banking transactions entered shall be allowed as deduction.

DEDUCTION OF SECURITIES TRANSACTION TAX PAID [Section 36(1)(xv)]

The amount of STT paid by the assessee during the year in respect of taxable securities transactions entered into in the course of business shall be allowed as deduction. [In CG, benefit of STT is not available to investor]

DEDUCTION OF COMMODITIES TRANSACTION TAX PAID [Section 36(1)(xvi)]

The amount of CTT paid by the assessee during the year in respect of taxable commodities transactions entered into in the course of business shall be allowed as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession"

7.11 RESIDUARY EXPENSES [SECTION 37]

Revenue expenditure incurred for purposes of carrying on the business, profession or vocation:

- This is a residuary section under which **only business expenditure is allowable but not the business losses**, e.g., those arising out of embezzlement, theft, destruction of assets, misappropriation by employees etc. (Business Losses are allowable under section 29 as losses incidental to the business).
- The deduction is limited only to the **amount actually expended** and does not extend to a reserve created against a contingent liability.

Conditions for allowance:

- a) The expenditure should not be of the nature described in sections 30 to 36.
- b) It should have been incurred by the assessee in the accounting year.

- c) It should be in respect of a business carried on by the assessee the profits of which are being computed and assessed.
- d) It must have been incurred after the business was set up.
- e) It should not be in the nature of any personal expenses of the assessee.
- f) It should have been laid out or expended wholly and exclusively for the purposes of such business.
- g) It should not be in the nature of capital expenditure.
- h) The expenditure should not have been incurred by the assessee for any purpose which is an offence or is prohibited by law.

Allowable Expenditure u/s 37 under specific instructions of CBDT:

- a) Diwali and Muharat Expenses.
- b) Telephone Deposit paid under Tatkal Telephone Deposit Scheme
- c) Expenditure on Fluorescent Tubes including wiring and fitting expenditure - Initial expenditure is of capital nature but all replacement expenditure should be treated as revenue nature.
- d) Insurance Premium paid on account of loss of profits.
- e) Lagan or mahamai contribution collection by the Trade Association from their Members, on the business transactions.
- f) Annual Listing Fees paid to Stock Exchange.
- g) Commitment Charges paid by Borrower to Lender.
- h) Training Expenditure.
- i) Expenditure incurred by business concern on civil defence measures.
- j) Professional Tax paid.

LOSSES ALLOWABLE AS DEDUCTION:

- a) Loss on account of embezzlement, in the previous year in which embezzlement is discovered.
- b) Loss caused by forfeiture of Security Deposits given at the time of submission of tenders for supply of goods.
- c) Loss of Stock-in-Trade by fire and other natural calamities, or due to negligence of the employees or due to enemy action, or in transit.
- d) Loss on account of robbery or theft, provided it is in the course of business and incidental to the trade whichever trade it is.
- e) Loss caused by non-recovery of advances made in course of business, provided it is a Trading Loss
- f) Loss caused on account of fluctuations in exchange rate, at the time of remitting the money for purchase of raw material,
- g) Loss caused due to breach of contract for delivery of goods by either party.

LOSSES NOT ALLOWABLE AS DEDUCTION:

- 1) Loss relating to any business or profession discontinued before the commencement of the previous year.
- 2) Violation of law is not a normal incident of trade and an expense incurred by way of penalty for infraction of laws is not deductible.
- 3) Loss incurred due to damage, destruction, etc. of capital assets.
- 4) Loss which is not incidental to the carrying on of the business of the assessee
- 5) Loss due to sale of securities held as Investments.

6) Loss caused by forfeiture of advances given for purchase of Capital Assets.

7) Anticipated losses of subsequent years cannot be allowed as a deduction in the current year.

Advertisements in Publication of political parties – SECTION 37(2B)

Section 37(2B) disallows any deduction on account of expenditure incurred on advertisement in any souvenir, brochure, tract or the like published by any political party, whether it is registered with the Election Commission of India or not, made by any person carrying on business or profession in computing the profits and gains of the business or profession.

However, a deduction for the same or/and similar expenditure is allowed under Section 80GGB and 80GGC.

Disallowance of CSR expenditure

- (i) For the purposes of Section 37(1), any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in Section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37.
- (ii) The rationale behind the disallowance is that CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business.
- (iii) However, CSR expenditure, which is of the nature described in sections 30 to 36, shall be allowed as deduction under those sections subject to fulfilment of conditions, if any, specified therein.

7.12 INADMISSIBLE DEDUCTIONS [SECTION 40]

Section 40(a)(i)–Non-compliance of provisions of TDS where payment is made to NonResident or to any person outside India

– No Deduction will be allowed where any Interest, Royalty, Fees for technical services or other sum chargeable under this Act, which is payable,

- (i) outside India;

(ii) in India to a Non-Resident, not being a Company or to a Foreign Company,

on which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in section 139(1).

– However, it is provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in Section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

– In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee –

- i. has furnished his return of income under section 139;

- ii. has taken into account such sum for computing income in such return of income; and
- iii. has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

it would be deemed that the assessee has deducted and paid the tax on such sum on the date on which **return of income has been furnished by the payee.**

Note: Since the date of furnishing the return of income by the payee is taken to be the date on which the payer has deducted tax at source and paid the same, such expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(i) in the year in which the said expenditure is incurred. However, such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the payee, since tax is deemed to have been deducted and paid by the payer in that year.

Section 40(a)(ia) – Non-compliance of provisions of TDS where payment is made to Resident in India

30% of any sum payable (paid or payable during the PY) to a Resident on which tax is deductible at source, shall be disallowed if

- (i) such tax has not been deducted; or
- (ii) (i) such tax, after deduction, has not been paid on or before the due date specified in section 139(1).

Tax Points:

1) However, it is provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in Section 139(1), 30% of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

2) If tax has not been deducted & the deductor is able to establish that the payee has furnished the return of income by including such income in his return and paid tax due on income declared by him in such return of income, it shall be deemed **that the assessee has deducted and paid tax on such income on the date of furnishing return of income by the resident payee.**

Section 40(a)(iii)

Any sum which is chargeable under the head 'Salaries' shall be disallowed if it is payable outside India or to a non-resident in India and if the tax has not been paid thereon nor deducted there from within the time prescribed under the Act. [Once paid without deduction of TDS, deduction can never be claimed even if tax is later deducted and paid]

EXPENSES OR PAYMENTS NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES [SECTION 40A]

Excess Payments to Relatives and Associates – Section 40A(2)

A. Where the assessee incurs any expenditure in respect of which a payment has been or is to be made to Specified Person, so much of the expenditure as is considered to be excessive or unreasonable (having regard to FMV of goods, services / Legitimate needs of business) shall be disallowed by the Assessing officer

B. The word “relative” as defined in the section 2(41) of the Act, means, in relation to individual, the spouse, brother or sister or any lineal ascendant or descendant of that individual.

D. A person shall be deemed to have a substantial interest in a business or profession if: - in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of equity shares carrying not less than 20% of the voting power and - in any other case such person is, at any time during the previous year, beneficially entitled to not less than 20% the profits of such business or profession.

E. Amount disallowed under section 40A(2) is however taxable as income in the hands of recipient.

**SECTION 41 – DEEMED INCOME/PROFITS CHARGEABLE TO TAX
EXCEPTION TO THE RULE THAT INCOME FROM BUSINESS CAN BE
ASSESSED ONLY IF THE BUSINESS IS CARRIED ON DURING THE
PREVIOUS YEAR:**

Section 41(1): Recovery against any deduction

A. Conditions:

1. Where an allowance or deduction is allowed in any assessment year in respect of loss, expenditure or trading liability incurred by the assessee and
2. subsequently during any previous year such assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof,

B. Treatment: the amount obtained or benefit accrued shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year.

C. Tax Points: Where such benefit has been obtained by the successor in business, such benefit shall be taxable in the hands of successor.

Section 41(5)- Adjustment of loss - Generally, loss of a business cannot be carried forward after 8 years. An exception is, however, provided by section 41(5), This exception is applicable if the following condition are satisfied:

- Condition 1 The business or profession is discontinued.

- Condition 2 Loss of such business or profession pertaining to the year in which it is discontinued could not be set-off against any other income.
- Condition 3 Such business is not speculation business.
- Condition 4 After discontinued of such business or profession, there is a receipt which is deemed as business income under section 41(1), (3), (4) or (4A).

Computation of income under the head "Profits and gains of business or profession" for transfer of immovable property in certain cases [Sec. 43CA]

1. Section 43CA provides that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the SDV shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and gains of business or profession".

However, if Stamp Duty Value does not exceeds 110% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing shall be deemed to be the full value of the consideration. [Hint: SDV does not exceeds 110% of sales consideration]

Further, in case of transfer of an asset, being a residential unit, if Stamp Duty Value does not exceeds 120% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing shall be deemed to be the full value of the consideration, if the following conditions are satisfied, namely:-

- i. the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2020 and ending on the 30th day of June, 2021;
 - ii. such transfer is by way of first time allotment of the residential unit to any person; and
 - iii. the consideration received or accruing as a result of such transfer does not exceed ` 2 crore
 - iv. "Residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household. [Amended by Finance Act 2021, effective from AY 2021-22]
2. When date of agreement and date of registration are not same:
SDV may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer if amount of consideration (or a part thereof) for the transfer has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other prescribed electronic modes on or before the date of the agreement. The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.
 3. Can an assessee challenge stamp duty valuation – Yes. In that case, VO will be appointed.

7.13 LET US SUM UP

As we know that a person's income can be divided under five heads like Salary, House property, Capital gains, income from other sources and Profits and gains of Business or Profession. Out of these heads _Profits and gains of Business or Profession' are most important and largest head. The income from business to which a person is chargeable under this head represents not the gross receipts from the business but the profits and gains derived from there. For instance, in the case of a businessman, the gross sale proceeds would not be the basis for levying tax but it is net profit or the profit or gain as determined in accordance with sections 28 to 44DB.

The chargeability to tax under Section 28 is based primarily upon the condition that the assessee must have carried on a business or profession at any time during the accounting year, though not necessarily throughout the accounting year. There are two parts of this head one is business and second is profession.

7.14 REVIEW QUESTIONS

Q1: Describe expressly allowed deduction at the time of calculating profit of business or profession.

Q2: Explain the deductions that are expressly disallowed in computing the income from business or profession.

Q3: Explain the incomes that are chargeable under the head business or profession.

Q4: What is the procedure of calculating the profit in case of business/profession? Give a Performa of corrected profit and loss account.

Q5: Write notes on the following: (i) Expenditure on Scientific research (ii) Tea development account (iii) Capital expenditure of Telecommunication services.

Q6: The net profit of business of Mr. Baveesh as disclosed by its P&L account was Rs:3,25,000 after charging the following: Municipal taxes on house property let out Rs:3,000 Bad debt written off Rs:15,000 Provision for bad and doubtful debts Rs: 16,000 Provision for taxation Rs: 15,000 Depreciation Rs: 25,000 Depreciation allowance as per rule is Rs:20,000. Compute taxable business profit.

UNIT 8: CAPITAL GAINS AND INCOME FROM OTHER SOURCES

Learning Objectives

After studying this unit, you should be able to:

- Explain the meaning of the term capital gains;
- List the capital gains exempt from tax;
- Discuss the deductions allowed from long-term capital gains;
- Compute the income chargeable under the head capital gains.
- List the incomes falling under the head 'Income from other sources';
- Explain in detail the provisions of income tax for dividends and interest on securities;
- Discuss the set off and carry forward of losses

Structure

- 8.1 Introduction
- 8.2 Section 45(1) – Charging Section
- 8.3 Definition of Transfer [Section 2(47)]
- 8.4 Nature of Capital Assets
- 8.5 Type of Capital Gains
- 8.6 Section 48: Computation of Capital Gain
- 8.7 Section 51 - Advance Money Received & Forfeited
- 8.8 Exempted Transfer [Section 47] – Some Special Cases
- 8.9 Section 49(1) - Deemed Cost of Acquisition
- 8.10 Exemption of Capital Gains
- 8.11 Capital Gains in Cases of Investment in Residential House [Section 54f]
- 8.12 Tax on Short Term Capital Gain on Shares/Units [Section 111a]
- 8.13 Tax on Long Term Capital Gains (LTCG) Other Than Those Covered Under Section 112a [Section 112]
- 8.14 Treatment of Securities Transaction Tax
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8.1 CAPITAL GAINS: INTRODUCTION

You know 'capital gains' is a separate head of income and any income arising out of sale or transfer of a capital asset is charged to tax under this head. In this unit, you will study the meaning of capital gains, items included in capital gains capital gains exempt from tax and the deductions allowed from capital gains. You will also study how the taxable income from capital gains is

calculated. Any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to income-tax under the head 'Capital Gains', and shall be deemed to be the income of the previous year in which the transfer took place. The above definition can be split up into three parts:

- Capital Asset
- Transfer of Capital Asset
- Profits or Gains

You have read about three heads of income. Income specific to a particular head is included in and charged to tax under that head. Income from other sources is a head of income which includes all those incomes which are:

- Listed in the definition of income,
- Not exempt from tax, and
- Not included in any specific head i.e., salaries, house property, capital gains etc.
- This means it is a residual head which includes all those incomes which are not included in a specific head.

In this unit you will study in detail the incomes included under this head and the provisions of income tax relating to them. You will also study about the set-off and carry forward of losses.

8.2 SECTION 45(1) – CHARGING SECTION

Any profits or gains arising from the TRANSFER of a CAPITAL ASSET effected in the PREVIOUS YEAR shall be chargeable to income tax under the head “Capital Gain” and shall be deemed to be the income of Previous Year in which the transfer took place.

DEFINITION OF CAPITAL ASSET [Section 2(14)]

Capital Asset means

- (a) property of any kind held by an assessee, whether or not connected with his business or profession,
- (b) any securities held by a Foreign Institutional Investor (FII) which has invested in such securities as per SEBI Regulations
- (c) any Unit Linked Insurance Policy to which exemption under clause (10D) of section 10 does not apply.

but excludes

- any stock-in-trade (other than securities referred in (b) above), consumable stores or raw materials held for the purpose of the business or profession of the assessee;
- **PERSONAL EFFECTS**, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him.

Excluding (i.e. these are capital Assets):

a) Jewellery	b) Drawings	c) Sculptures
d) Archaeological Collections	e) Paintings	f) Any work of art

- *Agricultural land situated in Rural Area*
- *Specified Gold Bonds, Special Bearer Bonds 1991, Gold Deposit Bonds 1999 or Deposit Certificates issued under the Gold Monetisation Scheme 2015 notified by the central government.*

Definition of Rural Area: Rural area means any area which is outside the jurisdiction of a municipality or cantonment board having a population of 10,000 or more and also which does not fall within distance given below –

shortest aerial distance from the local limits of municipality/ cantonment board	Population according to the last preceding census of which the relevant-figures have been published before the first day of the previous year
2km	If the population is more than 10,000 but not more than 1 lakhs.
6km	If the population is more than 1 lakh but not more than 10 lakhs.
8km	If the population is more than 10 lakhs.

8.3 DEFINITION OF TRANSFER [SECTION 2(47)]

“TRANSFER”, IN RELATION TO A CAPITAL ASSET, INCLUDES:

- i) Sale, Exchange or Relinquishment of the asset or Extinguishment of any rights therein; or
- ii) Reduction of Share Capital; or
- iii) Compulsory Acquisition thereof under any law; or
- iv) Conversion of Capital Asset into **Stock In Trade [SIT]** of a business; or
- v) Maturity or Redemption of a Zero-Coupon Bond; or
- vi) Allowing of the possession of any immovable property in part performance of a contract u/s. 53A of the Transfer of property Act; 1882 [Part-performance of the contract]; or
- vii) Any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other Association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring or enabling the enjoyment of any immovable property.

[POH will be counted from date of allotment of shares/membership and not from the date of allotment of immovable property]

8.4 NATURE OF CAPITAL ASSETS

- Section 2(42A) defines Short-Term Capital Asset as a **capital asset** held by an assessee for **not more than 36 months** (Period of Holding) **immediately preceding the date of its transfer**. However, in case of following financial assets the above period of 36 months is replaced by 12 months:

- a. Securities (other than Unit) listed in a recognized stock exchange in India.
- b. Units of an Equity Oriented Fund.
- c. Units of unit Trust of India / Zero Coupon Bond.

In case of Unlisted equity or preference shares; Land or Building or Both, period of 36 months is replaced by 24 Months.

Section 2(29A) defines Long Term Capital Asset as a capital asset which is not Short-Term Capital Asset. Therefore, a capital asset held by an assessee for more than 36 months (or 24 months/12 months as the case may be) immediately preceding the date of its transfer is a long-term capital asset.

Tax Points:

- a) An asset held exactly for 36/24/12 months will be a STCA.
- b) For computing the period of 36/24/12 months, the date on which the asset was acquired is to be included while the date on which the asset is transferred is to be excluded.
- c) In the case of transfer of a depreciable asset (WDV Method), Capital Gain (if any) is taken as STCG, irrespective of period of holding.

8.5 TYPE OF CAPITAL GAINS

1) Short-Term Capital Gains: Gain arising on transfer of STCA [Section 2(42B)]

2) Long-Term Capital Gains: Gain arising on transfer of LTCA [Section 2(29B)]

Cost of Acquisition[COA]: Cost of Acquisition of assets is the value for which it was acquired by the assessee. Expenses of capital nature for completing or acquiring the capital assets are includible in the COA.

COA will include the followings:

- | | |
|--------------------------|--|
| (a) Purchase Price | (c) Brokerage/Commission paid on acquisition of assets |
| (b) Registration charges | (d) any other expenses of similar nature |

Cost of Improvement[COI]:

Cost of improvement is capital expenditure incurred by an assessee in making any additions/improvement to the capital assets. It also includes any expenditure to protect or complete the title to the capital assets or to cure such title. In other words, any expenditure incurred to increase the value of the capital asset is treated as COI.

8.6 SECTION 48: COMPUTATION OF CAPITAL GAIN

Section 48: Computation of capital gain

Particular		₹
Full Value Of Consideration(FVOC)		XXX
Less: Expenditure incurred wholly and exclusively in connection with such a transfer.		XXX
Net Sales Consideration		XXX
Less: Indexed Cost of Acquisition [ICOA]	xxx	
Less: Indexed Cost of Improvement [ICOI]	xxx	
CAPITAL GAIN		XXX

Note: Benefit of Indexation is available only in case of Long-Term Capital Assets.

Indexed cost of acquisition means = COA $\times$ COST INFLATION INDEX IF THE YEAR IN WHICH THE

ASSET IS TRANSFERRED

CII for the P.Y. in which the asset was first held by the assessee

Or

CII for the year of 2001-02, whichever is later.

Cases where Benefit of Indexation is Not Available even in case of Long-Term Capital Assets:

- Transfer of a bond or a debenture other than Capital Indexed Bonds issued by the Government OR Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme 2015. (Index benefit is available on transfer on sovereign gold bond)**
- Transfer of undertaking or division in a Slump Sale under Section 50B.**
- Transfer of shares/debentures of an Indian company purchased by a Non-Resident in foreign currency.**
- Transfer of Depreciation Assets (other than an asset used by a power generating unit eligible for depreciation on SLM basis)**

COST OF ACQUISITION WHEN THE ASSET IS ACQUIRED BEFORE 01/04/2001 [SECTION 55(2)(b)]

When an asset has been acquired by the

(a) assessee or

(b) by the previous owner from whom the asset was acquired by the assessee u/s 49(1), before 01/04/2001, the assessee has an option to take either the actual COST OF ACQUISITION(COA) or FAIR MARKET VALUE of the asset as on 01/04/2001 to be the COA for computation of CG. [Higher will be preferred]

However, in case of capital asset, being land or building or both, the fair market value of such asset on 1-4-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 1-4-2001.

COST OF IMPROVEMENT [COI] - SECTION 55(1)(b)

- a) Any COI incurred by the Assessee/Previous Owner is to be considered.
- b) Any COI incurred before 01-04-2001 is to be completely ignored.
- c) COI in respect of following assets is taken at NIL:
 - Goodwill of a Business (not profession);
 - Right to manufacture, produce or process any article or thing;
 - Right to carry on any business or profession.

8.7 SECTION 51 - ADVANCE MONEY RECEIVED & FORFEITED

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

- ✓ The cost for which the asset was acquired, or
 - ✓ The FMV as on 1.4.2001 where FMV as on 1.4.2001 has been taken as COA, or
 - ✓ The WDV in case of depreciable assets
- as the case may be, in computing the **COST OF ACQUISITION**.

NOTES:

- Amount forfeited either before or on/after 1.4.2001 is to be deducted as per section 51.
- Amount forfeited on or after 01/04/2014, will not be deducted under this Section, but it will be taxable as **INCOME FROM OTHER SOURCES** as per New Section 56(2)(ix)
- Amount forfeited by previous owner is not to be deducted as per 51.
- **Travancore Rubber & tea Co. Ltd (SC):** if the money forfeited exceeds the cost, the cost shall be reduced to the extent it becomes NIL, the excess shall be a Capital Receipt not taxable.

SECTION 50D – FMV AS A FULL VALUE OF CONSIDERATION

Fair market value(FMV) of the capital asset on the date of transfer to be taken as sale consideration, in cases where the consideration is not determinable.

SECTION 50C – SALE CONSIDERATION IN SPECIAL CASES

Where the consideration received (as declared) for **LAND OR BUILDING OR BOTH** is **LESS THAN** the value adopted or assessed or assessable by Stamp Valuation Authority (SVA) then, sales consideration shall be taken to be the value so adopted or assessed or assessable by Stamp Valuation Authority.

Where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer if amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic modes as may be prescribed, on or before the date of the agreement for transfer.

The prescribed electronic modes notified are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT

(National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay as other electronic modes of payment.

Where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 110% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

REFERENCE TO VALUATION OFFICER:

- Where the assessee can claim that the value adopted or assessed or assessable by stamp valuation authority is greater than the FMV of the property as on the date of transfer.
- and value so adopted / assessed or assessable by the Stamp Valuation Authority is not disputed (i.e., challenged) in any appeal / revision before any authority or Court.,
- then Assessing Officer. may refer the case to a Valuation Officer for valuation of the capital asset.

SECTION 50CA – SALE CONSIDERATION IN CASE OF TRANSFER OF UNLISTED SHARES

Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of section 48, be deemed to be the full value of consideration received or accruing as a result of such transfer.

Explanation-

For the purposes of this section, "**QUOTED SHARE**" means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

The provisions of this section would, however, not be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

8.8 EXEMPTED TRANSFER [SECTION 47] – SOME SPECIAL CASES

HUF - Taxability of Distribution of Capital Assets on the Total / Partial Partition of HUF

1. Distribution of Capital Asset in total or partial partition of HUF is not considered as transfer and not chargeable to capital gain tax. [Section 47(i)]
2. Holding Period in the hands of the Transferee for the purpose of subsequent transfer [Sec 2(42A)]: Previous owner's holding period shall be included.
3. Cost in the hands of Transferee [Sec 49]: Cost to Previous owner.

Example:

Mr. X & sons, HUF, purchased a land for ₹ 40,000 in 2004-05. In 2009-10, a partition takes place when Mr. A, a coparcener, is allotted this plot valued at ₹ 80,000. In 2012-13, he had incurred expenses of ₹ 1,85,000 towards fencing of the plot. Mr. A sells this plot of land for ₹ 15,00,000 in PY 2021-22 after incurring expenses to the extent of ₹ 20,000. You are required to compute the capital gain for the A.Y. 2022-23.

Financial year	Cost Inflation Index
2004-05	113
2009-10	148
2012-13	200
2021-22	317

Solution: **Computation of taxable capital gains for the A.Y. 2022-23**

Particulars	₹	₹
Sale consideration		15,00,000
Less: Expenses incurred for transfer		20,000
Less:		14,80,000
(i) Indexed cost of acquisition ($\text{₹ } 40,000 \times \frac{317}{148}$)	85,676	
(ii) Indexed cost of improvement ($\text{₹ } 1,85,000 \times \frac{317}{200}$)	2,93,225	3,78,901
Long term capital gain		11,01,099

GIFT - TAXABILITY OF TRANSFER OF CAPITAL ASSETS UNDER GIFT / WILL/ IRREVOCABLE TRUST

(A) Transfer of Capital Asset under Gift / Will/ Irrevocable Trust is not considered as transfer and not chargeable to capital gain tax Under Section 47(iii) in the hands of Transferor.

- Conditions to be fulfilled: Capital Assets other than Shares, Debentures or Warrants allotted directly or indirectly under Employee Stock Option Plan shall be transferred.
- Holding Periods in hands of the Transferee in case of subsequent transfer [Sec 2(42A)]: Previous owner's holding period shall be included.
- Cost in the hands of Transferee [Sec. 49]: Cost to Previous Owner.

(B) COST OF ACQUISITION/PERIOD OF HOLDING for Transferee where GIFT is taxable UNDER THE HEAD INCOME FROM OTHER SOURCES:

COST OF ACQUISITION(COA)[Section 49(4)]: However where the capital gain arises from the transfer of a property, the value which has been subject to Income-Tax under section 56(2)(x) in the hands of recipient, the COA of such property shall be deemed to be the value [FMV/SDV] which has been taken into account for the purpose of the said Section 56(2)(x). [Previous owner cost MUST be ignored]

Period Of Holding: Further, POH in the hands of transferee will be started from the date of Gift in the hands of transferee.

Employee stock option plan(ESOP): TAXABILITY OF TRANSFER OF SPECIFIED SECURITY/SWEAT SHARES ALLOTTED

A. COA: Where the capital gain arises from the transfer of specified security or sweat equity shares allotted under ESOP Scheme as referred to section 17(2)(vi), the COST OF ACQUISITION of

such SECURITY or SHARES Shall be the FMV which has been considered for the purposes of section 17(2)(vi) [Section 49(2AA)]

B. Period of Holding: From the date of allotment or transfer of such specified security or sweat equity shares.

8.9 SECTION 49(1) - DEEMED COST OF ACQUISITION

Cost to previous owner deemed as cost of acquisition of asset: In the following cases, the cost of acquisition of the asset shall be deemed to be cost for which the previous owner of the property acquired it. To this cost, the cost of improvement to the asset incurred by the previous owner or the assessee must be added.

Where the capital asset became the property of the assessee:

- (i) on any distribution of assets on the total or partition of a HUF.
- (ii) under a gift or will.
- (iii) (a) by succession, inheritance or devolution.
(b) on any distribution of assets on the liquidation of a company.
(c) under a transfer to revocable or an irrevocable trust
(d) under any transfer of capital asset by a holding company to its wholly owned subsidiary Indian company or by a subsidiary company to its 100% holding Indian company, referred to in section 47(iv) and 47(v) respectively.
(e)) under any transfer referred to in section 47(vi) of a capital asset by amalgamating company to the amalgamated Indian company, in a scheme of amalgamation;
(f) under any transfer referred to in section 47(vib), of a capital asset by the demerged company to the resulting Indian company, in a scheme of demerger.
- (iv) by conversion by an individual of his separate property into a HUF property, by the mode referred to in section 64(2).

Example:

Ms. Usha purchases 1,000 equity shares in X Ltd. at a cost of ₹ 15 per share (brokerage 1%) in January 1998. She gets 100 bonus shares in August 2000. She again gets 1100 bonus shares by virtue of her holding on February 2005. Fair market value of the shares of X Ltd. on April 1, 2001 is ₹ 25. In January 2022, she transfers all her shares @ ₹ 150 per share (brokerage 2%). Compute the capital gains taxable in the hands of Ms. Usha for the A.Y. 2022-23 assuming X Ltd is an unlisted company and securities transaction tax was not applicable at the time of sale.

Cost Inflation Index for F.Y. 2001-02 : 100, F.Y. 2004-05 : 113 & F.Y. 2020-21: 317

Solution; Computation of capital gains for the A.Y. 2022-23

Particulars	₹
1000 Original shares	
Sale proceeds (1000 × ₹ 150)	1,50,000
Less : Brokerage paid (2% of ₹ 1,50,000)	3,000
Net sale consideration	1,47,000
Less : Indexed cost of acquisition [₹ 25 × 1000 × 317/100]	79,250
Long term capital Gain (A)	67,750
100 Bonus shares Sale proceeds (100 × ₹ 150)	15,000
Less : Brokerage paid (2% of ₹ 15,000)	300
Net sale consideration	14,700
Less : Indexed cost of acquisition [₹ 25 × 100 × 317/100] [See Note below]	7,925
Long term capital Gain (B)	6,775
1100 Bonus shares	1,65,000
Sale proceeds (1100 × ₹ 150)	3,300
Less: Brokerage paid (2% of ₹ 1,65,000)	1,61,700
Net sale consideration	NIL
Less: Cost of acquisition Long term capital gain (C)	1,61,700
Long term capital gain (A+B+C)	2,36,225

Note: Cost of acquisition of bonus shares acquired before 1.4.2001 is the FMV as on 1.4.2001 (being the higher of the cost or the FMV as on 1.4.2001).

8.10 EXEMPTION OF CAPITAL GAINS

1) CAPITAL GAINS ON SALE OF RESIDENTIAL HOUSE [SECTION 54]**ELIGIBLE ASSESSEE – INDIVIDUAL & HUF****CONDITIONS**

- ✓ There should be a transfer of Residential House Property (buildings or lands appurtenant thereto)
- ✓ It must be a Long -Term Capital Asset
- ✓ Income from such house should be chargeable under the head “Income from house property”.
- ✓ **Where the amount of capital gains exceeds ₹ 2 crore** Where the amount of capital gain exceeds ₹ 2 crore, one residential house in India should be
 - purchased within 1 year before or 2 years after the date of transfer (or)
 - constructed within a period of 3 years after the date of transfer.
- ✓ **Where the amount of capital gains does not exceed ₹ 2 crore**

Where the amount of capital gains does not exceed ₹ 2 crore, the assessee i.e., individual or HUF, may at his option,

- purchase two residential houses in India within 1 year before or 2 years after the date of transfer (or)
- construct two residential houses in India within a period of 3 years after the date of transfer.

IMP: Where during any assessment year, the assessee has exercised the option to purchase or construct two residential houses in India, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

However, he can continue to claim exemption on purchase or construct of one house.

QUANTUM OF EXEMPTION – LOWER OF THE TWO

- Amount invested in Residential House or houses or Capital Gain whichever is lower.

UNUTILISED AMOUNT – CAPITAL GAIN ACCOUNT SCHEME APPLICABLE

- a) The amount not utilized before the due date of filing ROI shall be **deposited before the due date of filing ROI in Capital gain Accounts Scheme.**
- b) The amount should be utilized within the **prescribed period.**
- c) Amount not utilized within the prescribed period (3 years from the date of transfer of the original asset) shall be treated as **LONG TERM CAPITAL GAIN** of the P/Y in which the prescribed period expires.

CONSEQUENCES OF TRANSFER OF NEW ASSET BEFORE 3 YEARS

If the new asset is transferred before 3 years from the date of its acquisition/Construction, then **cost of the asset will be reduced by capital gains exempted earlier** for computing capital gains.

2)CAPITAL GAINS ON TRANSFER OF AGRICULTURE LAND [SECTION 54B]

ELIGIBLE ASSESSEE – INDIVIDUAL & HUF

CONDITIONS

- There should be a transfer of **URBAN Agricultural Land.**
- Such land must have been used for agricultural purposes either by the assessee himself or his parents or by HUF in the 2 immediately preceding years.
- Another agricultural land (urban or rural) should be purchased within 2 years from the date of transfer.

QUANTUM OF EXEMPTION – LOWER OF THE TWO

- Cost of the new agricultural land or Capital Gain whichever is **lower.**

UNUTILISED AMOUNT – CAPITAL GAIN ACCOUNT SCHEME APPLICABLE

- a) The amount not utilized before the due date of filing ROI shall be deposited before the due date of filing ROI in **Capital gain Accounts Scheme.**
- b) The amount should be **utilized within the prescribed period.**
- c) Amount not utilized within the prescribed period (2 years from the date of transfer of the original asset) shall be treated as **CG of the PREVIOUS YEAR** in which the prescribed period expires.

CONSEQUENCES ON TRANSFER OF NEW AGRICULTURE LAND BEFORE 3 YEARS

- If the new agricultural land is transferred before 3 years from the date of its acquisition, then **cost of the land will be reduced by capital gains exempted earlier** for computing capital gains.

- However, if the new agricultural land is a rural agricultural land, there would be no capital gains on transfer of such land.

Example: Mr. Z had purchased certain urban agricultural land on 26.12.2006 for ₹ 7,50,000. The land was being used for agricultural purpose by him. This land is sold by him on 15.09.2021 for ₹ 78,50,000. He has spent ₹ 5,00,000 for acquiring an urban agricultural land on 15.10.2021 and has deposited ₹ 3,00,000 under the capital gains account scheme on 03.05.2022. Out of the spent amount deposited in Capital Gains Account Scheme, he withdrew ₹ 1,00,000 for purchasing agricultural land on 30.03.2023. The remaining amount could not be utilized by him for purchase of agricultural land up to 14.09.2023. Compute the taxable capital gain for the AY 2022-23, AY 2023-24 & AY 24-25.

3)CAPITAL GAINS NOT CHARGEABLE ON INVESTMENT IN CAPITAL BONDS [Section 54EC]

ELIGIBLE ASSESSEE – ANY ASSESSEE

CONDITIONS

- There should be transfer of a Long term capital Asset being Land or building or both.
- Such asset can also be a depreciable asset held for more than 24 months as the case may be.
- The capital gains arising from such transfer should be invested in a long-term specified asset within 6 months from the date of transfer.
- **LONG-TERM SPECIFIED ASSET** means specified bonds, redeemable after 5 years, issued by the
 - National Highways Authority of India (NHAI) or
 - Rural Electrification Corporation Limited (RECL)

OR any bond redeemable 5 years which is to be notified by the CG in this behalf.

For this purpose, bond issued by

- Power Finance Corporation Limited &
- Indian Railway Finance Corporation Limited

is considered as long term specified asset.

Further, there is no TDS on interest payable from these 2 bonds.

- The assessee should not transfer or convert or avail loan or advance on the security of such bonds for a period of 5 years from the date of acquisition of such bonds.
- **NOTE:** In case of conversion of capital asset into stock in trade and subsequent sale of stock in trade - period of 6 months to be reckoned from the date of sale of stock in trade for the purpose of section 54EC exemption [CBDT Circular].

QUANTUM OF EXEMPTION – LOWER OF THE TWO

- Capital gains or amount invested in specified bonds, whichever is lower.
- Investment made during the PY in which the original assets are transferred and in the subsequent financial year does not exceed ₹ 50,00,000.

ON VIOLATION OF CONDITIONS

in case of transfer or conversion of such bonds or availing loan or advance on security of such bonds before the expiry of 5 years, the capital gain exempted earlier shall be taxed as Capital Gain in the year of violation of condition.

8.11 CAPITAL GAINS IN CASES OF INVESTMENT IN RESIDENTIAL HOUSE [SECTION 54F]

ELIGIBLE ASSESSEE – INDIVIDUAL / HUF CONDITIONS

1. There must be transfer of a LONG-TERM CAPITAL ASSET, NOT BEING A RESIDENTIAL HOUSE
2. Transfer of plot of land is also eligible for exemption
3. The assessee should –
 - Purchase a residential house within a period of 1 year before or 2 years after the date of transfer; or
 - Construct a residential house within 3 years from the date of transfer.
4. Exemption under this section is available if the investment is made in One Residential House and that too the house is situated in India.
5. The assessee should not own more than one residential house on the date of transfer.
6. The assessee should not –
 - purchase any other residential house within a period of 2 year or
 - construct any other residential house within a period of 3 years from the date of transfer of the original asset.

QUANTUM OF EXEMPTION

If Cost of New Residential House = Net Sale Consideration of Original Asset

- Entire Capital Gain is exempt

If cost of new residential house < Net sale consideration of original asset, only proportionate capital gains is exempt i.e

- $\text{LTCG}^* \text{ Amount invested in RESIDENTIAL HOUSE} / \text{Net consideration.}$

UNUTILISED AMOUNT – CAPITAL GAIN ACCOUNT SCHEME APPLICABLE

- a) The amount not utilized before the due date of filing ROI shall be deposited before the due date of filing ROI in Capital gain Accounts Scheme.
- b) The amount should be utilized within the prescribed period.
- c) Amount not utilized within the prescribed period shall be treated as LTCG of the P/Y in which the prescribed period expires.

$$\text{LTCG} = \text{Unutilized Amount} \times \text{Amount of LTCG} / \text{Net Consideration}$$

CONSEQUENCES OF TRANSFER OF NEW ASSET BEFORE 3 YEARS

- Capital gain on new asset shall be taxed separately.
- LTCG exempted u/s. 54F shall be chargeable to tax as LTCG in the year of transfer.

8.12 TAX ON SHORT TERM CAPITAL GAIN ON SHARES/UNITS [SECTION 111A]

- This Section provides for a concessional rate of tax (i.e. 15%) on the STCG on transfer of
 - ✓ an equity shares in a company; or
 - ✓ a unit of a business trust; or
 - ✓ a unit of an equity-oriented fund (i.e., a fund set up under a scheme of mutual fund specified u/s 10(23D) or under a scheme of an insurance company comprising UNIFIED LINKED INSURANCE PLANS issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply) where transaction is subjected to Securities transaction tax(STT).
- Concessional Tax rate is also applicable in the case of STCG which arises from a transaction undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre located in Special economic zones[SEZ](even if STT is not applicable).
- RESIDENT IND/HUF: STCG will be reduced by the unexhausted basic exemption limit.
- No Deductions under Chapter VI-A.

8.13 TAX ON LONG TERM CAPITAL GAINS(LTCG) OTHER THAN THOSE COVERED UNDER SECTION 112A [SECTION 112]

- Where the Total Income of an assessee includes LTCG, tax is payable by the assessee @20% on such LTCG.
 - RESIDENT IND/HUF: LTCG will be reduced by the unexhausted basic exemption limit.
 - Deductions under Chapter VI-A cannot be availed in respect of such LTCG.
- PROVISO TO SECTION 112: The tax on LTCG from transfer of Listed Securities (other than Units) / Zero Coupon Bond shall be the lower of the following:
- Tax on Long term capital asset (computed normally with Indexation & Basic Exemption, if applicable), @20% OR-Tax on LTCG (computed normally without indexation & without Basic Exemption), @ 10%.

Section 112A – Tax on Long Term Capital Gains(LTCG) in certain Cases

1. Notwithstanding anything contained in Section 112, a concessional rate of tax @10% will be leviable on the LTCGs exceeding ₹ 1,00,000 on transfer of Long-Term Capital Asset being

- i. an equity shares in a company; or
- ii. a unit of a business trust; or
- iii. a unit of an equity-oriented fund (i.e., a fund set up under a scheme of mutual fund specified u/s 10(23D) or under a scheme of an insurance company comprising ULIPs issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply)

2. Securities Transaction Tax(STT)has

- a. in a case where the long-term capital asset is an equity share in a company, been paid on acquisition and transfer of such capital asset; or
- b. in a case where the long-term capital asset is in the nature of a unit of an equity-oriented fund or a unit of a business trust, been paid on transfer of such capital asset.

3. RESIDENT IND/HUF: Such LTCG will be reduced by the unexhausted basic exemption limit.

4. **Requirement of STT** payment shall not apply to a transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency.

5. The CG may notify the nature of acquisition where STT is not required to be paid.

6. Deductions under Chapter VI-A cannot be availed in respect of such LTCG.

7. Currency conversion as per first proviso to section 48 – Not available.

8. Indexation is not permitted to compute LTCG chargeable to tax under Section 112A.

9. Rebate under Section 87A is not available against tax computed under Section 112A.

Section 55(2)(ac) – Cost of acquisition

Cost of Acquisition, In relation to a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A, acquired before the 1st day of February, 2018 shall be higher of

- (i) the cost of acquisition of such asset; and
- ii. lower of-
 - a. the fair market value of such asset as on 31.01.2018; and
 - b. the full value of consideration received or accruing as a result of the transfer of the capital asset.

8.14 TREATMENT OF SECURITIES TRANSACTION TAX

If Shares/Units are treated as Investment: The securities transaction tax (STT) paid on sale of shares / units shall not be reduced from the sale consideration and the STT paid on purchase of shares / units shall not be added to the COA.

If Shares/Units are treated as Stock-In-Trade: If Shares/units are held as stock-in-trade then LTCG/STCG shall not arise. The profits/loss on sale of such shares/units shall be assessable as business income/business loss taxable normally. **In such a case the STT paid on purchase and sale of securities shall be allowed as deduction under section 36(xv) of the Income Tax Act while computing PGBP.**

8.15 INCOME FROM OTHER SOURCES: INTRODUCTION

SECTION 56(1) Any income which is not taxable under the head Salary, Income from house property, profits and gains from business and profession(PGBP) or Capital gains shall be chargeable under the head “INCOME FROM OTHER SOURCES (IFOS)”.

SECTION 56(2) INCOME FROM OTHER SOURCES

Income taxable under the head “Income from Other Sources”, in particulars:

- 1. Dividend;
- 2. Winning from lotteries, puzzles, card game etc.
- 3. Any sum received from the employee toward contribution for any staff welfare fund (like PF or ESI), if it is not chargeable under PGBP;

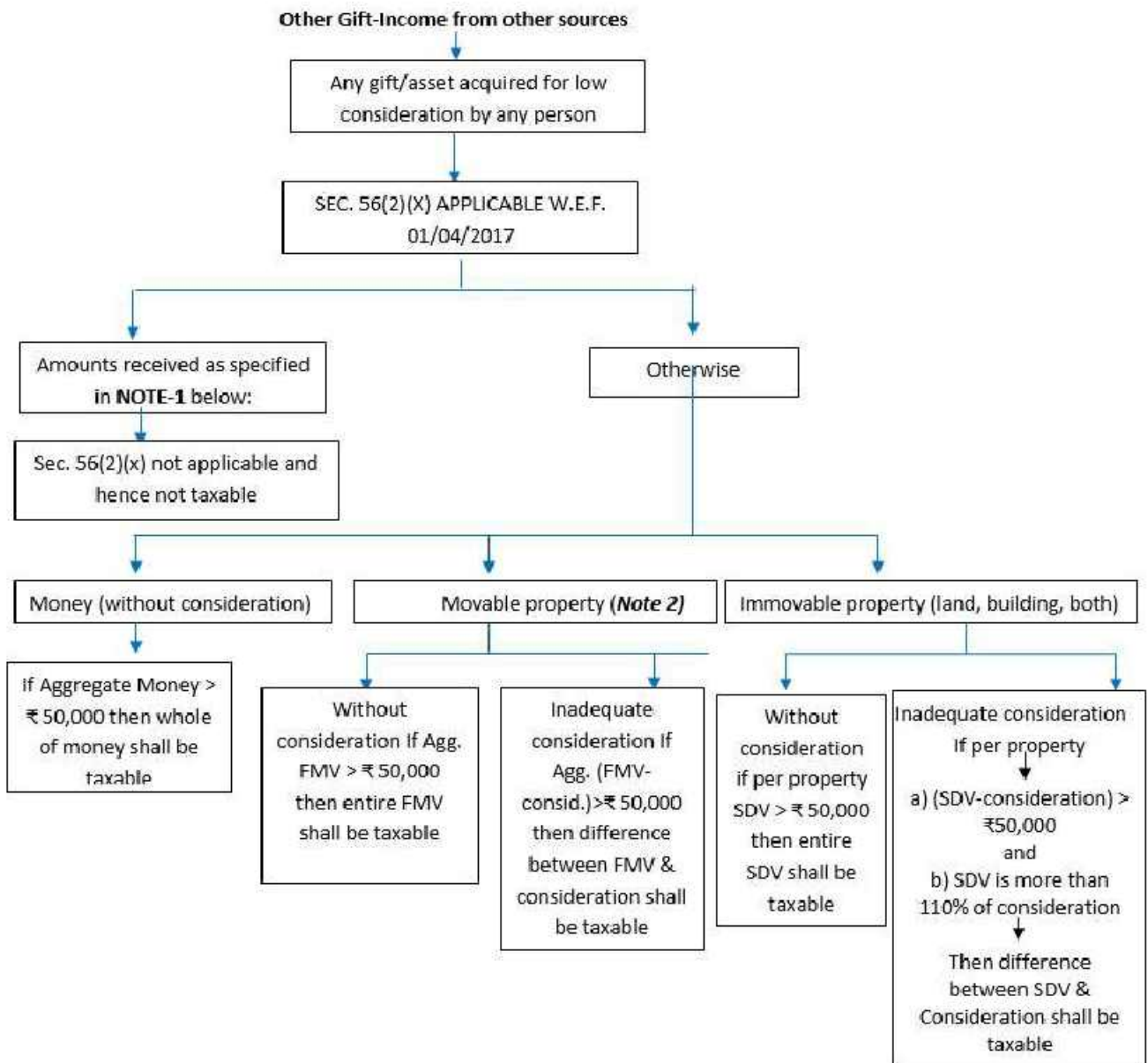
4. Interest on securities, if it is not chargeable under PGBP;
5. Rent from letting out of plant and machinery or furniture with or without building, if not chargeable under PGBP;
6. Any sum received under keyman insurance policy if not chargeable under PGBP or Salaries;
7. Interest received on compensation of compulsory acquisition of capital asset.
8. Gift.

Other Incomes which are taxable under this head are as follows:

- Amount received under family pension.
- Interest on bank deposit & loan given.
- Interest on income tax refund.
- Income from sub-letting of house property.
- Royalty income.
- Agriculture income
- Director setting fee.
- Salary of MP/MLA/MLC etc.

8.16 TAXATION OF GIFT

1. Any gift received by employee from employer due to employee- employer relationship- always taxable [even if received on marriage] under income from salary.
2. Any benefit/gift/perquisite arising due to business or profession is always taxable under the head PGBP (Sec 28)
3. Other Gift-Income from other sources



Note-1: Money/property Not taxable if it is received,

- on the occasion of marriage,
- from any Relative (note-3)
- under will or way of Inheritance
- in contemplation of Death
- from or by any Trust registered u/s 12AA
- from any Hospital or medical institution
- from any university or educational institution
- from any Local Authority defined u/s 10(20)
- from an individual by trust created solely for the benefit of the relative of the individual
- by any Fund, Trust, Hospital, Medical institution, University education, institution referred in section 10(23C)

- by way of transaction not regarded as transfer u/s 47(HUF Partition, Holding to Subsidiary, Subsidiary to Holding, Amalgamation & Demerger)
- from such class of persons and subjects to such condition, as may be prescribed

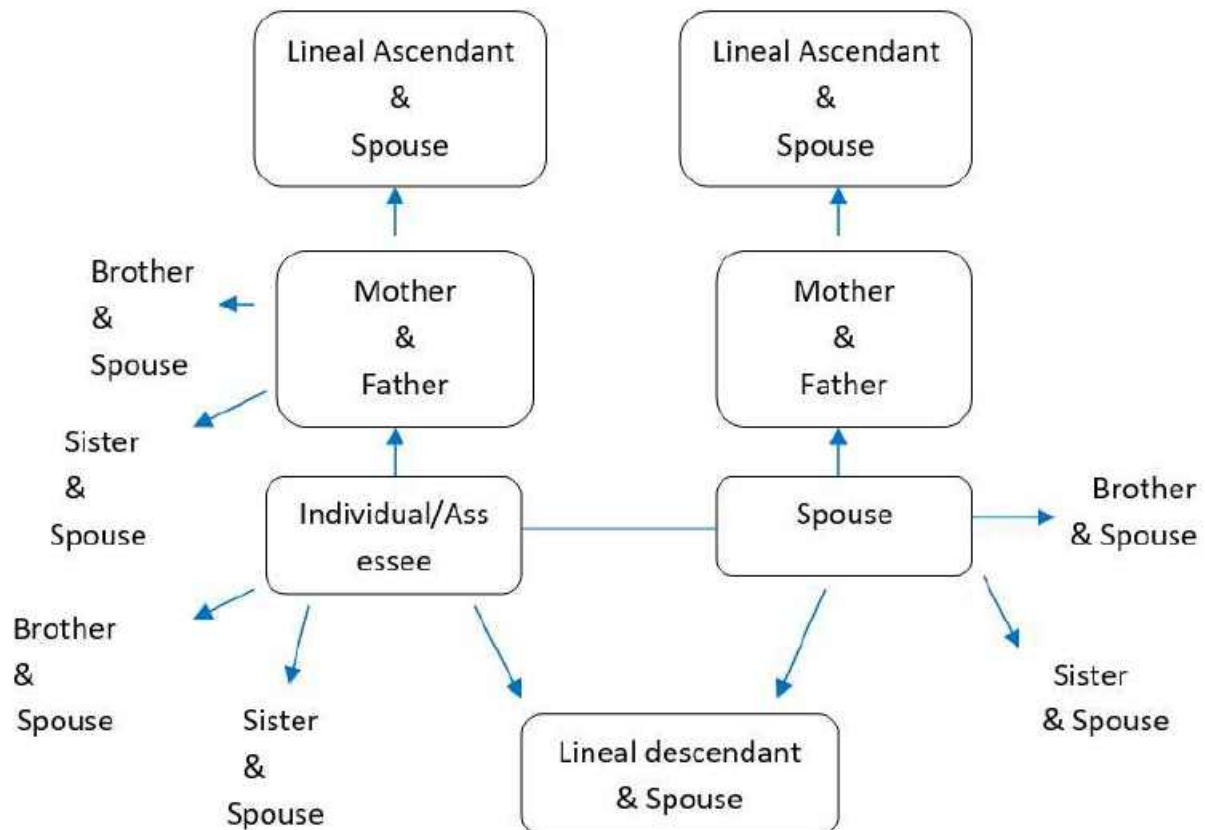
Note-2: Property means (movable & immovable)

- Shares & securities
- Jewellery
- Drawing
- Painting
- Archaeological collection
- Sculptures
- Any other work of art
- Bullion
- Immovable property

Any property received as gift or acquired for low consideration other than Note 2 above, then Sec.56(2)(x) is not applicable and hence, not taxable. For example, Car, iphone-x, T.V., Furniture, Wristwatch, etc. received then not taxable even value is more than ₹50,000/-

Note3: Meaning of Relative

a) in case of individual



b) In case of HUF

Any member of HUF

Note 4: if assessee is not satisfied with SDV then his case may be referred to valuation officer

(Same as sec 50C)

Note5: Sec 56(2)(x) applicable only if property is in the nature of capital asset of the recipient, if it is stock-in-trade then sec 56(2)(x) not applicable (CBDT circular)

Note6: Sec49(4): if any person receiving any asset as gift or acquires for inadequate consideration & he already assessed u/s 56(2)(x) on FMV/SDV then cost of acquisition of such asset shall be FMV/SDV which was considered under IFOS u/s sec.56(2)(x) and when COA is computed as per section 49(4), the period of holding of the previous owner shall not be included in the period of holding.

Note7: Section 56(2)(x) is applicable even if gift (money) made outside India by Resident Person to a Non Resident.

Example-1:

Mr. Ram acquired a house property for ₹3 lakh during PY 2001-02, He gifted such property to his friend lakhan on 16/07/2021 [SDV on date of gifting-₹40lakh] Lakhan sells such property to Hari on 16/02/22 for ₹83Lakhs. Discuss tax treatment.

In hands of Ram

Gift not treated as transfer-No capital gain due to Section 47.

In hands of Lakhan

He received immovable property without consideration & SDV > ₹50,000, so total SDV of ₹40 lakh shall be taxable u/s 56(2)(x) in hands of lakhan for AY 2023-2024.

Capital Gain applicable on transfer of asset

Computation of capital gain

	PY 2022-23 AY 2023-24
[POH 16/07/22 to 15/02/23]	₹
FVOC	83,00,000
(-) Transfer expenses	-
	<u>83,00,000</u>
(-) COA [Sec.49(4)]	<u>40,00,000</u>
STCG	<u>43,00,000</u>

8.17 SECTION 43CA

SDV shall be treated as sales consideration

In case of immovable property held as stock-in-trade, if sales consideration is less than SDV then such

SDV shall be deemed to be sales consideration for computing PGBP However, where the SDV does not

More than 110% of sale consideration, then sale consideration shall be treated as FVOC.

If assessee not satisfied with SDV then his case may be transferred to a valuation officer (same as

Sec.50C)

➤ **Amendment by FA- 2021**

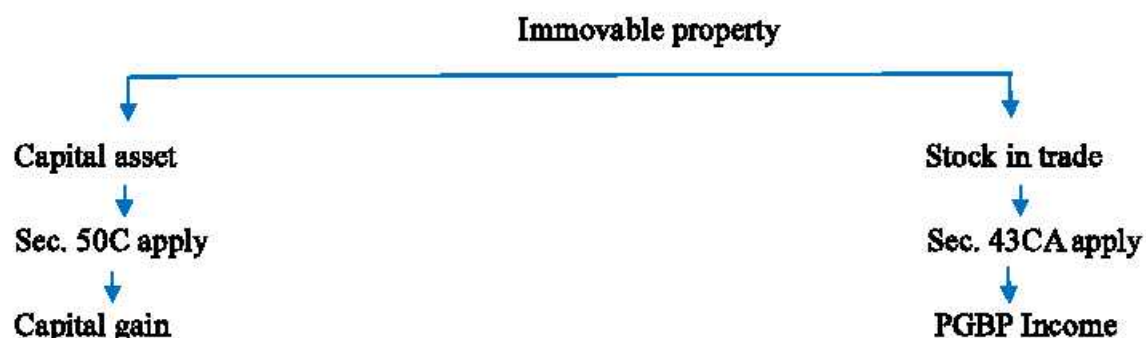
If following conditions are satisfied then allowed tolerance band 20% allowed instead of 10%:-

- a) the transfer of residential unit takes place during the 12th NOV 2020 to 30th June 2021,
- b) such transfer is by way of first time allotment of the residential unit to any person; and
- c) the consideration received or accruing as a result of such transfer upto 2 crore rupees.

➤ **Meaning of residential unit-** An independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.

➤ **Important Note:**

Similar amendment is also made under section 56(2)(x) so if buyer buys capital asset (immovable property) for low consideration and above 3 conditions are satisfied then in the last part of chart of Sec.56(2)(x), 120% consider instead of 110%.



Note: If date of agreement & registration are not same, SDV on the date of agreement can be considered u/s 50C/43CA/56(2)(x), if full or part consideration received or paid by A/c payee cheque, A/c Payee DD or any mode of electronic clearing system, through bank account or any other electronic modes as may be prescribed.

#SDV- Date of Agreement or Registration?

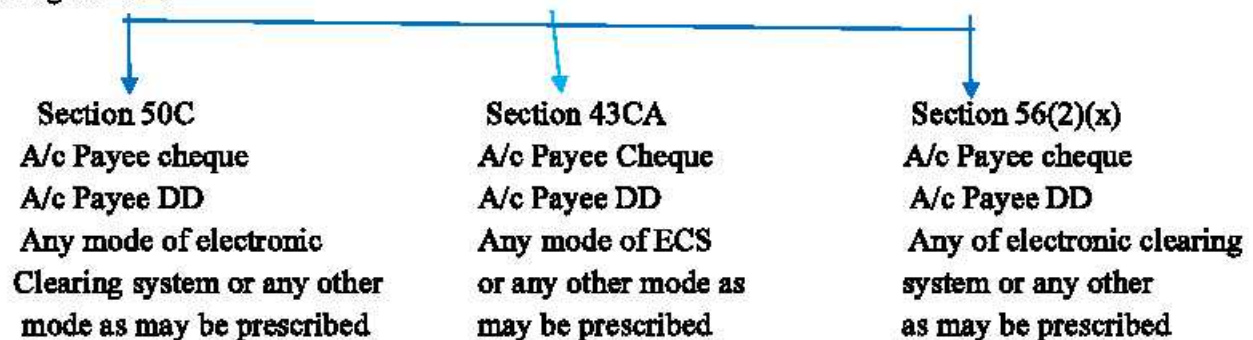
Section

Stamp duty value Date

50C/43CA/56(2)(x)

Date of registration or agreement

SDV on date of agreement can be considered, if full or part consideration received/paid upto date of agreement in



Example:1

DLF Builders transfer a residential house to Mr. jay on 14/04/22 for ₹1.9cr. SDV on the date of transfer is ₹2.15cr. DLF transfer a unit to jay as a first-time allotment. Discuss tax treatment in hands of DLF and Mr. JAY.

Solution:

In above example conditions mentioned in amendment are satisfied so allowed difference (SDV and consideration) 20% applicable instead of 10%.

In hands of DLF:

As per section 43CA since SDV is not more than 120% of consideration sop consideration of ₹1.9cr treated as FVOC for PGBP.

In hands of Jay:

Difference between SDV and consideration is more than ₹50,000 but SDV is not more than 120% of consideration so sec 56(2)(x) Not applicable in this case.

Example:2

Suppose in above example date of transfer is 10/12/22 instead of 14/04/22.

Solution:

In hands of DLF:

As per section 43CA since SDV is more than 110% of consideration so SDV pf ₹2.15cr treated as FVOC for PGBP.

In hands of Jay:

Difference between SDV and consideration is more than ₹50,000 & SDV is more than 110% of consideration so difference between SDV and consideration of ₹25 Lakhs taxable u/s 56(2)(x). For the purpose of section 49(4) ₹2.15cr is treated as COA of Jay.

8.18 SECTION 56(2) (VIIB): SHARES ISSUED ON PREMIUM

If any closely held company issues shares to any resident share holder on premium then- [Issue price of share- FMV of such shares] shall be taxable in hands of company under IFOS

Example:

Mr. Ramesh acquired a house property on 16/7/20 for ₹40,00,000. He entered into an agreement to sell on 14/02/21 with Mr. Suresh for ₹70 lakhs & SDV on that date is ₹80 lakh. Suresh paid ₹7,00,000 by cheque on 14/02/21 & the cheque was cleared on 18/02/21. The possession is given to Mr. Suresh on 10/12/21 when Suresh paid balance amount of ₹63 lakh & property registered in the name of Mr. Suresh on 10/12/2021. SDV on the date of registration is ₹110 lakhs. Discuss tax treatment in hands of Ramesh & Suresh if property is held as capital asset or stock-in-trade.

Solution: PART A: Property held as capital asset (in both Hands)

In hands of Mr. Ramesh		In hands Mr. Suresh.	
Computation of capital gain		P.Y. 2021-22 AY 2022-23	
P.Y. 2021-22 A.Y. 2022-23		Sec.56(2)(x) applicable	
		because difference between SDV &	
Full value			
Of consideration(50C)	80 lakhs	Consideration is more than ₹50,000	
(-)COA	40 lakhs	& SDV is > 110% of consideration	
[POH 16/07/20-09/12/21)		[₹80 lakhs-₹70 lakhs]= ₹ 1000000	
STCG	40 lakhs	Taxable under IFOS in hands of	
		Suresh for A.Y. 2022-23	

PART B: Property held as stock in trade (in both Hands)

In hand of Ramesh		In hands of Suresh	
Profit & Gain from business ₹		As per CBDT circular if asset	
Sale price of stock[43CA]	80 lakhs	received by any person as stock in	
(-)cost of stock	40 lakhs	trade then Sec. 56(2)(x) Not applicable.	
PGBP	40 lakhs		

SECTION: 56(2)(XI)

Compensation on termination of Employment

Any compensation or other payment, due or received by any person in connection with termination of his employment (or modification of terms of employment) is treated as income under section 56(2)(xi)

This section is applicable only if compensation is received from a person other than employer. However, if it is received from employer, then it is taxable as profits in lieu of salary under section 17(3)(i) under the head "Salaries".

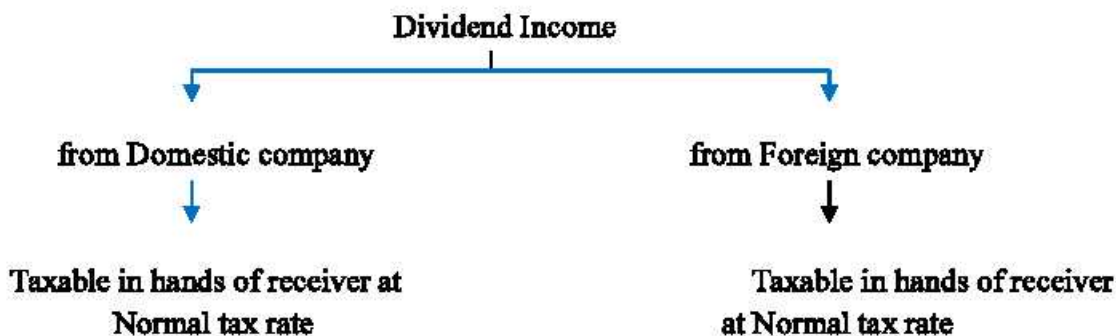
Taxation of Dividend & Deemed Dividend

#Indian Company: Company formed and registered under Companies Act, 1956/2013 or any law of state/union territory.

#Domestic Company: Indian Company or any other company (foreign company) who made prescribed arrangements for the declaration and payment of dividend within India. Thus, all Indian Company are treated as Domestic Company but all Domestic Company are not Indian Company.

If a Foreign Company makes prescribed arrangements for payment of dividends in India it shall be treated as Domestic Company.

#Foreign Company: Company which is not a Domestic Company



Deemed Dividend

In reality the payments are not dividend but for the purpose of income tax they are treated as dividends. The objective is to plug the loopholes in the tax provision & to check avoidance. The following payments/distributors are deemed as dividend to the extent of Accumulated profits.

Accumulated profits in section 2(22)(a),(b), (d) and (e) include all profits of the company up to the date of distribution or payment of dividend and u/s 2(22)(c) all profits up to date of liquidation.

In the case of an amalgamated company, the accumulated profits, whether capitalised or not, or loss, as the case may be, shall be increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.

8.19 SECTION 2 (22) (A)

Any distribution of Assets by a company to its shareholders to the extent the company possesses accumulated profit (Capitalised or not).

Notes:

1. In case of Bonus shares, there is no release of assets hence; issue of bonus shares is not deemed as dividend.

2. When assets are distributed us 2(22(a)/(c)/(d), the Fair market value of the asset on the date of distribution has to be taken for computing the dividend.

#Sec2(22)(b): Distribution of Debentures, etc.

a) Any distribution to its shareholders by Co. of debentures, debentures stock or deposit certificates, and

b) Any distribution to its preference shareholders of shares by way of Bonus.

to the extent to which Co. possesses accumulated profit (capitalised or not).

Sec 2(22)(c) Distribution of assets on liquidation

Any distribution of assets by company on liquidation extent to which company possesses accumulated profit (capitalised or not).

Sec 2(22)(d): Reduction of share Capital.

Any distribution to its shareholder by company on reduction of its capital to the extent to which company has accumulated profit (Capitalised or not).

#Some differences between 2(22)(a)/(b)/(c)/(d)&(e)**Sec 2(22)(a)/(b)/(c)/(d)**

1. Treated as deemed dividend to the
Extent accumulated profit
(Capitalized or not).

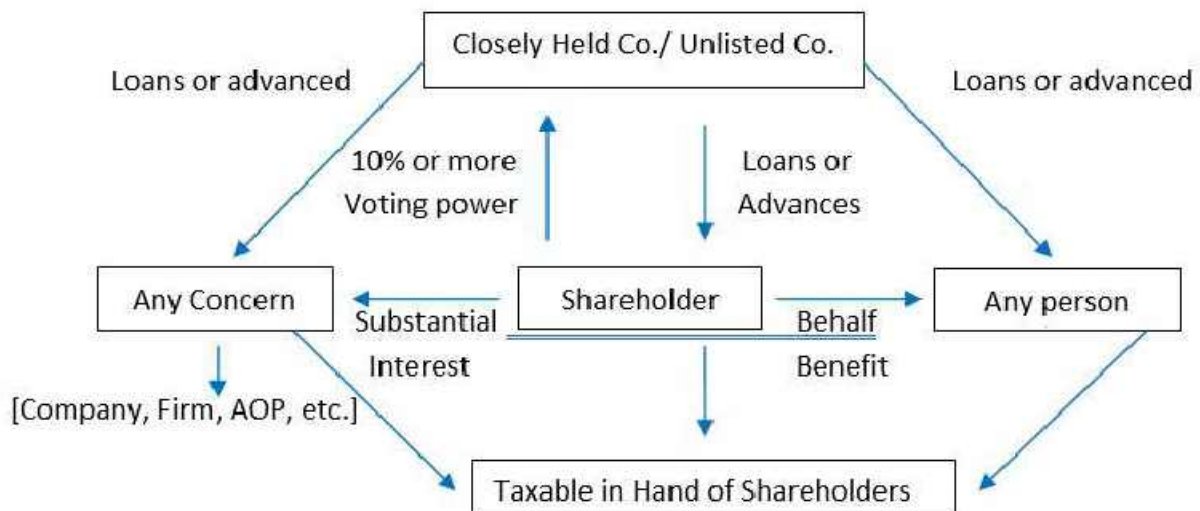
2. Applicable to all Companies
held

Sec 2(22)(e)

Treated as deemed dividend to the
extent accumulated profit.

Applicable to only closely
Companies.

#Sec 2(22)(e): Loans or advances by closely held Co.



Notes:

1. Loan or advances is treated as deemed dividend to the extent to which company possesses accumulated profit.
2. Concern means HUF, Firm, Company, AOP/BOT
3. Substantial interest means 20% or more voting power /share in profit at any time during the P.Y.
4. Loan is repaid or Company charges market rate of interest doesn't make any difference in the applicability of sec 2(22)(e).
5. Accumulated profit means profit as per Company Act (means accounting profit) Not Assessable profit.
6. Section 2(22)(e) is Not Applicable in case of trade advances means advance which is in the nature of commercial transaction [CBDT Circular 19/2017]

Example: advance made by company to sister concern for job work, Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfill an export order etc.

#Dividend shall not include-

1. Any Advance or Loans given by Company in the ordinary course of its business of money lending. Where money lending is substantial part of the business.
2. Any dividend paid by a company, which is set off by Company against the loan which has been deemed as dividend us 2(22)(e).
3. Buy back of shares
4. Shares allotted to shareholder of demerged Company by resulting Company under scheme of Demerger.
5. Any distribution made us 2(22)(c)/2(22)(d) in respect of preference shares.

8.20 SECTION 57: WHILE CALCULATING INCOME UNDER INCOME FROM OTHER SOURCES FOLLOWING DEDUCTIONS ALLOWED

- 1. In the case of dividend or income on units of Mutual fund(MF)/unit trust of india(UTI):** only interest expenses is allowed as deduction subject to maximums 20% of such dividend or income from MF/UTI.
- 2. In the case of interest on securities,** any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such interest on behalf of the assessee.
- 3. In the case of employee contribution toward any welfare fund:** any Amount remitted before due date under respective Acts: [as per sec 36(1)(va)]
- 4. In the case of rental income from machinery, plant or furniture:** amount paid on current repair & Insurance and normal depreciation allowance on such P&M and furniture.
- 5. In case of income under family pension,** deduction shall be lower of 1/3rd of family pension or 15,000 p.a.
- 6. In case of interest on compensation of compulsory acquisition,** amount equals to 50% of such income shall be allowed as deduction and no deduction shall be allowed under any other clause of this section.
- 7. Any other expenditure** (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.

8.21 SECTION 58: EXPENSES NOT ALLOWED AS DEDUCTIONS UNDER THIS HEAD

- 1. Any personal expenses** of the assessee.
- 2. Any interest chargeable** under this Act which is payable outside India on which TDS has not been paid or deducted.
- 3. Any payment** which is chargeable under the head "Salaries, if it is payable outside India, unless TDS has been paid thereon or deducted.
- 4. Cash Expenditure** exceeding 10,000 Provisions of section 40A(3) shall apply.
- 5. 30% of any sum payable** to a resident on which TDS has not been paid or deducted at source. Provision of section 40(a)(ia) shall apply
- 6. Any expenditure** incurred in connection with casual income.

However, this prohibition will not apply in respect of the income of an assessee, being the owner of race horses from the activity of owning and maintaining such horses. Any expenses incurred in respect of such activity shall be allowed even in the absence of any stake money earned. Such loss shall be allowed to be carried forward u/s 74A.

8.22 LET US SUM UP

Any profits or gains arising from the transfer of a capital asset affected in the previous year shall be chargeable to income-tax under the head 'Capital Gains'. Capital asset means property of any kind held by an assessee whether or not connected with his business' or profession, but does not include stock-in-trade, personal effects and, agricultural land in India. Capital assets are of two types-long-term and short-term. Long-term capital assets are those which are held by the assessee for more than 36 months before transfer and short-capital assets are those which are held by the assessee for not more than 36 months before transfer.

Capital gains arising from the transfer of short-term capital assets are called short-term capital gains and capital gains arising from the transfer of long-term capital assets are called long-term capital gains. Transfer of a capital asset means sale, exchange or extinguishment of any rights therein, or its compulsory acquisition under any law or its conversion into stock-in-trade etc. The income chargeable under the head 'Capital Gains' shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital assets: (i) expenditure incurred wholly and exclusively in connection with the transfer, and (ii) the cost of acquisition of the capital asset and cost of any improvement thereto.

Only long-term capital gains are exempt from tax under Section 53, 54, 54E, and 54F, subject to the fulfillment of certain conditions. Similarly, capital gains are also exempt under sections 54B, 54D and 54G subject to fulfillment of certain conditions. In the case of long-term capital gains an initial deduction of Rs. 10,000 is made and thereafter on the balance of such capital gain deduction at specified percentage will be allowed on specified nature of capital gains. The net balance left thereafter shall be taxable capital gain.

In case of long-term capital losses also deduction shall be made in the same manner as is done in respect of long-term capital gains u/s 48(2) and the balance of the amount shall be net long-term capital loss to be set-off and/or carry forward.

Any income which, though to be included in total income but does not find place under any other head of income, is taxable under the head 'Income from Other Sources'. It includes dividends; income from winnings from lotteries, crossword, puzzles, horse races, card games or betting etc., interest on securities, income from letting of machinery, plant, or furniture which is not chargeable as business income, etc. In case of dividends or interest on securities any commission paid to a banker or any other person for collecting the dividends or interest on behalf of the assessee is deductible from such income. In case of income from letting of machinery, plant or furniture along with letting of buildings, which is chargeable under the head 'Other Sources' deduction in respect of repairs, insurance premium and depreciation of buildings, machinery, plant or furniture shall be allowed.

8.23 REVIEW QUESTIONS

Q1: What does the term 'Capital Gains' signify under the Income Tax Act?

Q2: Explain the following terms in the context of the I.T. Act

- a) Capital Assets
- b) Short Term Capital Assets
- c) Transfer of Capital Assets

Q3: Discuss the provisions of the Income-tax Act regarding exemption of capital gains U/S 54E?

Q4: A is the owner of a car. On 1-4-2022, he starts a business of purchase and sale of motor cars. He treats the above car as part of the stock-in-trade of his new business. He sells the same on 31-3-2023 and gets a profit of Rs 1 lakh. Discuss the tax implication in his hands under the head "Capital gains".

Q6 : Discuss the various kinds of securities? Explain the rule regarding grossing up of interest on Tax-Free Commercial Securities.



**Uttar Pradesh Rajarshi Tandon
Open University, Prayagraj**

MBA 3.24 INCOME TAX LAW AND PRACTICE

Brief Contents

Block No.	Block	Unit No.	Unit	
3	Assessee's Total Income and Deduction	9	Income of other Persons	121
		10	Set Off and Carry Forward of Losses	125
		11	Deductions from Gross Total Income	129
		12	Rebate u/s 87 A	141

UNIT 9: INCOME OF OTHER PERSONS

Learning Objectives

After successful study of this unit, you will be able to:

- know the income of other persons as per the act
- Understanding about the income of other persons becomes the assessee's income

Structure

9.1 Introduction

9.2 Incomes due to other persons are included in the assessee's total income

9.3 Review

9.1 INCOMES OF OTHER PERSONS: INTRODUCTION

The income of other persons comprises the total income of an individual (Sections 60 to 64)

1. Transfer of income where no assets are transferred [Section 60]
2. Revocable asset transfer [Section 61]
3. Section 61 is inapplicable if the transfer is irrevocable for a set period of time [Section 62]
4. When a transfer can be revocable [Section 63]
5. Individual income consists of the income of spouse, minor child, etc. [Section 64]
6. Clubbing of a minor child's income [Section 64(1A)]
7. Self-acquired property income that was transformed into joint family property [Section 64(2)]

9.2 INCOMES DUE TO OTHER PERSONS ARE INCLUDED IN THE ASSESSEE'S TOTAL INCOME

According to the rules of sections 60 to 64 of the Income-tax Act of 1961, in the following situations, some incomes, even though they are due to other persons, are included in the individual assessee's total income (also known as "clubbing of income") in order to avoid tax fraud.

1. Transfer of income where no assets are transferred [Section 60]

When a person transfers an income to another person instead of transferring the asset from which the income is derived, that income becomes included in the transferor's total income, whether the transfer is revocable or not, and whether the transfer is made before or after the implementation of the Income-tax Act, 1961.

For example :

Owner X, who has a house that rents for Rs. 10,000 per month, claims that moving forward, the rent will belong to his friend Y, but the house would continue to be owned by X.

Since there is simply a transfer of income in this situation and no transfer of assets, the rental income must be taken into account when calculating X's total income.

2. Revocable asset transfer [Section 61]

Any income flowing from assets that have been revocably transferred by one person to another must be included in the transferor's overall income.

3. Section 61 is inapplicable if the transfer is irrevocable for a set period of time [Section 62]:

As per section 62(1), the provisions of revocable transfer, disclosed in section 61, shall not apply in certain situations. Such situations are—

- a. in the case of transfer by way of trust, the transfer is not revocable during the life time of the beneficiary;
- b. in the case of any other transfer, the transfer is not revocable during the life time of the transferee;
- c. in case the transfer is made before 1.4.1961, the transfer is not revocable for a period exceeding 6 years.

The above exceptions are applicable provided the transferor derives no direct or indirect benefit from such income.

In the above cases, the income shall be taxable in the hands of the transferee.

4. When a transfer can be revocable [Section 63]:

As per section 63, a transfer for the purpose of sections 60, 61 and 62 shall be deemed to be revocable if:

- a. it contains any provision for the re-transfer, directly or indirectly of the whole or any part of the income or assets to the transferor, during the life time of the beneficiary or the transferee as the case may be, or
- b. it gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets during the life time of the beneficiary or the transferee as the case may be.

5. Individual income consists of the income of spouse, minor child, etc. [Section 64]

A- Remuneration of spouse from a concern in which the other spouse has substantial interest [Section 64(1)(ii)]:

In computing the total income of an individual, there shall be included all such sums as arise directly or indirectly to the spouse, of such individual by way of salary, commission, fees or any other form of remuneration, whether in cash or in kind from a concern in which such individual has a substantial interest.

Therefore, any remuneration derived by a spouse from a concern in which the other spouse has a substantial interest, shall be clubbed in the hands of the spouse who has a substantial interest in that concern.

Any other income, not specified above, is outside the scope of this section and will not be clubbed even if it accrues to the spouse from a concern in which the individual has a substantial interest.

Where both husband and wife have substantial interest and both are getting remuneration from the concern:

If the husband and wife both have substantial interest in the concern and both are in receipt of remuneration from the concern, then the remuneration of both shall be clubbed in the hands of that spouse whose total income, before including such remuneration, is greater.

B. Income from assets transferred to the spouse [Section 64(1)(iv)]:

In computing the total income of an individual, all such income as arises directly or indirectly, subject to the provisions of section 27(i) (i.e. deemed owner), to the spouse of such individual from assets (other than house property) transferred directly or indirectly to the spouse of such

individual otherwise than for adequate consideration or in connection with an agreement to live apart shall be included.

As per this provision, if an individual transfers any asset other than house property to his/her spouse, the income from such an asset shall be included in the total income of the transferor. This provision is not applicable to house property because in that case the transferor is deemed to be the owner of the house property and the annual value of the property is taxed in the hands of the transferor as per section 27.

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

Any income which arises from assets transferred directly or indirectly by an individual to his son's wife after 1.6.1973, otherwise than for adequate consideration, shall be included in the income of the transferor. For example, R transfers 1,000 10% bonds of Rs.100 each of IDBI to his son's wife without any consideration. IDBI declares Rs.10,000 as interest. Although the sum of Rs.10,000 as interest is received by his son's wife, this amount shall be included in the income of R under the head 'Income from Other Sources' for the purpose of computing his total income.

D. Income from assets transferred to any person for the benefit of the spouse of the transferor [Section 64(1)(vii)]:

Where an individual transfers any assets to any person or association of persons, otherwise than for adequate consideration, the income from such assets shall be included in the income of the transferor to the extent to which the income is for the immediate or deferred benefit of his or her spouse. In other words, where an asset is transferred to some other person, without adequate consideration for the benefit of the spouse of the individual as well as for some other persons, income on such an asset to the extent of benefit which accrues to the spouse, shall be included in the total income of the individual.

For example :

X transfers a house to his friend Y with a direction that 50% of the rental income is to be used for the benefit of his wife Mrs. X and 50% for others, then the rental income to the extent of 50% shall be included in the total income of X.

E. Income from assets transferred to any person for the benefit of son's wife [Section 64(1)(viii)]:

Where an individual transfers any assets, after 1st June, 1973 to any person or association of persons, otherwise than for adequate consideration the income from such assets shall be included in the income of the transferor to the extent to which the income is for the immediate or deferred benefit of his or her son's wife.

6. Clubbing of a minor child's income [Section 64(1A)]

In computing the total income of an individual, there shall be included all such income as arises or accrues to his minor child. Therefore, the income of a minor child is to be clubbed in the hands of either of his parents.

The income shall be clubbed in the hands of that parent whose total income (excluding the income of the minor) is greater. If the marriage of his parents does not subsist, the income shall be clubbed in the hands of that parent who maintains the minor child in the previous year.

Where any income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.

Where the income of a minor child has been included in the total income of a parent, such parent shall be entitled to an exemption to the extent of such income or Rs.1,500 whichever is less, in respect of each minor child whose income is so included.

7. Self-acquired property income that was transformed into joint family property [Section 64(2)]

Where an individual, who is a member of the Hindu Undivided Family,—

- a. converts, his separate property as the property of the HUF, or
- b. throws the property into the common stock of the family, or
- c. otherwise transfers his individual property to the family,

otherwise than for adequate consideration, then the income from such property shall continue to be included in the total income of the individual.

In other words, if self-acquired property of an individual is treated/converted into joint family property without adequate consideration, the income derived by the joint family on account of such property shall be included in the total income of the individual who was the owner of such self-acquired property.

For example :

X owns a house property from which he derives an income of Rs.6,00,000 per annum. If, he converts this property as the property of an HUF of which he is a member. Although the income shall henceforth be received by the HUF but it shall be deemed to be the individual income of X and shall be included in computation of his total income under the head 'Income from House Property'.

9.3 REVIEW

- Q.1 States the income of other persons that comprises the total income of an individual.
- Q.2 Discuss the incomes due to other persons which are included in the assessee's total income for tax computation.

UNIT 10: SET OFF AND CARRY FORWARD OF LOSSES

Learning Objectives

After successful study of this unit, you will be able to:

- understand about the difference between Set off of Losses and Carry Forward
- know the different ways of Set off of Losses
- understand about the unadjusted losses to be carried forward to the next year

Structure

- 10.1 Introduction
- 10.2 Meaning of Set off of Losses and Carry Forward
- 10.3 Different ways of Set off of Losses
- 10.4 Carry forward of Unadjusted Loss for adjustment in Next Year
- 10.5 Let sum up
- 10.6 Review

10.1 INTROCUCTION

The provisions for "Set Off and Carry Forward of Losses" under the Income Tax Act of 1961 in India are very important in estimating the taxable income of a person or business organisation. Due to these regulations, taxpayers can reduce their overall tax obligation by offsetting their losses against their taxable income.

10.2 MEANING OF SET OFF OF LOSSES AND CARRY FORWARD

Meaning of Set off of Losses

Set off describes how losses are subtracted from income for the current year. The Act divides losses into a number of categories, including business, capital gains, and real estate. Under some circumstances, a loss suffered under one head may be offset against revenue earned under that head or other heads. company losses, for instance, may be offset by company profits, whereas capital losses may be offset by capital gains.

On the other hand, carry forward refers to a situation in which the taxpayer is unable to fully offset the losses in the current year. In such situations, the accumulated losses may be carried over to succeeding years and deducted from income in those years. Due to this clause, temporary losses won't cause immediate financial hardships and taxpayers will eventually gain fully from their losses.

The amount and length of carrying forward losses are nevertheless subject to constraints and restrictions. Depending on the type of loss and the particular income head, these restrictions change.

10.3 DIFFERENT WAYS OF SET OFF OF LOSSES

Set off of Losses may be undertaken in the following ways.

- 1) **Inter Source Set off:** Set off a loss from one source against income from another source within the same head of Income [Section 70]

Inter-source set off, under India's Income Tax Act of 1961, enables taxpayers to offset losses from one income source against income from another source under the same head. For example, the loss of a business can be set off against the income from another business. Loss from a house property can be set off against the income from another house property.

However, there are six exceptions to the above rule. It interprets that losses under one source cannot be set off against any other source under the same head. The six exceptions are discussed below.

i. Speculation Loss [Section 73(1)]

Speculation loss can only be set off against speculation income. It cannot be set off against income from any non-speculation business. However, non-speculation business loss can be set off against income from any speculation business income.

ii. Loss from Specified Business as per Section 35AD [Section 73A(1)]

Section 35AD is applicable to certain specified businesses like setting up a cold chain facility, setting up and operating a warehouse facility for the storage of agricultural produce, developing and building housing projects, etc. Losses from businesses specified under this section cannot be offset against any other income except income from those businesses.

iii. Long-term Capital Loss

Long-term capital loss can be set off against any income from long-term capital gain. However, short-term capital loss can be set off against long-term or short-term capital gain.

iv. Loss from Owning and Maintenance of Race Horses

Any loss under such a source cannot be set off against any income from the same source. In other words, any income other than income from the business of owning and managing race horses cannot be used to make set off against any loss from that business.

v. Loss from an Exempted Source of Income

Losses from exempted sources of income cannot be allowed to set off against the taxable source of income. For instance, income from the agricultural sector cannot be set off against non-agricultural income.

vi. Loss in respect of a Casual Income falling under Section [56(2)(ib)]

No loss under the source can be set off against income from lotteries, crossword puzzles, races, including horse races, card games, and any other similar game, as well as earnings from gambling or betting of any kind.

vii. No Set off of Losses against Deemed Incomes

Set off of losses is prohibited against deemed incomes under Section 68, 69, 69A, 69B, 69C or 69D.

2) Inter Head Set off: Set of loss of one head against the income of another head in the same assessment year [Section 71]

Losses from one income head can be set off against income from another income head in a procedure known as "inter-head set off." Of losses. By allowing losses in one income head to be offset against income in other heads, inter-head set-off rules attempt to relieve taxpayers by lowering their overall tax liability. This mechanism encourages entrepreneurship, investment, and balanced taxation while preventing misuse of loss set off for undue tax benefits.

However, following restrictions can be kept in mind while undertaking inter-head set off.

- i. The taxpayer must first perform intra-head adjustments before making inter-head adjustments.
- ii. Speculative business losses cannot be offset by any other income.
- iii. Non-speculative business losses, however, can be offset by income from speculative enterprise.
- iv. A loss under the "Capital gains" heading cannot be offset by income under any other heading.
- v. No loss may be offset against earnings from winnings from lotteries, crossword puzzles, races, including horse races, card games, and any other game of any kind, as well as from gambling or betting of any kind.
- vi. Losses incurred in the ownership and upkeep of racehorses cannot be offset against any other revenue.
- vii. Section 35AD is applicable to certain specified businesses, such as setting up a cold chain facility, setting up and operating a warehouse for the storage of agricultural produce, developing and building housing projects, etc. Losses from businesses specified under this section cannot be offset against any other income.
- viii. A loss under the "Capital gains" heading cannot be offset by income under any other heading.
- ix. Loss from business and profession cannot be set off against income chargeable to tax under the head "Salaries".
- x. Loss under the head "house property" shall be allowed to be set-off against any other head of income only to the extent of Rs. 2,00,000 for any assessment year.
- xi. However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years as per the existing provisions of section 71B.

10.4 CARRY FORWARD OF UNADJUSTED LOSS FOR ADJUSTMENT IN NEXT YEAR

i. Business Loss other than the Loss from Speculative Business

The unadjusted business loss (other than speculative business) can be carried forward to be adjusted in the next year from the corresponding income.

Only if the return of income/loss for the year in which the loss is incurred is provided on or before the due date of making the return, as stipulated under section 139(1), is a loss under the subject "Profits and gains of business or profession" can be carried forward. Such loss may be carried forward for eight years following the loss-producing year.

ii. Loss from Business Specified under Section 35AD

losses business listed under section 35AD may not be offset against any other losses. Section 35AD is applicable to certain defined businesses, such as setting up and maintaining a cold chain facility creating and constructing a warehouse for the storage of agricultural products housing complexes, etc. Such a loss may be carried forward and allowed to be set off from the future incomes from the specified business or any number of years. Only if the conditions listed in section 35AD are met can a loss from a business be carried forward. The year's return of income or loss is provided on or before the deadline for submitting the return, as specified in section 139(1).

iii. Loss from the Business of Owning and Maintaining Race Horses

Losses from the ownership and maintenance of racing horses cannot be set off by any other revenue than earnings from the ownership and maintenance of racehorses.

iv. Loss of any Speculative Business

Unadjusted losses from speculative businesses may be carried forward to be adjusted in the next year if these losses cannot be fully offset in the year in which they are incurred. Only income from speculative businesses (which could be the same or different speculative businesses) can be used to offset such losses in the following year(s).

Only if the return of income/loss for the year in which the loss is incurred is provided on or before the due date of filing the return, as stipulated under section 139(1), may a loss from a speculative business be carried forward.

For four years that immediately follow the year in which the loss is incurred, it may be carried forward.

10.5 LET SUM UP

Set off and carry forward of losses is the strategy to reduce the overall tax liability of the tax payers. Losses can be used to offset profit in the same year or carried forward to offset profit in future years. This practice aims to provide financial relief to business during periods of low profitability and encourage investment and growth.

10.6 REVIEW

Q.1 Discuss the different ways of Set off of Losses.

Q.2 Discuss the unadjusted losses to be carried forward to the next year for adjustment.

UNIT 11: DEDUCTIONS FROM GROSS TOTAL INCOME

Learning Objectives

After successful study of this unit, you will be able to:

- know the difference between exemption and deductions
- understand about general provisions for deductions
- know about the deductions in respect of payments.

Structure

- 11.1 Exemptions vs. Deductions
- 11.2 General Provisions for deductions
- 11.3 Deductions in respect of payments
- 11.4 Review Questions

11.1 EXEMPTIONS VS. DEDUCTIONS

The various forms of income mentioned in Section 10 are considered in the computation of total income, whereas, items that are allowed as deductions are considered in the computation of total income but are later deducted from it to determine the assessee's total taxable income.

11.2 GENERAL PROVISIONS FOR DEDUCTIONS

A. Section 80A(1)

According to Section 80A (1), the deductions stated in Sections 80C to 80U must be allowed from the assessee's gross total income when calculating their total income.

B. Section 80A(2)

The total amount of deductions in this section cannot exceed the assessee's Gross Total Income.

C. Section 80A(3)

It is important to note that deductions under Sections 80G, 80GGC, 80-IA, 80-IB, 80-IC, 80-ID, and 80-IE will not be considered in the total income calculation for AOP/BOI. Compliance with this requirement is mandatory.

11.3 DEDUCTIONS IN RESPECT OF PAYMENTS

☐ Deductions in respect of investments in specified assets [Section 80C]

A. Deductions in respect of Investments/Contributions

In this section, individuals and HUF can claim a deduction of up to ₹1,50,000 from their gross total income for investments made in specified modes of savings.

Following are the investments that are eligible for deduction under this section-

1. Premium paid in respect of life insurance policy

Life insurance and endowment policies paid for spouse, parents, child (minor or major), or any HUF member are eligible for deduction under Section 80C.

Receipts from a life insurance policy or bonus are exempt from taxation under LIC Section 10(10D).

• Notification regarding contribution to Central Government pension scheme (80CCD)

1. Central Government contributes to notified pension schemes. Premiums paid for deferred annuity contracts are only eligible if there is no provision for cash payout.

A contract for a deferred annuity can be established with anyone..

2. A government employee's deferred annuity is funded by deducting a sum from their salary. A government employee can have a portion of their salary deducted to secure a deferred annuity or provide for their spouse or children. The deduction cannot exceed one fifth of their income.

3. Contribution to SPF/PPF/RPF

Contributions to Provident Funds under the Provident Fund Act, 1925 and any recognized Provident Fund are eligible for deduction under Section 80C. Additionally, any contribution to Provident Funds set up by the government under the Public Provident Fund Scheme, 1968 also qualifies for the same deduction.

4. Contribution to an approved superannuation fund.

5. The amount that was paid or deposited into the Sukanya Samriddhi Account..

6. Subscription to National Savings Certificate VIII.

7. Contribution towards unit linked insurance plan 1971.

8. Contribution towards unit linked insurance plan of LIC mutual fund.

9. Contribution towards an approved annuity plan with LIC.

10. Subscription to a notified units of mutual fund or UTI.

11. Contribution towards a notified pension fund set up by mutual fund or UTI.

12. Contribution to national housing bank (Tax saving) Term Deposit Scheme, 2008.

13. Subscription to notified deposit scheme.

14. Payment of tuition fees for up to two children in any Indian educational institution for full-time education.

15. Repayment of housing loan including stamp duty, registration fee and other expenses.

16. Subscription to certain equity shares or debentures.

17. Subscription to certain units of mutual fund.

18. Investment in five-year term deposit.

19. Subscription to notified bonds issued by NABARD.

20. Investment in five-year Post-Office time deposit.

21. Deposits in Senior Citizen Savings Schemes Rules, 2004.

B. Transfer of house property, termination of insurance policy, unit linked insurance plan or withdrawal of deposit before five years of ownership will affect assessment.

a. The policyholder can promptly conclude the insurance contract by giving notice to terminate it.

b. The policyholder can terminate their involvement in a Unit Linked Insurance Plan by giving notice or by stopping contributions due to non-payment.

c. At the end of the financial year when the taxpayer acquires or receives possession of the property (including any refund), no deduction is allowed for sums paid during that year..

Deduction regarding contribution to certain pension funds [Section 80CCC]

In case an individual has paid or deposited any amount from their income which is taxable to maintain an annuity plan with LIC or any other insurer to receive pension from their fund, they will be eligible for a deduction in their total income.

The maximum amount of deduction allowed is Rs. 1,50,000, which includes deductions for 80C and 80CCD (1).

- Individuals can claim a deduction for contributions made towards government-notified pension schemes like the New Pension Scheme (NPS) under Section 80CCD.

Under the Restructured Defined Contribution Pension System, individuals who enter government service on or after January 1, 2004, must contribute 10% of their monthly salary to a pension account. The government also contributes an equivalent amount to the account, and the benefits of this account are available to those who are self-employed or employed by individuals.

Section 80CCD(1) allows for a deduction of 10% of an employee's salary deposited into their pension account. Self-employed individuals may deduct 20% of their Gross Total Income.

The section 80CCD(1B) allows for an extra deduction of up to Rs. 50,000 for contributions to the National Pension Scheme.

Section 80CCD(2) allows employees to deduct up to 10% of their salary as contributions to their pension account.

☐ **Limit on deduction under Sections 80C, 80CCC & 80CCD(1) [Section 80CCE]**

Under Section 80C, the maximum deduction is Rs. 1,50,000 for 80CCC and 80CCD(1). Deductions in 80CCD(1B) and 80CCD(2) exceed the limit.

☐ **Deduction regarding investment made under an equity savings scheme [Section 80CCG]**

In this section, a deduction is available for resident individuals with a Gross Total Income up to 12 lakhs, subject to the following conditions being fulfilled.-

- A. Should be a retail investor under the requirements of the scheme notified.
- B. Investments should be made in listed equity shares or units of equity-oriented funds.
- C. The minimum lock-in period for acquisition should be three years from the date of purchase.

The deduction that would result from meeting the above conditions is the least of the following options.-

- a. 50% of the amount is invested in equity shares; or
- b. Rs. 25,000 for 3 Assessment Years.

If an assessee fails to comply with any of the above conditions in the previous year after claiming a deduction, the claimed amount will be deemed as income and taxed accordingly.

The Rajiv Gandhi Equity Savings Scheme, which allowed for deductions in AY 2018-19, has been discontinued since April 1, 2017.

If an assessee invested before AY 2017-18, they can claim deductions until AY 2019-20.

Deduction in respect of medical insurance premium [Section 80D]

o Individuals

- ☐ Individuals can claim a tax deduction of up to Rs. 25,000 for paying health insurance premiums for themselves, their spouse, and children, or for contributing to a government health scheme.
- ☐ Up to Rs. 25,000 can be deducted for payments made to maintain parents' health insurance policies and cover their health check-ups.
- ☐ Persons aged 60 and above and 80 and above during the previous year can claim a deduction of up to Rs. 30,000 instead of Rs. 25,000.
- ☐ Only payments made in specific situations and ways allow for claims under Section 80D.-
- ➔ Any mode of payment, including cash, is accepted for health check-ups.;
- ➔ Any form of payment besides cash must be used in all cases.

o HUF

- ☐ Section 80D allows deduction on health insurance premiums paid for any family member..
- ☐ The deduction under this section is Rs. 25,000. For senior citizens, it is Rs. 30,000..
- ☐ Senior citizens aged 80 or above can claim deduction of up to Rs. 30,000 for medical expenses if no health insurance has been availed..

o Other conditions

- ☐ The premium should be paid through non-cash modes using taxable income in the previous year..
- ☐ Insurance should comply with schemes approved by the Central Government's GIC of India or any other IRDA-approved insurer.
- ☐ This section pertains to the maintenance and medical treatment expenses of a dependent who is disabled, specifically under Section 80DD.

Education under this section applies to individuals or HUFs who are citizens of India.

Deduction can relate to-

- ☐ Expenses for the medical treatment, training, or rehabilitation of a dependent person with a disability can be claimed as a tax deduction., or
- ☐ Any payment deposited for the maintenance of a dependent person with disability, under schemes framed by LIC, insurers, administrators or specified companies referred in UTI Act 2002.

The deduction is Rs. 75,000, and it is Rs. 1,25,000 for those with severe disabilities, defined as 80% or more..

If the disabled dependent passes away prior to the person for whom the subscription was made, the amount paid or deposited will be chargeable in the assessee's hands under that specific plan in the PY in which the assessee receives the cash.

Deduction regarding medical treatment etc. [Section 80DDB]

o Eligibility of the assessee

Any person or HUF may claim deductions under this provision for the cost of treating themselves or a dependent who is an Indian resident and has a certain disease.

o Amount of deduction

⇒ For individuals and HUF below age 60

The least of the following is allowable as a deduction in relation to any costs incurred for the patient's or any of his dependents' medical care.

- ☐ Amount actually paid; or
- ☐ Rs. 40,000.

For HUF, such a deduction is available to any of the HUF members.

⇒ For senior citizen or an individual of age 60 or more

Amount paid at any point during the relevant PY in respect of a senior citizen or for himself will only be eligible for a deduction of the least of the following-

- ☐ Amount actually paid; or
- ☐ Rs. 60,000

⇒ For very senior citizen or an individual of age 80 or more

Amount paid at any time during the relevant PY in respect of a very senior citizen or for himself, then least of the following will be allowed as deduction-

- ☐ Amount actually paid; or
- ☐ Rs. 80,000

In case, the sum of money is received from any insurance company under any insurance policy on health of the dependent or any sum reimbursed from an employer than such insurance or reimbursement received shall be excluded from the deduction.

o Condition for the allowance of such claim

Unless the assessee obtains the prescription for such medical treatment, no such deduction shall be allowed.

• Deduction in respect of interest loan taken higher education [Section 80E]

o Eligibility and conditions

Deduction under Section 80E is allowed to an individual in respect of any interest on loan taken for the purpose of his/her or for his/her relatives paid by him in the previous year out of his income chargeable to tax. The loan must be taken from any financial institution or approved charitable institution.

o Deduction period

Deduction is allowed in computing the total income. The earlier of the following would be considered-

- ☐ The initial AY and seven AY immediately succeeding the initial AY; or
- ☐ Until the interest is in full by the assessee

o Financial institution – it means

- ☐ A banking company under Banking Regulation Act, 1949
- ☐ Any other institution as specified by Central Government in the official gazette.

• Deduction for interest on loan borrowed for acquisition of self-occupied house property by an individual [Section 80EE]

The Section 80EE stipulates deduction for interest paid on loan borrowed for acquiring self-occupied house by an individual until the complete repayment of the loan is not done. The maximum deduction available under this section is Rs. 50,000. However, this amount is over and above the limit mentioned in Section 24 on this behalf.

Conditions to be fulfilled to claim such deduction are-

- ⇒ Assessee should not possess any residential house on the date of sanctioning of the loan,
- ⇒ Value of the house should be Rs. 50 lakhs or more,
- ⇒ The loan should get sanctioned during FY 2016-17, and
- ⇒ Sanctioned loan should be Rs. 35 lakhs or more.

• Deduction in respect of donation to certain funds, charitable institutions etc. [Section 80G]

Deductions are available in respect of donations to certain funds, charitable institutions etc. These deductions are divided into 4 categories which are follows-

1. Donations qualifying for 100% deductions, without any qualifying limit

- ⇒ National Sports Fund
- ⇒ National Cultural Fund
- ⇒ Fund for Technology Development and Application
- ⇒ National Children's Fund
- ⇒ Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund with respect to any State or Union Territory
- ⇒ The Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund, Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996
- ⇒ The Maharashtra Chief Minister's Relief Fund during October 1, 1993 and October 6, 1993
- ⇒ Chief Minister's Earthquake Relief Fund, Maharashtra
- ⇒ Any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat
- ⇒ Any trust, institution or fund to which Section 80G(5C) applies for providing relief to the victims of earthquake in Gujarat (contribution made during January 26, 2001 and September 30, 2001) or
- ⇒ Prime Minister's Armenia Earthquake Relief Fund
- ⇒ Africa (Public Contributions — India) Fund
- ⇒ Swachh Bharat Kosh (applicable from financial year 2014-15)
- ⇒ Clean Ganga Fund (applicable from financial year 2014-15)
- ⇒ National Fund for Control of Drug Abuse (applicable from financial year 2015-16)
- ⇒ National Defence Fund set up by the Central Government

- ⇒ Prime Minister's National Relief Fund
 - ⇒ National Foundation for Communal Harmony
 - ⇒ An approved university/educational institution of National eminence
 - ⇒ Zila Saksharta Samiti constituted in any district under the chairmanship of the Collector of that district
 - ⇒ Fund set up by a State Government for the medical relief to the poor
 - ⇒ National Illness Assistance Fund
 - ⇒ National Blood Transfusion Council or to any State Blood Transfusion Council
 - ⇒ National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities
2. Donations qualifying for 50% deductions, without any qualifying limit
- ⇒ The Jawaharlal Nehru Memorial Fund
 - ⇒ Prime Minister's Drought Relief Fund
 - ⇒ Indira Gandhi Memorial Trust
 - ⇒ Rajiv Gandhi Foundation
3. Donations qualifying for 100% deductions, subject to a qualifying limit of 10% of adjusted Gross Total Income
- ⇒ Government or any approved local authority, institution or association to be utilized for the purpose of promoting family planning.
 - ⇒ Donation by a Company to the Indian Olympic Association or to any other notified association or institution established in India for the development of infrastructure for sports and games in India or the sponsorship of sports and games in India.
4. Donations qualifying for 50% deductions, subject to a qualifying limit of 10% of adjusted Gross Total Income
- ⇒ Any Institution or Fund established in India for charitable purposes fulfilling prescribed conditions.
 - ⇒ The Government or any local authority for utilisation for any charitable purpose other than the purpose of promoting family planning.
 - ⇒ An authority constituted in India by or under any other law enacted either for dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or both.
 - ⇒ Any Corporation established by the Central Government or any State Government for promoting the interests of the members of a minority community.
 - ⇒ for renovation or repair of Notified temple, mosque, gurdwara, church or other place of historic, archaeological or artistic importance or which is a place of public worship of renown throughout any State or States.

(SOURCE- ICAI study material, <https://cleartax.in/s/80c-80-deductions#Section80G>)

Adjusted Gross Total Income means Gross total income less the following-

1. amount of deduction under Section 80C to 80U excluding 80G
2. any income chargeable to tax
3. Long Term Capital Gains under Section 112 Short Term Capital Gains under Section 111A.

Other conditions that needs to satisfy are-

1. If deduction is claimed and received on any amount under this section than no other deduction on the same can be claimed for the same or any other AY under any provisions of the act.
2. Donations in kind are shall not qualify for deduction.
3. Donations exceeding Rs. 2000 shall not qualify for such deduction unless paid by any mode other than cash.
4. The deduction under this section can be claimed whether it has any relation with the business or not.

• **Deduction in respect of rent paid [Section 80GG]**

This section provides deduction on the amount of rent paid by the assessee upon the fulfilment of the following conditions-

- A. The assessee should not be receiving any HRA exempt under Section 10(13A).
- B. The rent paid on any accommodation should exceed 10% of his total income after all the deductions mentioned in Chapter VI A except 80GG.
- C. The accommodation should be occupied by the assessee for his/her own residence.
- D. The assessee or his spouse/children or the HUF of which he might be a member should not own any residence at the place where he/she is carrying the business & profession or employment or perform duties.

• **Deduction in respect of donations for scientific research and rural development [Section 80GGA]**

Under Section 80GGA deduction is available for donations for scientific research and rural development for an assessee not having income under "Profits and Gains from business and profession".

The following donations are qualified for deduction-

1. Any payment made in the PY towards research institutions or college/university for scientific research as the main objective from such donations.
2. Any sum paid towards an association or any institution for taking up rural development programme as main objective as approved by the prescribed authority or to an institution or association for training of persons for taking up any rural development programme.
3. Any sum paid to research associations, university for taking up research in social sciences or statistics.
4. Such Research Association, University, College or institution must be approved under section 35(1)(iii).
5. Any fund paid rural development fund set up and notified under Section 35CCA.

However, restrictions are provided while claiming the deduction as follows-

1. If deductions under this section is already claimed on any amount than no other deductions can be claimed under any provisions of the act on such amount.

2. No deduction shall be made for any amount exceeding Rs. 10,000 unless the amount is paid by any mode other than cash.

• Deduction in respect of contributions given by companies to political parties [Section 80GGB]
Deduction under Section 80GGB is available for contributions made towards political parties or electoral trusts by companies in the previous year.

However, no deduction shall be allowed in case of payment made by cash.

The meaning of Contribution for this purpose is same as given by Companies Act, 1956-

1. Any donation or subscription or payment made towards a person by a company for carrying on any activities which are probably to affect the support of public for a political party shall also be defined to be a contribution for a political purpose;

2. The expenditure incurred by a company on advertisement in any publication by/on behalf of a political party or for its advantage shall also be considered as a contribution to the political party or a contribution for a political purpose to the person publishing it.

• Deduction in respect of contributions given by any person to political party [Section 80GGC]

⇒ The Section 80GGC provides deduction for any sum contributed towards a political party or an electoral trust in the previous year by any person. However, no such deduction would be allowed for any sum contributed by way of cash.

⇒ This deduction will not be available to a local authority and an artificial juridical person, wholly or partly funded by the Government.

⇒ Political party in such case means a political party registered under section 29A of the Representation of the People Act, 1951.

• Deduction in respect of royalty income, etc., of authors of certain books other than textbooks [Section 80QQB]

⇒ Under this section a deduction up to Rs. 3,00,000 is allowed to individuals resident in India for income derived being an author. The deduction shall be the income derived as author or Rs. 3,00,000, whichever is less. This income can be a lumpsum of money or interest in the copy right of the book.

⇒ However, this deduction will not be available for royalty income from school textbooks, guides, commentaries, newspapers, journals, pamphlets and other publications of same kind.

⇒ For calculating the deduction under this section, the amount of eligible income, before allowing expenses attributable to such income, should not exceed 15% of the value of the books sold during the previous year. However, this condition is not applicable where the royalty or copyright fees is receivable in lump sum for all rights of the author in the book.

- Deduction in respect of interest on deposits in savings accounts [Section 80TTA]

Under this section interest on deposits in savings account paid by an individual or HUF out of income, shall avail a deduction up to Rs 10,000 while calculating the total income of the assessee.

The deduction shall be allowed in case the saving account is maintained with-

⇒ A banking company under Banking Regulation Act, 1949;

⇒ A co-operative society involved in carrying on the business of banking; or

⇒ A post office.

However, if interest paid on such account is held by or on behalf of a firm, an AOP/BOI, then no such deduction would be allowed.

- Deduction in respect of interest on deposits earned by Senior citizens [Section 80TTB]

The Government of India in the budget of 2018-19 has chosen to introduce a good number of benefits for senior citizens. One such important amendments in Budget 2018 (for senior citizens) is the introduction of a new section – Section 80 TTB.

Section 80TTB is a provision whereby a taxpayer who is a resident senior citizen, aged 60 years and above at any time during a Financial Year (FY), can claim a specified amount as a deduction from his gross total income for that FY. This section is applicable w.e.f. 1 April 2018.

- Quantum of deductions available

A deduction of lower than Rs 50,000 or an amount from a specified income is allowed from the gross total income. Specified income is any of the following income in aggregate:

- Interest on bank deposits (savings or fixed);

- Interest on deposits held in a co-operative society engaged in the business of banking, including a co-operative land mortgage bank or a co-operative land development bank; or

- Interest on post office deposits

- Exceptions to Section 80TTB

If the specified deposits are held by or on behalf of a partnership firm, an association of persons (AOP) or a body of individuals (BOI), Section 80TTB deduction is not available for the partner of such a firm or for any member of such an AOP or BOI, while computing their total income.

- Section 80TTA vs 80TTB

Section 80TTA provides deductions similar to Section 80TTB. However, it provides deductions of interest only on savings account held in a bank, co-operative bank or a post office, from the gross total income of the individual taxpayer or a Hindu Undivided Family upto Rs 10,000.

With the introduction of Section 80TTB exclusively for senior citizens, deductions under Section 80TTA is not available to senior citizens.

- Deduction in case of a person with disability [Section 80U]

⇒ Section 80U provides the criteria for being disable under income tax rules in accordance with the rules laid down by Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

⇒ This Section is applicable to resident individuals who is certified by medical authority to be a person with disability at any time during the previous year.

⇒ A deduction of Rs. 75,000 for a person with disability and Rs. 1,25,000 for a person with severe disability i.e. having disability over 80%, is allowed.

⇒ Benefit of this deduction also extends to person suffering from autism, cerebral palsy and multiple disorders.

⇒ The assessee claiming this deduction shall furnish a copy of certificate issued by medical authority in the form and manner as prescribed by the appropriate authority along with the return of income for the assessment year for which the deduction is claimed.

⇒ In case the person needs reassessment, the assessee have to obtain a fresh certificate from the appropriate medical authority, after the expiry of the original certificate to keep in force the claiming of deduction under this section.

• Deduction in respect of employment of new employees [Section 80JJAA]

A. Quantum of deduction available under this section

A deduction of an amount equal to 30% of additional employee cost incurred in the course of such business in the previous year is allowed for 3 assessment years including the assessment year relevant to the previous year in which the employment is provided.

B. Conditions need to be fulfilled

1. The business should be formed by splitting up or reconstruction of an existing business.
2. The business is not acquired by the assessee by way of transfer or as a result of any reorganisation of business.
3. Along with return of income, the repost of accountant is to be provided.

C. Meaning of certain terms

⇒ Additional employee cost

Total remunerations paid or payable to additional employees employed during the previous year.

↳ In case of an existing business

Nil, if

☐ There is no increase in the number of employees than the total number of employees employed on the last day of the preceding year.

☐ remunerations are paid by an account payee cheque account payee bank draft or through of electronic clearing system by a bank account

↳ In the first year of a new business

The remunerations paid or payable to employees employed during the previous year shall be considered as the additional employee cost.

⇒ Additional employee

An employee who has been employed during the previous year and whose employment has resulted increase in the total number of employees employed

by the employer on the last day of the preceding year except,

↳ An employee whose total remunerations are more than Rs. 25,000 per month; or

↳ An employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme.

↳ An employee who is employed for a period of less than 240 days in the previous year and an employee employed for a period of less than 150 days during the previous year, in case of an assessee engaged in the business of manufacturing of apparel; or

↳ An employee who has no contribution toward RPF in the recognised provident fund.

⇒ **Emoluments/Remunerations**

Any sum paid or payable to an employee in lieu of his employment, excluding

↳ For the benefit of the employee, any contribution paid or payable by the employer to any pension fund or provident fund or any other fund under any law; and

↳ lump-sum payments such as gratuity, leave encashment, voluntary retrenchment benefits, commutation of pension etc. paid or payable to an employee at the time of termination of his service/superannuation/voluntary retirement.

11.4 REVIEW QUESTIONS

Q.1 Discuss the different deductions in respect of Investments/Contributions.

Q.2 Distinguish between Exemptions and Deductions.

UNIT 12: REBATES U/S 87A

Learning Objectives

After successful study of this unit, you will be able to:

- understand about rebate under Income Tax Act.
- acquire knowledge of rebate under New and Old regime
- know the other important provisions under u/s 87 A
- gain knowledge regarding different levels of Income and its Corresponding Rebates

Structure

- 12.1 Meaning of rebate of tax
- 12.2 Rebate of tax u/s 87A- Old and New Regime
- 12.3 Review Questions

12.1 MEANING OF REBATE OF TAX

A rebate of tax means a reduction in tax liability. It is an arrangement to pay less tax. Such rebate is allowed under the Income Tax Act 1961 to certain individual assesses after fulfilment of certain conditions.

12.2 REBATE OF TAX U/S 87A- NEW AND OLD REGIME

Rebate under the Act is discussed below:

i. Rebate of tax u/s 87A

Such rebate of tax is allowed to individual assesses only fulfilling the following two conditions:

- a) Assessee should be an individual and should be a resident of India during the previous year.
- b) His/her total income during the relevant previous year should not exceed ₹ 5,00,000.

ii. Rebate under the New Tax Regime

The Section 87A refund amount for FY 2023–2024 (AY 2024–2025) has changed in light of the new income tax regime. An individual resident who has taxable income up to Rs 7,00,000 would get a Rs 25,000 tax rebate. The previous tax rebate is still in place, which is Rs. 12,500 for income up to Rs. 5,00,000.

iii. Amount of Rebate allowed u/s 87A

If the assessee is opting for the old tax regime, then the amount of rebate is the least of the following two:

- a) ₹ 12,500 or
- b) Tax on total income

If the assessee is opting for the new tax regime, then the amount of rebate is the least of the following two:

- a) ₹ 25,000
- b) Tax on total income

iv. Other Important Provisions for Claiming Rebate u/s 87A

- a) Before 4% of the tax is added for health and education, the rebate can be applied to the entire tax.
- b) Only residents are qualified to get reimbursement under this section.
- c) Senior citizens who are above 60 but under 80 can avail of a rebate under Section 87A.
- d) However, such does not apply to super senior citizens who are over 80. It means rebate is available for super senior citizens.
- e) The rebate amount will be less than the entire income tax owed (before cess) or the limit stipulated in Section 87A.
- f) In both the old and new tax laws, a Section 87A rebate is available.

v. Rebate against Certain Tax Liabilities

Rebate u/s 87A can be availed for adjustment and set off against certain tax liabilities which are mentioned below

- a) Tax liabilities under the normal tax slabs.
- b) Long-term Capital Gains (Section 112)
The Section deals with the long-term capital gains from the sale of any capital assets, excluding listed equity shares and mutual fund equity-oriented schemes.
- c) Short-term Capital Gains (Sec 111A)
The Section deals with the short-term capital gains from listed stock shares and equities-oriented mutual fund schemes are subject to a 15% flat tax under Section 111A of the Act.

vi. Different levels of Income and its Corresponding Rebates

The following table explains different amounts of rebates for different incomes of a resident individual.

Table 1: Income and its Corresponding Rebates					Amount in ₹
Incomes	Tax Liability	Available Rebate	Rebate Amount	Net Tax Payable	Net Tax Payable with 4% Cess
2,50,000	Nil	NA	NA	NA	NA
2,70,000	1000	Least of 1000 or 12,500	1000	NIL	NA
4,50,000	10,000	Least of 10,000 or 12,500	10,000	NIL	NA
5,50,000	22, 500	NA	NA	NA	23,400

Source: Compiled

vii. Rebate in the Last Five Financial Years

Income Tax Act 1961 has provided different amounts of tax rebates in different financial years which are as follows:

Table 2: Rebate in Last Five Financial Years

Amount in ₹

Financial Years	Limit of Total Taxable Income	Amount of Rebate u/s 87A
2021-22	Rs. 5,00,000	Rs. 12,500
2020-21	Rs. 5,00,000	Rs. 12,500
2019-20	Rs. 5,00,000	Rs. 12,500
2018-19	Rs. 3,50,000	Rs. 2,500
2017-18	Rs. 3,50,000	Rs. 2,500

Source: Compiled

Illustration 1

Compute tax for the assessment year 2023-24 with the following information.

Mr. X, a resident individual (age below 60 years), has earned a total income of ₹ 4,50,020.

Solution

Computation of Tax of Mr. X.

	₹	₹
Total Income		4,50,020
Rounded off		4,50,000
Tax up to 250000	Nil	
Tax on balance 200000@5%	10,000	
Total tax	10,000	
Add: Health and Education Cess@4%	400	
Total tax	10,400	
Less: Rebate U/S 87A (10400 or 12500 whichever is lower)	10,400	
Tax liability		<u>Nil</u>

Illustration 2

Mr. Y, a resident Individual (age below 60 years), has a total income of ₹ 540000. Compute his tax liability.

Solution

Computation of Tax of Mr. Y.

	₹	₹
Total Income		5,40,000
Tax up to 250000	Nil	
Tax on 250000@5%	12,500	
Tax on remaining 40000@20%	8,000	
Total tax	20,500	
Add: Health and Education Cess@4%	820	
Total tax	21,320	
Less: Rebate U/S 87A	NA	
Tax liability		<u>21,320</u>

Illustration 3

Mr. Z, a resident senior citizen, has earned an income of ₹ 5,20,000. Compute his tax liability.

Solution

Computation of tax of Mr. Z.

	₹	₹
Total income		5,20,000
Tax up to 300000	Nil	
Tax on 200000@5%	10,000	
Tax on remaining 2,00,000@20%	4,000	
Total tax	14,000	
Add: Health and Education Cess@4%	560	
Total tax	14,560	
Less: Rebate U/S 87A	NA	
Tax liability		<u>14,560</u>

Illustration 4

The income details of Mr. P, a resident individual (age below 60 years) is given below.

	Amount in ₹
Income from salary	4,50,000
Income from short-term capital gain	50,000
Income from long-term capital gain	30,000
Income from lottery	40,000

Compute tax liability of Mr. P for the assessment year 2023-24.

Solution

	Amount in ₹	
I. Salary Income		
	4,50,000	
Less: Standard Deduction	<u>50,000</u>	4,00,000
II. Capital Gain		
Short-term capital gain	50,000	
Long-term capital gain	<u>30,000</u>	80,000
III. Income from Other Sources		
Winning from lottery	40,000	<u>40,000</u>
Gross Total Income		<u>5,20,000</u>

Computation of Tax Liability of Mr. P for the Assessment Year 2023-24

Amount in ₹

Winning from lotteries	40,000@30%	12000
Long-term capital gain	30,000@20%	6000
Remaining income (5,20,000-70,000)	4,50,000	
Tax on the remaining income		
On the first 2,50,000	Nil	
On the remaining 2,00,000 @ 5%	<u>10,000</u>	<u>10,000</u>
Total tax		28,000
Less: Rebate u/s 87A		<u>12500</u>
		15,500
Add: Health and Education Cess@4% on 15,500		<u>620</u>
Total tax liability		<u>16,120</u>

12.3 REVIEW QUESTIONS

- Q.1 Explain the rebate under new and old regime.
Q.2 What are the important provisions for Claiming Rebate u/s 87A?



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MBA 3.24 INCOME TAX LAW AND PRACTICE

Brief Contents

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UNIT-13: COMPUTATION OF TAX LIABILITY OF AN INDIVIDUAL

LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Compute total income of individual assesses.
- Acquire knowledge about various income tax rates in force.
- Understand the new tax regime under section 115BAC.
- Compute tax liability of individual assesses.

STRUCTURE

- 13.1 Introduction
- 13.2 Computation of Total Income and Tax Liability of Individuals
- 13.3 Income Tax Rates (Slab Rates) for Individuals
- 13.4 New Tax Regime for Individuals Under Section 115BAC
- 13.5 Some Special Rates of Income Tax
- 13.6 Problems and Solutions
- 13.7 Let us sum up
- 13.8 Key Words
- 13.9 Review Questions

13.1 INTRODUCTION

Definition of the term 'person' under section 2(31) of the Income Tax Act, 1961 covers individuals meaning that individuals are to be considered as a separate tax entity who may be liable to pay tax on their total income as per the methods and rates applicable to them. We human beings are the natural persons and falls within the ambit of the term 'individual'. An individual can be male, female or others, major or minor, with sound mind or unsound mind. Like other persons, they are also liable to determine their taxable total income and pay tax thereon for an assessment year. An individual assessee is liable to pay tax on total income at the prescribed slab rates subject to deduction on account of applicable rebates and reliefs. In case of individuals, tax rates vary with the income level and are categorised in different slabs. These rates are prescribed for an assessment year by the Finance Act relevant to that year. For example, tax rates prescribed in the Finance Act, 2022 are to be applicable for the assessment year 2023-24 relating to previous year 2022-23. From the assessment year 2021-22, new tax regime under section 115BAC has been introduced, which also prescribes an alternative concessional slab rate structure. The option to pay tax under section 115BAC is available to an individual assessee only if they sacrifice many other benefits in computation of total income. In some cases, tax liability of an individual may also be subject to calculation of AMT (Alternate Minimum Tax) under section 115JC. Understanding on AMT is not required at this level of study and hence left out of the coverage of this module.

13.2 COMPUTATION OF TOTAL INCOME AND TAX LIABILITY OF INDIVIDUALS

An assessee is liable to pay tax at specified rate(s) to be applicable on his total income for the relevant assessment year. A brief outline of computation of total income and tax payable thereon for an individual assessee is given below as per the provisions of the Income Tax Act, 1961.

STEP 1: Determination of residential status of an individual under section 6. Scope of total income that is which income is to be included in computing the total income of the person depends on whether he is ordinarily resident in India, not ordinarily resident in India or non-resident in

India. Scope of total income is determined as per the provisions of section 5 of the Income Tax Act.

STEP 2: Compute the income under each of the following five heads in accordance with the relevant provisions.

- Salaries (Section 15 to 17)
- Income from House Property (section 22 to 27)
- Profits and Gains of Business or Profession (section 28 to 44)
- Capital Gains (section 45 to 55)
- Income from Other Sources (section 56 to 59)

In computing income under each of the above heads, income which are fully or partly exempted under the Act need to be excluded. This is because exempted income is tax-free and does not form part of the gross total income.

STEP 3: Following the provisions of section 60 to 64, income of any other person needs to be clubbed in the hands of the assessee under respective heads stated in STEP 2. As for example, excepting certain circumstances, income of a minor child has to be clubbed/includible with the income of a parent under section 64(1A).

STEP 4: Current year's losses, if any, under different sources and heads are to be set off as per the provision of sections 70 and 71. Brought forward losses of earlier years are also to be adjusted as far as permissible under section 72 to 79 while aggregating income under the five heads.

STEP 5: Balance of income after STEP 4 is known as Gross Total Income (GTI). This is the aggregate of income computed under the five heads excluding exempted income, clubbing income of any other person under section 60 to 64, and after adjusting for current and brought forward losses.

STEP 6: Deductions allowable under Chapter VI-A (Sections 80C to 80U) will be deducted from the Gross Total Income to arrive at Total Income for the assessment year. Total income thus computed is to be rounded off to the nearest multiple of Rs.10 as per section 288A.

- However, no deduction under Chapter VI-A is available from short-term capital gains under section 111A, any long-term capital gains and casual income e. g. winnings from lotteries, crossword puzzles, races, card games, etc.
- Total amount of deductions under Chapter VI-A cannot exceed the gross total income [under Section 80A(2)] meaning that because of deductions total income cannot be negative.

STEP 7: Compute tax on total income. First taxes on special income under section 111A, 112, 112A and 115BB are to be computed applying special rates and then tax on balance income is to be computed applying slab rates as per the Finance Act or slab rates under section 115BAC (under new tax regime) at the option of the assessee.

- If total income excluding short-term capital gains under section 111A and long-term capital gains under section 112 and 112A falls below the basic exemption limit (Rs.2,50,000/3,00,000/5,00,000, as the case may be), then unexhausted basic exemption limit will be reduced from the income under section 111A, 112 or 112A and the balance amount thereof, if any, would be taxed at the respective special rate(s).

STEP 8: If the assessee is a resident individual having total income not exceeding Rs.5,00,000 during the assessment year, allow tax rebate under section 87A up to maximum of Rs.12,500.

- Rebate under section 87A is not available from long-term capital gains under section 112A.

STEP 9: Add surcharge at specified rate, if applicable.

STEP 10: Add Health and Education Cess @ 4% on the balance amount after surcharge.

STEP 11: Allow relief under section 89.

STEP 12: Add interest, if any, under section 234A, 234B or 234C. The balance amount will be considered as tax payable for the assessment year.

STEP 13: Deduct TDS/TCS and advance tax paid for the relevant assessment year. The balance amount is the net tax payable/refundable, which is to be rounded off to the nearest multiple of Rs.10 as per section 288B.

STEP 14: Net tax payable for the assessment year, if any, is to be paid as self-assessment tax under section 140A before filling the return of income.

Logical steps for computation of total income and tax payable thereon for an individual assessee is shown in the following table:

Computation of Taxable Income and Tax Liability thereon for the A.Y.....

Particulars	Amount (Rs.)
1. Salaries	***
2. Income from house property	***
3. Profits and gains of business or profession	***
4. Capital gains	***
5. Income from other sources	***
[Note: Income under 1 to 5 above is to be computed excluding exempted income, clubbing income of any other person under section 60 to 64, and after adjusting for current and brought forward losses]	
Gross Total Income	****
Less: Deductions u/s 80C to 80U (Chapter VI-A)	****
Total Income	****
Computation of Tax Liability on Total Income	
Tax on the part of total income chargeable at special rate(s)	****
Tax on balance of the total income chargeable at normal slab rate	****

Less: Rebate u/s 87A, if any	****

Add: Surcharge, if any	****
Tax including Surcharge	****
Add: Health and Education Cess @ 4% on tax including surcharge	****

Less: Relief u/s 89	****
Tax Liability	****
Add: Interest under Section 234A/234B/ 234C, if any	****
Tax Payable	****

Less: Taxes paid by way of:		
TDS/TCS	****	
Advance Tax	****	****
Self-Assessment Tax Payable u/s 140A / Refundable		****

13.3 INCOME TAX RATES (SLAB RATES) FOR INDIVIDUALS

In case of every resident individual, who is below 60 years		In case of resident individual, who is of 60 years or more but less than 80 years (Senior Citizen)		In case of resident individual, who is of 80 years or more (Super Senior Citizen)	
Total Income (Rs.)	Rate	Total Income (Rs.)	Rate	Total Income (Rs.)	Rate
Up to 2,50,000	NIL	Up to 3,00,000	NIL	Up to 5,00,000	NIL
From 2,50,001 to 5,00,000	5%	From 3,00,001 to 5,00,000	5%		
From 5,00,001 to 10,00,000	20%	From 5,00,001 to 10,00,000	20%	From 5,00,001 to 10,00,000	20%
Above 10,00,000	30%	Above 10,00,000	30%	Above 10,00,000	30%

Rebate u/s 87A

A resident individual, whose total income does not exceed Rs.5,00,000 during an assessment year, will be allowed a rebate to the extent of tax on total income or Rs.12,500, whichever is lower. However, rebate under section 87A is not available from long-term capital gains under section 112A.

Surcharge: Surcharge is to be levied on the amount of tax liability as follows:

- No surcharge if total income does not exceed Rs.50 Lakhs.
- Surcharge @ 10% of income-tax, if total income exceeds Rs.50 lakhs, but does not exceed Rs.1 crore.
- Surcharge @ 15% of income-tax, if total income exceeds Rs.1 crore, but does not exceed Rs.2 crore.
- Surcharge @ 25% of income-tax, if total income exceeds Rs.2 crore, but does not exceed Rs.5 crore.
- Surcharge @ 37% of income-tax, if total income exceeds Rs.5 crore.

However, maximum rate of surcharge on tax payable on dividend income, short-term capital gains under sections 111A and long-term capital gains under section 112 and 112A shall be 15%.

Health & Education Cess: @ 4% on the amount of tax liability plus surcharge.

13.4 NEW TAX REGIME FOR INDIVIDUALS UNDER SECTION 115BAC

The Finance Act, 2020 has introduced a new tax rate system for individuals to pay tax on total income at reduced rates applicable from assessment year 2021-22. This is commonly known as 'new tax regime'. This new alternative tax system under section 115BAC is optional. As of now, an individual assessee has to exercise his option to opt for the new tax regime. However, from the

assessment year 2024-25, this new tax regime becomes the default tax regime for the Individual. And then one will have to exercise option to shift from new to old tax regime. Tax rates (slab Rates) under the new tax regime are stated in the table below:

Total Income (Rs.)	Rate applicable for all individual assesses including senior and super senior citizens
Up to 2,50,000	Nil
From 2,50,001 to 5,00,000	5%
From 5,00,001 to 7,50,000	10%
From 7,50,001 to 10,00,000	15%
From 10,00,001 to 12,50,000	20%
From 12,50,001 to 15,00,000	25%
Above 15,00,000	30%

The option to pay tax at concessional rates under section 115BAC is available to an individual assessee only if they compute their total income without claiming specified exemptions, deductions, allowances or other benefits. Some of these important exemptions, deductions or benefits which are not available under section 115BAC are listed below:

- Exemption of leave travel concession under section 10(5).
- Exemption of house rent allowance under section 10(13A).
- Exemption of special allowances (other than few which are allowed) under section 10(14).
- Exemption of MPs/MLAs allowances under section 10(17).
- Deduction on account of clubbing of minor child's income under section 10(32).
- Standard deduction of Rs.50,000, deduction for entertainment allowance and deduction for professional tax from salary income under section 16.
- Deduction of interest on borrowed capital under section 24(b) in respect of self-occupied property.
- Additional depreciation.
- Deduction on account of payments made for scientific research to outside institutions.
- Deduction on account capital expenditure in respect of specified business under section 35AD.
- Standard deduction in respect of family pension under section 57(ia).
- Loss under the head income from house property.
- Deduction under section 80C to 80U excepting deduction under section 80CCD(2) and 80JJAA.

Some of the important exemptions, deductions or benefits which are available under section 115BAC are:

- Transport allowances in case of a specially-abled person.
- Conveyance allowance received to meet the conveyance expenditure incurred as part of the employment.
- Exemption on gratuity under section 10(10), voluntary retirement under section 10(10C), and

Leave encashment under section 10(10AA).

- Deduction of interest on borrowed capital in respect of let out or deemed to be let out property.
- Deduction under section 80CCD(2) and 80JJAA.

From the assessment year 2024-25, standard deduction of Rs 50,000 from salary income under section 16, standard deduction in respect of family pension under section 57(ia) and newly introduced deduction under section 80CCH(2) are allowable under section 115BAC.

13.5 SOME SPECIAL RATES OF INCOME TAX

Other than the tax rates specified in the Finance Act of the relevant year or tax rates specified under section 115BAC, certain special tax rates are also there to be applicable to certain special income as follows:

Nature of Income	Section	Rate of tax
Long-term capital gains from transfer of equity shares or units of equity mutual funds on which Securities Transaction Tax (STT) has been charged.	112A	Taxable @ 10% in excess of Rs.1,00,000
Long-term capital gains (Other than LTCG under section 112A above)	112	20%
Short-term capital gains from transfer of equity shares or units of equity mutual funds on which Securities Transaction Tax (STT) has been charged.	111A	15%
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 (Casual income).	115BB	30%

Note: From the above, it can be noted that long-term capital gains other than under section 112A normally be taxed @ 20%. Whereas, short-term capital gains other than under section 111A normally be taxed at the slab rates.

13.6 PROBLEM AND SOLUTION

Problem 1: Mr. Sundar, a resident individual, has computed total income of Rs.12,00,000 for the assessment year 2023-24. He has not opted for section 115BAC (new tax regime). Compute his tax liability assuming he is (i) 44 years old; (ii) 67 years old; or (iii) 82 years old.

Solution:

Computation of Tax Liability of Mr. Sundar, a resident individual
A.Y. 2023-24, P.Y. 2022-23 (Ignoring section 115BAC)

If he is 44 years old		If he is 67 years old (Senior Citizen)		If he is 82 years old (Super Senior Citizen)	
	Rs.		Rs.		Rs.
Up to Rs.2,50,000	Nil	Up to Rs.3,00,000	Nil	Up to Rs.5,00,000	Nil
Next Rs.2,50,000 @ 5%	12,500	Next Rs.3,00,000 @ 5%	10,000		
Next Rs.5,00,000 @ 20%	1,00,000	Next Rs.5,00,000 @ 20%	1,00,000	Next Rs.5,00,000 @ 20%	1,00,000
Balance of Rs.2,00,000 @ 30%	60,000	Balance of Rs.2,00,000 @ 30%	60,000	Balance of Rs.2,00,000 @ 30%	60,000
	1,72,500		1,70,000		1,60,000
Add: Surcharge	Nil	Add: Surcharge	Nil	Add: Surcharge	Nil
	1,72,500		1,70,000		1,60,000
Add: Health & Education Cess @ 4%	6,900	Add: Health & Education Cess @ 4%	6,800	Add: Health & Education Cess @ 4%	6,400
Tax Liability	1,79,400	Tax Liability	1,76,800	Tax Liability	1,66,400

Problem 2: Mrs. Rawat (age 35 years), a resident Indian, has earned income from house property of Rs.2,10,000, Long-term capital gains of Rs.6,00,000 and income from other sources of Rs.35,000 during the previous year 2022-23. Deduction available u/s 80C is Rs.60,000. Compute her tax liability for the assessment year 2023-24. (Ignore section 115BAC)

Solution:

Computation of Tax Liability of Mrs. Rawat, a resident individual
A.Y. 2023-24, P.Y. 2022-23 (Ignoring section 115BAC)

Particulars	Amount (Rs.)
Income from house property	2,10,000
Long-term capital gains (LTCG)	6,00,000
Income from other sources	35,000
Gross Total Income	8,45,000
Less: Deductions u/s 80C	60,000
Total Income	7,85,000
Total Income excluding LTCG: Rs.(7,85,000 – 6,00,000) = Rs.1,85,000, which is below the basic exemption limit of Rs.2,50,000. So, unexhausted basic exemption limit of Rs.(2,50,000 – 1,85,000) = Rs.65,000 to adjusted against LTCG.	
Hence, Tax @ 20% on LTCG of Rs.(6,00,000-65,000) = Rs.5,35,000	
Tax on balance total income of Rs.1,85,000	1,07,000
	nil
Add: Health & Education Cess @ 4%	1,07,000
Tax Liability	4,280
	1,11,280

Problem 3: Determine the amount of tax payable by Mr. Rehman (age 29 years), who is a person with disability (not severe), for the A.Y.2023-24.

	Rs.
– Net salary	3,60,000
– Long-term capital gains	40,000
– Short-term capital gains	30,000
– Winning from lottery (net of TDS @ 30%)	70,000
– Interest from bank fixed deposit	25,000
– LIC premium paid	15,000
– Medical insurance premium paid	22,000

Solution:

Computation of Tax Liability of Mr. Rehman, a resident individual
A.Y. 2023-24, P.Y. 2022-23

Particulars	Amount (Rs.)
Net Salary	3,60,000
Long-term capital gains (LTCG)	40,000
Short-term capital gains (STCG)	30,000
Winning from lottery (Grossed up) [Rs.70,000 / (100 – 30) %]	1,00,000
Interest from bank fixed deposit	

	Gross Total Income	25,000
Less: Deductions u/s 80C	Rs.15,000	5,55,000
Deductions u/s 80D	22,000	
Deduction u/s 80U (person with not severe disability)	<u>75,000</u>	
	Total Income	1,12,000
		4,43,000
Tax on LTCG of Rs.40,000 @ 20%		
Tax on winning from lottery of Rs.1,00,000 @ 30%		8,000
Tax on balance total income of Rs.3,03,000 at slab rate [Rs.53,000 × 5%]		30,000
		2,650
Less: Rebate u/s 87A (Maximum Rs.12,500)		40,650
		12,500
Add: Health & Education Cess @4% on Rs.28,150		28,150
	Tax Liability	1,126
Less: TDS		29,276
	Tax Refundable	30,000
	Rounded off	724
		720

Note: If nothing specifically mentioned in the problem, it can be assumed that the assessee is following the default tax system, and not the new section 115BAC.

Problem 4: Mrs. Sen (age 38 years), a resident Indian, has earned income from business: Rs.17,70,000, long-term capital gains on sale of land Rs.4,60,000, long-term capital gains on sale of listed equity shares u/s 112A: Rs.3,00,000, short-term capital gains on sale of listed equity shares u/s 111A: Rs.40,000, short-term capital gains on sale of gold jewellery: Rs.1,00,000, winning from horse race: Rs.2,00,000 and income from other sources: Rs.1,45,000 during the previous year 2022-23. Total deduction available under section 80C, 80D and 80G is Rs.1,80,000. Compute her tax liability for the assessment year 2023-24 assuming:

- she is not opting for section 115BAC.
- she is opting for section 115BAC.

Solution under (i): Not opting for section 115BAC

Computation of Tax Liability of Mr. Sen, a resident individual

A.Y. 2023-24, P.Y. 2022-23

Particulars	Amount (Rs.)
Income from business	17,70,000
Long-term capital gains on sale of land	4,60,000
Long-term capital gains on sale of listed equity shares u/s 112A	3,00,000
Short-term capital gains on sale of listed equity shares u/s 111A	40,000
Short-term capital gains on sale of gold jewellery	1,00,000
Winning from horse race	2,00,000
Income from other sources	1,45,000
	Gross Total Income
	30,15,000
Less: Deductions under chapter VI-A (Sec.80C, 80D and 80G)	1,80,000

	Total Income	28,35,000
– Tax on LTCG on sale of land of Rs.4,60,000 @ 20%		92,000
– Tax on LTCG of Rs.3,00,000 on sale of equity shares u/s 112A @ 10% exceeding Rs.1,00,000 [Rs.(3,00,000 – 1,00,000) × 10%]		20,000
– Tax on STCG of Rs.40,000 on sale of equity shares u/s 111A @ 15%		6,000
– Tax on winning from horse race of Rs.2,00,000 @ 30%		60,000
– Tax on balance total income of Rs.18,35,000 at slab rates:		
On First Rs.2,50,000	nil	
On Next Rs.2,50,000 @ 5%	Rs. 12,500	
On Next Rs.5,00,000 @ 20%	Rs.1,00,000	
On balance of Rs.8,35,000 @ 30%	<u>Rs.2,50,500</u>	3,63,000
		5,41,000
Add: Health & Education Cess @4% on Rs.5,41,000		21,640
	Tax Liability	5,62,640

Note: Long-term capital gains other than under section 112A normally be taxed @ 20%. Short-term capital gains other than under section 111A normally be taxed at the slab rates.

Solution under (ii): Opting for section 115BAC

Computation of Tax Liability of Mr. Sen, a resident individual

A.Y. 2023-24, P.Y. 2022-23

Particulars	Amount (Rs.)
Gross Total Income [from the calculation (i) above]	30,15,000
Less: Deductions under chapter VI-A (Sec.80C, 80D and 80G) [not available u/s 115BAC]	Nil
Total Income	30,15,000
– Tax on LTCG on sale of land of Rs.4,60,000 @ 20%	92,000
– Tax on LTCG of Rs.3,00,000 on sale of equity shares u/s 112A @ 10% exceeding Rs.1,00,000 [Rs.(3,00,000 – 1,00,000) × 10%]	20,000
– Tax on STCG of Rs.40,000 on sale of equity shares u/s 111A @ 15%	6,000
– Tax on winning from horse race of Rs.2,00,000 @ 30%	60,000
– Tax on balance total income of Rs.20,15,000 at slab rates u/s 115BAC:	
On First Rs.2,50,000	nil
On Next Rs.2,50,000 @ 5%	Rs. 12,500
On Next Rs.2,50,000 @ 10%	Rs. 25,000
On Next Rs.2,50,000 @ 15%	Rs. 37,500
On Next Rs.2,50,000 @ 20%	Rs. 50,000
On Next Rs.2,50,000 @ 25%	Rs. 62,500
On balance of Rs.5,15,000 @ 30%	<u>Rs.1,54,500</u>
	3,42,000
	5,20,000

Add: Health & Education Cess @4% on Rs.5,20,000	20,800
Tax Liability	5,40,800

Problem 5: Mr. Rahul Gautam (52 years) has furnished the following details of his income and savings for the previous year 2022-23. Compute his total income for the assessment year 2023-24.

– Basic Salary	Rs.8,60,000
– Dearness Allowance (D.A)	Rs.4,30,000
– House Rent Allowance (HRA)	Rs.1,20,000
– HRA exempted u/s 10(13A)	Rs. 80,000 (computed)
– Professional Tax paid	Rs. 2,400
– Interest on savings bank account	Rs. 11,000
– Interest on Public Provident Fund (PPF) account	Rs. 45,000
– Dividend from Indian Company	Rs. 17,000
– House building loan repaid (Self-occupied)	Rs. 80,000
– Interest on house building loan	Rs. 2,40,000
– Contribution to PPF account	Rs. 90,000
– Medical insurance premium paid on his health	Rs. 32,000

Solution:

Computation of Total Income and Income Tax thereon of Mr. Rahul Gautam, a resident individual A.Y. 2023-24, P.Y. 2022-23

Particulars	Amount (Rs.)	Amount (Rs.)
<u>Income under the head 'Salaries'</u>		
Basic Salary		8,60,000
Dearness Allowance		4,30,000
House Rent Allowance	1,20,000	
Less: HRA exempted u/s 10(13A) and Rule 2A	80,000	40,000
Gross Salary		13,30,000
Less: (i) Standard deduction	50,000	
(ii) Professional Tax	2,400	52,400
Net Salary		12,77,600
<u>Income from House Property (self-occupied)</u>		
Net Asset Value (NAV)	Nil	
Less: Interest on Borrowed Capital u/s 24(b) [Maximum of Rs.2,00,000]	2,00,000	(2,00,000)
		10,77,600
<u>Income from Other Sources</u>		
Interest on savings bank account	11,000	
Interest on PPF account (Exempted)	Nil	
Dividend from Indian Company	17,000	28,000
Gross Total Income		11,05,600

Less: Deductions under Chapter VI-A		
Deduction u/s 80C		
– House Building Loan repaid:	Rs.80,000	
– Contribution to PPF:	<u>Rs.90,000</u>	
	<u>Rs.1,70,000</u>	
(But, subject to maximum of Rs.1,50,000)	1,50,000	
Deduction u/s 80D: Medical insurance premium paid of Rs.32,000 on his health (But maximum limit is Rs.25,000)	25,000	
Deduction u/s 80TTA: Interest on savings bank accounts of Rs.11,000 (But Maximum Rs.10,000)	10,000	
		<u>1,85,000</u>
Total Income		<u>9,20,600</u>
Tax on Total Income:		
On First Rs.2,50,000	Nil	
On Next Rs.2,50,000 @ 5%	12,500	
On Balance Rs.4,20,600 @ 20%	84,120	
		<u>96,620</u>
Add: Health & Education Cess (HEC) @ 4%		<u>3,865</u>
Tax Liability		<u>1,00,485</u>
Rounded off u/s 288B		<u>1,00,490</u>

Note: If nothing specifically mentioned in the problem, it can be assumed that the assessee is following the default tax system, and not the section 115BAC.

Problem 6: For the assessment year 2023-24, Mrs. Nalanda (age 55 years) furnishes the following particulars of her income:

	Rs.
– Income from house property	3,20,000
– Loss from paper business	1,20,000
– Income from textiles business	6,60,000
– Long-term capital gains on transfer of vacant land in March 2023	4,28,000
– Short-term capital Loss	48,000
– Rental income from a vacant land	55,000
– Interest on savings bank account	16,877
– Brought forward business loss from the previous year 2020-21	44,000

Other information:

- Contribution to Notified Pension Fund: Rs.72,000.
- Tuition fees paid for her children: Rs.2,00,000
- Repayment of loan taken for MBA (from a foreign management institute) of her elder daughter (age: 20 years): Rs.1,80,000 (including interest of Rs.1,00,000).
- Donation of Rs.25,000 to National Defence Fund.
- Tax deducted at source amounts to Rs.5,000

- Advance tax paid of Rs.1,02,500

Compute total income and tax payable by Mrs. Nalanda for the assessment year 2023-24.

Solution:

Computation of Total Income and Tax Liability of Mrs. Nalanda

A.Y. 2022-23, P.Y. 2021-22

Particulars	Amount (Rs.)	Amount (Rs.)
Income from house property		3,20,000
Income from textiles business	6,60,000	
Less: Loss from paper business	1,20,000	
	5,40,000	
Less: Brought forward business loss	44,000	
		4,96,000
Long-term capital gains on transfer of the vacant land	4,28,000	
Less: Short-term capital loss	48,000	
		3,80,000
Rental income from a vacant land	55,000	
Interest on savings bank account	16,877	71,877
Gross Total Income		12,67,877
Less: Deduction under Chapter VIA		
Deduction u/s 80C: Tuition fees paid for her children (But, maximum of Rs.1,50,000)	1,50,000	
Deduction u/s 80CCC: Contribution to Notified Pension Fund	72,000	
	2,22,000	
Maximum of Deduction u/s 80C, 80CCC and 80CCD is limited to Rs.1,50,000 [u/s 80CCE]	1,50,000	
Deduction u/s 80E: Payment of interest on higher education loan	1,00,000	
Deduction u/s 80G: Donation to National Defence Fund	25,000	
Deduction u/s 80TTA: Interest on savings bank account (But, maximum of Rs.10,000)	10,000	
		2,85,000
Total Income		9,82,877
Total income rounded off u/s 288A		9,82,880
Tax on LTCG of Rs.3,80,000 on transfer of the vacant land @ 20%	76,000	
Tax on balance income of Rs.6,02,880 on slab rate:		
— On First Rs.2,50,000	nil	
— On Next Rs.2,50,000 @ 5%	Rs.12,500	
— On Balance Rs.1,02,880 @ 20%	<u>Rs.20,576</u>	
Add: HEC @ 4%	33,076	1,09,076
		4,363
Tax Liability		1,13,439
Less: Tax Deducted at Source	5,000	

Advance Tax paid	1,02,500	1,07,500
Self-assessment tax payable u/s 140A		5,939
Rounded off u/s 288B		5,940

13.7 LET US SUM UP

By summing up income under the five heads excluding exempted income, clubbing income of any other person under section 60 to 64, and after adjusting for current and brought forward losses, if any, we get gross total income. Deductions under Chapter VI-A (Sections 80C to 80U) are then deducted from the Gross Total Income to arrive at Total Income for the assessment year. An individual assessee is liable to pay tax on total income at the prescribed slab rates subject to deduction on account of applicable rebates and reliefs. Slab rates are to be applicable as per the provisions of the Finance Act relevant to a particular assessment year or in accordance of provisions of section 115BAC, at the option of the individual assessee. In addition, some special income are always to be taxed at special rates. Final tax liability of an assessee after deduction of tax already paid/credited on account of TDS/TCS and advance tax is to be discharged as self-assessment tax before filing return for the relevant assessment year.

13.8 KEY WORDS

- Gross Total Income
- Total Income
- Rebate u/s 87A
- New Tax System u/s 115BAC
- Senior Citizen
- Super Senior Citizen
- Surcharge
- Health and Education Cess

13.9 REVIEW QUESTIONS

Q1. Discuss the steps to be followed for computation of total income and tax liability of an individual assessee.

Q2. Explain briefly the tax rate structure applicable to an individual assessee for the assessment year 2023-24 assuming he is:

- (i) not opting section 115BAC;
- (ii) opting section 115BAC.

Q3. Determine tax liability of Mrs. Punom (age 30 years), a resident individual, for the assessment year 2023-24 assuming her gross total income of:

- (i) Rs.13,50,000
- (ii) Rs.10,50,000
- (iii) Rs.5,50,000.

It is reported that she has invested Rs.1,00,000 in NSC during the previous year 2022-23.

Q4. Mr. Das (age 51 years), a resident Indian, has earned income from business: Rs.11,50,000, long-term capital gains on sale of listed equity shares u/s 112A: Rs.1,90,000, short-term capital

gains on sale of listed equity shares u/s 111A: Rs.50,000, other long-term capital gains: Rs.1,20,000, other short-term capital gains: Rs.55,000, and income from other sources: Rs.2,45,000 during the previous year 2022-23. Deduction available u/s 80C is Rs.1,50,000 and u/s 80D is Rs.19,000. Compute his tax liability for the assessment year 2023-24 assuming:

- (i) he is opting for section 115BAC.
- (ii) he is not opting for section 115BAC.

Q5. For the assessment year 2023-24, Mr. Bhadra (age 64 years) furnishes the following particulars of his income:

	Rs.
– Net Salary	7,80,000
– Loss from house property	90,000
– Income from business A	4,55,000
– Loss from business B	2,12,000
– Long-term capital gains on sale of gold	1,20,000
– Short-term capital gain	34,000
– Short-term capital Loss	70,000
– Dividend from Indian companies	12,544
– Interest on savings bank account	27,362
– Winning from T.V. game show	50,000
– Brought forward business loss from the previous year 2019-20	44,000

Other information:

- Contribution to Notified Pension Fund: Rs.50,000.
- LIC premium paid Rs.25,000.
- Repayment of house building loan Rs.1,20,000.
- Donation of Rs.20,000 to National Foundation for Communal Harmony.
- Tax deducted at source amounts to Rs.90,000.
- Advance tax paid of Rs.40,000.

Compute total income and tax payable by Mr. Bhadra for the assessment year 2023-24.

UNIT-14: PROVISION FOR FILING OF RETURN

Learning Objectives

After studying this unit, you will be able to:

- Understand the concept of 'return of income'.
- Identify when one has to compulsorily file a return of income.
- Know the due date for filing a return of income.
- Know the consequences of late filing of returns.
- Acquire knowledge about various types of return filing and forms
- Appreciate when one has to apply for and quote a permanent account number.

Structure

- 14.1 Introduction
- 14.2 Compulsory Filing of Return of Income
- 14.3 Due Dates of Furnishing Return of Income
- 14.4 Consequences for Late Filing of Return
- 14.5 Different Types of Return Filing
- 14.6 Return of Income by Whom to be Verified in Case of Individual Assessee
- 14.7 Forms for Furnishing Return of Income
- 14.8 Permanent Account Number
- 14.9 Let Us Sum Up
- 14.10 Key Words
- 14.11 Review Questions

14.1 INTRODUCTION

Every assessee is required to compute his total income and tax liability thereon for every assessment year. The assessee discharges the tax liability in the form of advance tax payment, TDS credit, self-assessment tax payment, etc. The information as provided accurately captures the essence of the return of income. The assessee must furnish details like total income, tax payments, and other essential details in a prescribed form known as the income tax return (ITR). There are different ITR forms depending on the type of income and assessee. The form in which the assessee furnishes information in relation to his total income and tax payable along with other basic details, like name, address, date of birth, contacts, PAN, Aadhaar, bank details, etc., is known as return of income. Different forms of return of income prescribed under Rule 12 for different types of assessee having different types of income are known as Income Tax Return (ITR) forms. Every assessee specified under section 139(1) has to file a return of income relating to the previous year on or before the due date in the appropriate ITR form.

14.2 COMPULSORY FILING OF RETURN OF INCOME [SECTION 139(1)]

- ❑ As per section 139(1),
 - (a) every company or a firm has to file a return of its income earned during the previous year on or before the due date in the prescribed form and verified in the prescribed manner.

- (b) every person (not being a company or firm) whose total income exceeds the basic exemption limit has to file a ITR. Exemptions like those from capital gains are not considered while determining the need to file a return. Every person is liable to file a return of its income earned during the previous year on or before the due date in the prescribed form and verified in the prescribed manner, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the basic exemption limit.

- In case of an individual or a HUF or an AOP/BOI, whether incorporated or not, or an artificial juridical person, total income for this purpose is to be computed without giving effect to the exemptions from capital gains under section 54/54B/54D/54EC/54F/54G/54GA/54GB or Chapter VI-A (deductions under section 80C to 80U).
- The basic exemption limit has been given as Rs.2,50,000 for individuals, HUFs, AOPs, BOIs, and artificial juridical persons. The limit is Rs.3,00,000 for senior citizens and Rs.5,00,000 for super senior citizens.

❑ In the following cases, any person (other than a company or a firm), who is not otherwise required to file a return under section 139(1)(b) above, is also liable to file income tax return on or before the due date in the prescribed form and verified in the prescribed manner, if such person during the previous year –

- has deposited an amount or aggregate of the amounts exceeding Rs.1 crore in one or more current accounts maintained with a banking company or a co-operative bank; or
- has incurred expenditure of an amount or aggregate of the amounts exceeding Rs.2 lakh for himself or any other person for travel to a foreign country; or
- has incurred expenditure of an amount or aggregate of the amounts exceeding Rs.1 lakh towards consumption of electricity; or
- fulfils such other conditions as may be prescribed.

Accordingly, CBDT, vide notification no. 37/2022 dated 21.4.2022, has prescribed that any person (other than a company or a firm), who is not otherwise required to file a return under section 139(1)(b) and fulfils any of the following conditions, is also liable to file income tax return on or before the due date in the prescribed form and verified in the prescribed manner –

- (i) if his total sales, turnover or gross receipts, as the case may be, in the business exceeds Rs.60 lakh during the previous year; or
- (ii) if his total gross receipts in profession exceeds Rs.10 lakh during the previous year; or
- (iii) if the aggregate of tax deducted at source and tax collected at source during the previous year, in the case of the person, is Rs.25,000 (Rs.50,000 in case of senior citizen) or more; or
- (iv) the deposit in one or more savings bank account of the person, in aggregate, is Rs.50 lakh or more during the previous year.

CASE: Rohit Bal (age 49 years) is a resident of India reported the following income details for the previous year 2022-23:

Net salary income:	Rs.2,60,000
Income from other sources:	Rs. 40,000
Deduction allowable u/s 80C:	Rs. 50,000
Deduction allowable u/s 80D:	Rs. 10,000

Is Rohit required to file return of income for the previous year 2022-23?

Solution: Total income of Rohit comes to Rs.[(2,60,000+40,000) – (50,000+10,000)] = Rs.2,40,000 for the previous year 2022-23. However, under section 139(1), an individual has to file return of income if his total income without giving effect to the exemptions under section 54/54B/54D/54EC/54F/54G/54GA/54GB or deductions under Chapter VI-A (section 80C to 80U) exceeds the basic exemption limit.

Accordingly, Rohit's total income before giving effect to the deductions under section 80C and 80D comes to Rs.3,00,000 which is more than the basic exemption limit of Rs.2,50,000. Hence, Rohit is required to file return of income compulsorily for the previous year 2022-23.

14.3 DUE DATES OF FURNISHING RETURN OF INCOME [SECTION 139(1)]

1. In case an assessee is a:

- ✓ company, or
- ✓ a person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force, or
- ✓ a working partner of a firm whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force.

31st October of the assessment year

2. In case an assessee is required to furnish a report referred to in section 92E. (i. e. assessee who have undertaken international transactions).

30th November of the assessment year

3. In the case of any other assessee

31st July of the assessment year

CASE: State what would be the due date of filing return in case of the following persons for the previous year 2022-23:

- (i) Mrs. Rama Menon
- (ii) Mr. Rana Gupta having business subject to tax audit
- (iii) Lexon Private Company Limited
- (iv) XYZ LLP

Solution: (i) For the previous year 2022-23, due date of filing return for Mrs. Rama Menon, an individual assessee, would be 31st July 2023.

(ii) For the previous year 2022-23, due date of filing return for Mr. Rana Gupta, an individual assessee, whose business accounts are subject to tax audit would be 31st October 2023.

(iii) For the previous year 2022-23, due date of filing return for Lexon Private Company Limited, a company, would be 31st October 2023.

(iv) For the previous year 2022-23, due date of filing return for XYZ LLP (a limited liability partnership firm) would be 31st July 2023. (Assuming its business accounts are not subject to tax audit. If it is subject to tax audit, then due date of filing return would be 31st October 2023).

14.4 CONSEQUENCES FOR LATE FILING OF RETURN

Interest Payable for Default in furnishing Return of Income [Section 234A]

An assessee is liable to pay interest under section 234A, if he fails to file a return of income on or before the due date prescribed under section 139(1). Interest under section 234A is payable as follows:

(i) where an assessee files the return, but after the due date:

- simple interest @ 1% per month or part of the month is payable
- on the amount of tax on total income, less advance tax paid, TDS or TCS, relief, self-assessment tax paid within the due date, etc.
- for a period starting from the date immediately following the due date to the date of filing the return.

(ii) where an assessee does not furnish the return of income:

- simple interest @ 1% per month or part of the month is payable
- on the amount of tax on the total income, less advance tax paid, TDS or TCS, relief, self-assessment tax paid within the due date, etc.
- for a period starting from the date immediately following the due date to the date of completion of assessment.

However, interest under section 234A is not chargeable, if taxes are paid by the assessee in full on or before the due date.
--

Fee for default in furnishing return of income [Section 234F]

If an assessee fails to file a return of income on or before the due date prescribed under section 139(1), he shall be liable to pay a fee of Rs.5,000. However, where the total income of an assessee is up to Rs.5,00,000, then the fee payable shall not exceed Rs.1,000.

Problem:

Mr. Basu furnished the following information for the assessment year 2023-24.

Total income	Rs.8,90,200
Tax on total income	Rs.94,167
Advance tax paid	Rs.56,000
TDS	Rs.12,000
Due date for filing the return	31.07.2023
Actual date of filing the return	04.10.2023

You are required to compute the amount of interest payable u/s 234A and fees u/s 234F for the assessment year 2023-24.

Solution:

Computation of Interest u/s 234A for the A.Y. 2023-24

Particulars		Rs.
Tax on Total Income		94,167
Less: Advance tax paid	56,000	
TDS	12,000	68,000
Amount on which interest is payable		26,167
Rounded Off (See the Note below)		26,100
Period of default (August to October)		<u>3 months</u>
Interest payable u/s 234A would be = $\text{Rs.}26,100 \times 1\% \times 3$ months		783

Fees: As Mr. Basu fails to file the return on or before the due date i. e. 31/07/2023 and his total income is more than Rs.5,00,000, he shall also be liable to pay a fee of Rs.5,000 under section 234F.

Note: The amount of tax on which interest under section 234A is to be calculated must be rounded off to the nearest multiple of Rs.100 ignoring the fraction of Rs.100.

14.5 DIFFERENT TYPES OF RETURN FILING

Return of Loss [Section 139(3)]

Section 80 of the Income Tax Act states that in order to carry forward certain types of losses, an assessee has to compulsorily file the return of loss on or before the due date under section 139(1). Accordingly filing of return of loss within the due date is mandatory under section 139(3) in order to carry forward the following losses.

- Business loss u/s 72(1)
- Speculation business loss u/s 73(2)
- Loss from specified business u/s 73A(2)
- Loss under the head 'Capital Gains' u/s 74(1)
- Loss from the activity of owning and maintaining race horses u/s 74A(3)

If return has not been filed timely then above-mentioned losses cannot be carried forward for set off. However, filing of return of loss within the due date is not compulsory to carry forward house property loss under section 71B and unabsorbed depreciation under section 32. This means that house property loss and unabsorbed depreciation can be carried forward even if the return for the year is submitted after the due date.

Belated Return [Section 139(4)]

If any person submits return for any previous year after the due date allowed under section 139(1), then it is known as a belated return. Belated return for any previous year may be submitted within three months prior to the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. This means that any person who fails to furnish a return within the due date, may furnish the return belatedly but the belated return cannot be submitted after 31st December of the relevant assessment year.

CASE: Mr. Bhadra failed to file his return of income for the previous year 2022-23 within the due date 31st July 2023. Can he file the return anymore?

Solution: Yes, he can file belated return under section 139(4) within 31st December 2023 or before completion of assessment, whichever is earlier.

Revised Return [Section 139(5)]

Any person who has filed a return within the due date under section 139(1) or filed a belated return under section 139(4), discovers any omission or any wrong statement therein later, he may file a revised return. Revised return may be submitted within three months prior to the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. This means that any person may revise return but the revised return cannot be submitted after 31st December of the relevant assessment year.

A belated return filed under section 139(4) can also be revised if the person discovers any omission or any wrong statement therein later. In addition, a revised return can be revised again provided it is done within the prescribed time stated under section 139(5).

CASE: Mr. Bhadra filed a belated return for the previous year 2022-23 on 20th October 2023. Later he discovered an omission in the return on 31st October 2023. He wants to revise his return. Can he do so now?

Solution: Yes, he can file a revised return within 31st December 2023 or before completion of assessment, whichever is earlier.

Updated Return of Income [Section 139(8A)]

Any person may furnish an updated return for an assessment year at any time within twenty-four months from the end of that assessment year in the prescribed form and verified in the prescribed manner. The return of the assessment year, for which an updated return is to be filed, may or may not have been furnished earlier under section 139(1) or under section 139(4) or under section 139(5). The person may furnish an updated return for his income or for the income of any other person in respect of which he is assessable under this Act for the relevant assessment year.

However, the person cannot file an updated return, if the updated return:

- (a) is a return of a loss; or
- (b) has the effect of decreasing the total tax liability as per the return filed earlier; or
- (c) results in refund or increases the refund due as per the return filed earlier.

In addition to the above cases, there are other circumstances as well where updated return cannot be filed for an assessment year.

CASE: An assessee wants to file an updated return for the assessment year 2023-24. State the time within which the updated return can be filed.

Solution: The assessee can file an updated return for the A.Y. 2023-24 till 31/03/2026 that is within 24 months from the end of the assessment year (i.e. 31/03/2024).

Defective Return [Section 139(9)]

Where the Assessing Officer considers that the return of income filed by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation. The Assessing Officer may, in his discretion, allow the assessee to rectify the defect within such extended time period beyond the 15 days, on an application made by the assessee.

If the assessee fails to rectify the defect within such period of fifteen days or within such extended time period allowed, if any, then the return shall be treated as an invalid return. As a result, it would then be considered as if no return has been filed by the assessee.

However, if the assessee rectifies the defect after the expiry of the fifteen days or after the extended period allowed, if any, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

14.6 RETURN OF INCOME BY WHOME TO BE VERIFIED IN CASE OF INDIVIDUAL ASSESSEE [SECTION 140]

Before submission, return of income under section 139 has to be verified by the person who is authorised under section 140. In case of individual assessee, the return would normally be verified by the individual himself. However, there are certain circumstances where return of an individual can be verified by someone else as follows:

- Where the individual is absent from India, the return can be verified by the individual himself or some person duly authorised by him in this behalf holding a valid power of attorney to do so.
- Where the individual is mentally incapacitated from attending to his affairs, the return can be verified by his guardian or any other person competent to act on his behalf.
- Where, for any other reason, it is not possible for the individual to verify the return, the return can be verified by any person duly authorised by him in this behalf holding a valid power of attorney to do so.

Similarly, returns by HUF, companies, partnership firms, and other persons are also need to be verified by someone authorised under section 140. Provisions relating to verification of return of such other persons are not discussed here.

14.7 FORMS FOR FURNISHING RETURN OF INCOME

We know that persons under section 139 are required to file a return of its income earned during the previous year on or before the due date in the prescribed form and verified in the prescribed manner. The prescribed form in which the assessee furnishes information in relation to his total income and tax payable, is known as return of income. For example, ITR-1 is indeed for individuals with a specific set of income sources, and ITR-7 is for trusts, political parties, and certain other entities. PAN (Permanent Account Number): The description about PAN, its purpose, and the mandatory quoting for various transactions appears accurate as per Indian tax regulations. The list of transactions where PAN needs to be quoted is consistent with Rule 114B of the Income Tax Rules, 1962. There are altogether seven ITR forms to be used for filing of returns by different assesseees as follows:

ITR FORM	WHO CAN USE THIS FORM?
ITR-1 SAHAJ	Individuals being an ordinary resident having total income up to Rs.50 lakh, having income from salaries, one house property, other sources (except winnings from lottery or income from race horses), and agricultural income up to Rs.5,000. However, ITR-1 cannot be used by a person in certain cases, like if he is a director in a company; he has held any unlisted equity shares at any time during the previous year; he has any brought forward loss or loss to be carried forward under any head of income, etc.
ITR-2	Individuals and HUFs not having income from business or profession and who is not eligible for filing ITR-1.
ITR-3	Individuals and HUFs having income from business or profession and who is not eligible for filing ITR-1, ITR-2 or ITR-4.
ITR-4 SUGAM	Individuals or HUFs being an ordinary resident, or firms (other than LLP) being a resident, having total income upto Rs.50 lakh and having income from business and profession which is computed under sections 44AD, 44ADA or 44AE. However, ITR-4 cannot be used by a person in certain cases, like if he is a director in a company; he has held any unlisted equity shares at any time

	during the previous year; he has any brought forward loss or loss to be carried forward under any head of income, etc.
ITR-5	Persons other than individual, HUF, company and person filing Form ITR-7. So, this form can be used by a firm, limited liability partnership (LLP), AOP, BOI, Artificial Juridical Person, local Authority, Cooperative Society, etc.
ITR-6	Companies other than companies required to file ITR-7.
ITR-7	Persons including companies required to furnish return: • Under sections 139(4A): Persons having income from property held under Trust wholly/in part for charitable or religious purposes. • Under section 139(4B): Political party. • Under section 139(4C): Various entities like Scientific Research Association, News Agency, etc. mentioned in section 10. • Under section 139(4D): University, college, or other institution referred in section 35.

14.8 PERMANENT ACCOUNT NUMBER (PAN) [SECTION 139A]

Permanent Account Number (PAN) is a ten-digit alphanumeric number, issued by the Income Tax Department in the form of a card. PAN acts as an identification number of a person to the tax department and helps in linking all transactions made by him with the department. Consequentially, quoting of PAN is mandatory by a person:

- in all returns to, or correspondence with, any income-tax authority;
- in all challans for the payment of any sum due under the Act;
- in all documents pertaining to such transactions entered into by him, as may be prescribed by the CBDT in the interests of revenue.

PAN is allotted by the Income Tax Department to any person who makes an application for the same in specified form or to whom the Department allots the number without an application. In case of Indian citizens, Indian companies, entities incorporated/formed in India, application for PAN has to be made in Form No. 49A, whereas, for Individuals not being a citizen of India, entities incorporated/formed outside India, application has to be made in Form No. 49AA.

Who has to Obtain PAN?

PAN has to be obtained compulsorily by the following persons:

- Every person if his total income or the total income of any other person in respect of which he is assessable during the year exceeds the basic exemption limit.
- A charitable trust which is required to furnish return under Section 139(4A).
- Every person who is carrying on any business or profession whose total sale, turnover, or gross receipts are or is likely to exceed Rs.50 lakh in any year.
- Every non-individual resident person and other specified persons associated with them, shall apply for PAN if the financial transaction entered into by them during the financial year exceeds Rs.2,50,000.

- Every person who intends to enter into specified financial transactions in which quoting of PAN is mandatory.

Transactions notified by CBDT in which quoting of PAN is mandatory *vide* Rule 114B:

- ✓ Sale or purchase of a motor vehicle or vehicle which requires registration by a registering authority, other than two wheeled vehicles.
- ✓ Making an application for issue of a credit or debit card.
- ✓ Opening of a demat account.
- ✓ Payment in cash of an amount exceeding Rs. 50,000 to a hotel or restaurant against bill or bills at any one time.
- ✓ Payment in cash of an amount exceeding Rs. 50,000 in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.
- ✓ Payment of an amount exceeding Rs. 50,000 to a Mutual Fund for purchase of its units.
- ✓ Payment of an amount exceeding Rs. 50,000 to a company or an institution for acquiring debentures or bonds issued by it.
- ✓ Deposits of cash exceeding Rs. 50,000 during any one day with a banking company or a cooperative bank.
- ✓ Payment in cash for an amount exceeding Rs.50,000 during any one day for purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank.
- ✓ A time deposit with a banking company or a co-operative bank or a Post Office, or a Nidhi, or registered NBFC to accept deposit from public for amount exceeding fifty thousand rupees or aggregating to more than five lakh rupees during a financial year.
- ✓ Payment of an amount aggregating to more than Rs. 50,000 in a financial year as life insurance premium to an insurer.
- ✓ A contract for sale or purchase of securities (other than shares) for amount exceeding Rs. 1 lakh per transaction.
- ✓ Sale or purchase of shares of an unlisted company for amount exceeding Rs. 1 lakh per transaction.
- ✓ Sale or purchase of any immovable property for an amount exceeding Rs.10 lakh or stamp valuation exceeding Rs.10 lakh.
- ✓ Sale or purchase of goods or services of any nature other than those specified above for amount exceeding two lakh rupees per transaction.

NOTE: Any person, who does not have PAN and enters into any of the above transactions, can make a declaration in Form No.60.

14.9 LET US SUM UP

Persons specified under section 139 are required to file a return of its income earned during the previous year on or before the due date in the prescribed form and verified in the prescribed manner. The prescribed form in which the assessee furnishes information in relation to his total income and tax payable, is known as Income Tax Return (ITR Form). Due dates for filing return differ for different types of assessee. If an assessee fails to furnish return of income on or before the time prescribed, he shall be liable to pay interest u/s 234A as well as a fee up to Rs.5,000 u/s

234F. There can be different types of return filing. In order to carry forward certain specified losses, filing of return of loss within the due date is mandatory. A person may also submit belated return for any previous year after the due date of filing return. If any person who has filed a return within the due date or filed a belated return, discovers any omission or any wrong statement therein, he may file a revised return. One may also furnish an updated return for an assessment year at any time within twenty-four months from the end of that assessment year subject to fulfilment of other conditions. If a return is considered as defective then the assessee has to rectify the return within the specified time period. In this connection, it is to be noted that some specified persons need to obtain Permanent Account Number (PAN) compulsorily and quote the same in case of some notified transactions.

14.10 KEY WORDS

- Return of Income
- Due Date of Filing Return
- Return of Loss
- Belated Return
- Revised Return
- Defective Return
- Permanent Account Number (PAN)

14.11 REVIEW QUESTIONS

- Q1. When an assessee is liable to submit return of income compulsorily? State the due dates for submission of return of income.
- Q2. State the consequences for failure to file return of income within the due dates under section 139(1).
- Q3. What is return of loss? State the consequences for non-submission of return of loss.
- Q4. Write a note on 'Belated Return'.
- Q5. What is revised return? Can belated return be revised?
- Q6. What is PAN? State any five cases where quoting of PAN is mandatory.

UNIT 15: CONCEPT OF ADVANCE TAX

LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Understand the concept of advance tax payment.
- Know when an assessee is liable to pay advance tax.
- Compute the advance tax liability of an assessee.
- Know the time limit for payment of advance tax.
- Understand the consequences for failure to pay advance tax as per the provisions.

STRUCTURE

- 15.1 Introduction
- 15.2 Liability to Pay Advance Tax [Section 207]
- 15.3 Computation and Payment of Advance Tax
- 15.4 Due Dates and Instalments of Advance Tax [Section 211]
- 15.5 Consequences for Failure to Pay Advance Tax
- 15.6 Let Us Sum Up
- 15.7 Key Words
- 15.8 Review Questions

15.1 INTRODUCTION

Tax on income earned by an assessee during a financial year is assessed and paid in the immediately succeeding year (assessment year). But in majority of cases an assessee becomes liable to pay the tax in advance during the current financial year. As we know that tax on income earned by an assessee during previous year, say 2022-23, is payable during the relevant assessment year that is during 2023-24. But as per the provisions of the Income Tax Act, subject to certain conditions, the tax liability related to the previous year 2022-23 is to be discharged in advance during the previous year itself. An assessee has to estimate its total income for a financial year in advance and pay tax thereon in instalments within the specified due dates before the completion of the previous year. This estimated total income is also referred to as current income. If an assessee fails to pay advance tax as per the provisions of the act, he will be liable to pay interest under section 234B and 234C. Advance tax is one of the important methods of collecting income tax from the assesses and protect revenue loss.

15.2 LIABILITY TO PAY ADVANCE TAX [SECTION 207]

As per section 207 of the Income Tax Act, every assessee is liable to pay tax in advance on his total income earned during a previous year in the previous year itself. Normally, tax on total income earned during a previous year is chargeable to tax in the immediately following financial year that is in the relevant assessment year. But, in majority of cases payment of tax has to be made within the previous year in which it is earned subject to certain exceptions. Detail provisions relating to this advance payment of tax stated under section 207 are covered under sections 208 to 219 of the Income Tax Act, 1961.

Assessee Who are not Liable to Pay Advance Tax

- If the assessee is a senior citizen (a resident individual attained the age of 60 years or more at any time during the previous year) and does not have any income from business/profession, then the assessee is not liable to pay any advance tax [Section 207(2)].
- If the amount of advance tax liability of an assessee during a previous year is calculated to be less than Rs.10,000, then the assessee is not liable to pay any advance tax [Section 208].

15.3 COMPUTATION AND PAYMENT OF ADVANCE TAX

Advance tax liability can be paid:

- o by an assessee himself on the basis of his own calculation of current income; or
- o in pursuance of order/amended order of Assessing Officer.

Computation and payment of advance tax by an assessee on his own account: Every assessee who he is liable to pay advance tax, shall estimate his current income and advance tax liability thereon on his own accord and pay the same in certain instalments on or before each of the due dates mentioned under section 211. For this, the assessee need not to submit any estimate or statement of income to the assessing authorities. The estimated current income can be computed by the assessee himself as follows:

Step 1: Estimate the current income of the previous year.

[The assessee has to estimate his likely gross total income for the previous year under five heads of income after adjusting for current and brought forward losses, if any. From the gross total income, deductions under section 80C to 80U, if any likely to be claimed, will be deducted to arrive at the estimated current income].

Step 2: Tax liability (including surcharge and cess) on the estimated current income is to be computed applying the income tax rate(s) in force for the previous year.

Step 3: Relief under section 89, 90, 90A and/or 91, if any, will be allowed.

Step 4: Credit under section 115JAA (MAT credit only for corporate assessee) or under section 115JD (AMT Credit), if any, has to be deducted.

Step 5: Deduct the amount of tax deductible at source or tax collectible at source during the previous year.

Step 6: The balance amount will be the advance tax liability if it amounts to Rs.10,000 or more.

- It is to be noted that, at any time during the previous year, advance tax liability so computed by the assessee may be revised upward/downward based on his new revised estimation of current income. In such case, subsequent instalment(s) of advance tax payment will have to be revised accordingly.

Computation and payment of advance tax in pursuance of order under section 210(3) or amended order under section 210(4) of Assessing Officer

The Assessing Officer can pass such order, only if the following conditions are satisfied:

1. The assessee has already been assessed earlier by way of a regular assessment.
2. The Assessing Officer is of the opinion that the assessee is liable to pay advance tax during the current previous year, but has not discharged his obligation properly.
3. The Assessing Officer can pass such order under section 210(3) requiring the assessee to pay the advance tax.
4. The Assessing Officer can serve the order at any time during the previous year but not later than the last date of February.
5. The order must specify the amount of advance tax and instalment/instalments in which the same should be paid.

- Current income of the previous year will be computed by the Assessing Officer by taking higher of the (i) the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment; or (ii) the total income returned by the assessee (but not yet assessed by way of regular assessment) for any subsequent previous year.
- Tax liability (including surcharge and cess) on such current income is to be computed applying the income tax rate(s) in force for the current previous year.
- If the assessee feels that his advance tax liability must be lower than the one estimated by the Assessing Officer, he can pay advance tax as per his own calculation after sending an intimation thereof to the Assessing Officer.
- On the other hand, if the assessee feels that his advance tax liability would be higher than the one estimated by the Assessing Officer, he can pay higher amount of advance tax as per his own calculation. In such case, no intimation is required to be sent to the Assessing Officer.
- Under certain circumstances, the order passed under section 210(3) may be revised/amended by the Assessing Officer under section 210(4) and, on the receipt of the same, the assessee has to pay advance tax accordingly.

15.4 DUE DATES AND INSTALMENTS OF ADVANCE TAX [SECTION 211]

1. Time limit for payment of advance tax on current income is provided in the table below. This schedule is applicable for all assesseees, other than assesseees computing profits on presumptive basis under section 44AD or section 44ADA:

Due date of instalment	Amount payable
On or before 15th June of the previous year	Not less than 15% of advance tax liability.
On or before 15th September of the previous year	Not less than 45% of advance tax liability, minus the amount, if any, paid earlier.
On or before 15th December of the previous year	Not less than 75% of advance tax liability, minus the amount(s), if any, paid earlier.
On or before 15th March of the previous year	100% of advance tax liability, minus the amount(s), if any, paid earlier.

2. An assessee computing profits of its eligible business on presumptive basis under section 44AD or computing profits of its eligible profession on presumptive basis under section 44ADA, is liable

to pay 100% of advance tax liability on or before 15th March of the previous year in one instalment.

- Although the last date of payment of advance tax is 15th March of the relevant previous year, but any amount paid by way of advance tax on or before 31st March of the previous year shall also be treated as advance tax paid for that previous year. However, in such case, the assessee will be liable to pay interest on the late payment of advance tax.
- If on any of the last day for payment of any instalment of advance tax, the receiving bank is closed, the assessee can make the payment on the next immediately following working day. In such case, this will not be treated as late payment and the assessee will not be liable to pay any interest thereon.
- If any assessee fails to pay any instalment by the due date specified under section 211, he shall be 'deemed to be an assessee in default' in respect of such instalment [Section 218].
- Advance tax payment can be made through Challan No. ITNS-280. All corporate assesseees and the assesseees who are subject to compulsory tax audit under section 44AB are mandatorily required to pay taxes (including advance tax) electronically. An assessee can also make such electronic payment of taxes from the account of any other person. So, it is not compulsory for the assessee to make payment of taxes from his own account always. However, the challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made [*Circular no.5/2008 dated: 14.7.2008*]
- Any sum paid by or recovered from an assessee as advance tax is treated as a payment of tax in respect of the income of the previous year and credit thereof shall be given in the regular assessment (Section 219).

Problem 1:

Estimated tax liability of Mr. Suraj for the financial year 2022-23 is computed to be Rs.1,30,000. Tax Deductible at Source for the same period is estimated at Rs.30,000. Calculate the amount of advance tax payable by Mr. Suraj mentioning the amount and due date of each instalment.

Solution:

- Advance Tax Payable by Mr. Suraj (Previous Year 2022-23)

	Amount (Rs.)
Estimated Tax Liability	1,30,000
Less: Estimated TDS	30,000
	Advance tax payable
1 st Instalment payable on or before July 15, 2022 (15% of the advance tax payable) [$\text{Rs.}1,00,000 \times 15\%$]	15,000
2 nd Instalment payable on or before September 15, 2022 (45% of the advance tax payable minus the amount paid earlier) [$\text{Rs.}(1,00,000 \times 45\%) - 15,000$]	30,000
3 rd Instalment payable on or before December 15, 2022	30,000

(75% of the advance tax payable minus the amounts paid earlier) [Rs.(1,00,000 × 75%) – (15,000+30,000)]	
4 th Instalment payable on or before March 15, 2023 (100% of the advance tax payable minus the amounts paid earlier) [Rs.(1,00,000 × 100%) – (15,000+30,000+30,000)]	25,000

Problem 2:

Mrs. Dona Das estimated her tax liability at Rs.40,000 initially for the financial year 2022-23. But later in November 2022, she revised her tax liability estimation to Rs.55,000. Calculate the amount of advance tax payable by Mrs. Dona. Assume no TDS.

Solution:

- Advance Tax Payable by Mrs. Dona Das (Previous Year 2022-23)

	Amount (Rs.)
1 st Instalment payable on or before July 15, 2022 (15% of the advance tax payable) [Rs.40,000 × 15%]	6,000
2 nd Instalment payable on or before September 15, 2022 (45% of the advance tax payable minus the amount paid earlier) [Rs.(40,000 × 45%) – 6,000]	12,000
3 rd Instalment payable on or before December 15, 2022 (75% of the revised advance tax payable minus the amount paid earlier) [Rs.(55,000 × 75%) – (6,000+12,000)]	23,250
4 th Instalment payable on or before March 15, 2023 (100% of the revised advance tax payable minus the amount paid earlier) [Rs.(55,000 × 100%) – (6,000+12,000+23,250)]	13,750

Problem 3:

Mr. Lalmohon (age 48 years) has furnished the following estimation relating to his income and deductions for the previous year 2022-23.

Gross Salary	Rs.10,00,000
Income from house property	2,40,000
Income from other sources	30,000
Deduction u/s 80C	1,50,000
Deduction u/s 80G	10,000
TDS	76,000

Calculate the amount of advance tax payable by Mr. Lalmohon [Ignore section 115BAC].

Solution:**Advance Tax Payable by Mr. Lalmohon (Previous Year 2022-23)**

	Amount (Rs.)	Amount (Rs.)
Gross Salary	10,00,000	
Less: Standard Deduction	50,000	9,50,000
Income from house property		2,40,000
Income from other sources		30,000
Estimated Gross Total Income		12,20,000
Less: Deduction under Chapter VIA		
u/s 80C	1,50,000	
u/s 80G	10,000	1,60,000
Estimated Total Income		10,60,000
Estimated Tax Payable:		
On first Rs.2,50,000	Nil	
On next Rs.2,50,000 @ 5%	12,500	
On next Rs.5,00,000 @ 20%	1,00,000	
On the balance of Rs.60,000 @ 30%	18,000	1,30,500
Add: Surcharge		Nil
		1,30,500
Add: Health & Education Cess @ 4%		5,220
Estimated tax payable		1,35,720
Less: Estimated TDS		76,000
Advance tax payable		59,720
1 st Instalment payable on or before July 15, 2022 (15% of the advance tax payable) [Rs.59,720 × 15%]		8,958
2 nd Instalment payable on or before September 15, 2022 (45% of the advance tax payable minus the amount paid earlier) [Rs.(59,720 × 45%) – 8,958]		17,916
3 rd Instalment payable on or before December 15, 2022 (75% of the advance tax payable minus the amount paid earlier) [Rs.(59,720 × 75%) – (8,958+17,916)]		17,916
4 th Instalment payable on or before March 15, 2023 (100% of the advance tax payable minus the amount paid earlier) [Rs.(59,720 × 100%) – (8,958+17,916+17,916)]		14,930

Problem 4:

Suppose in the Problem 3 above TDS amount is given to be Rs.1,26,000 instead of Rs.76,000. All other details remain same. Calculate the amount of advance tax payable by Mr. Lalmohon. [Ignore section 115BAC].

Solution:

Advance Tax Payable by Mr. Lalmohon for the Previous Year 2022-23

	Amount (Rs.)
Estimated tax payable (from the solution to Prob. 3 above)	1,35,720
Less: Estimated TDS	1,26,000
Tax payable	9,720

Here, tax payable (after TDS) by Mr. Lalmohon is less than Rs.10,000. Hence, he is not liable to pay advance tax as per section 208 during the previous year 2022-23.

15.5 CONSEQUENCES FOR FAILURE TO PAY ADVANCE TAX

Interest Payable if An Assessee Defaults in Payment of Advance Tax [Section 234B]

An assessee liable to pay advance tax, has to pay interest under section 234B if he fails to pay such tax or pays less than 90% of the assessed tax during the previous year.

- Interest when the assessee doesn't pay any advance tax (which he otherwise liable to pay) during the previous year,
 - simple interest @ 1% per month or part of month will be payable
 - on assessed tax
 - from 1st April of the assessment year to the date of determination of income under section 143(1) or where regular assessment has been made to the date of regular assessment.
- Interest when the assessee has paid advance tax, but such payment of advance tax during the previous year is less than 90% of the assessed tax,
 - simple interest @ 1% per month or part of month will be payable
 - on assessed tax minus advance tax paid
 - from 1st April of the assessment year to the date of determination of income under section 143(1) or where regular assessment has been made to the date of regular assessment.

- 'Assessed Tax' means tax on total income determined on the basis of summary assessment under section 143(1) or regular assessment, less TDS/TCS, etc.
- However, where self-assessment tax is paid by the assessee, interest shall be calculated up to the date of payment of such tax.
- The amount of tax on which interest under section 234A, 234B and 234C is to be calculated must be rounded off to the nearest multiple of Rs.100 ignoring the fraction of Rs.100.

Problem 5: Tax Liability of Mr. Sherpa for the assessment year 2023-24 has been determined by the Assessing Officer on the regular assessment at Rs.1,15,640 on 06.12.2023. Amount of Tax Deducted at Source (TDS is Rs.42,000. Compute interest payable u/s 234B, if Mr. Sherpa paid (i no advance tax; (ii advance tax of Rs.50,000; or (iii advance tax of Rs.70,000 during the previous year 2022-23.

Solution:

CASE (i) If no advance tax was paid:

- Assessed tax = Rs.(1,15,640 – 42,000) = Rs.73,640
- Advance tax paid = nil
- Shortfall = Rs.73,640
- Shortfall rounded off = Rs.73,600

Interest payable u/s 234B would be on Rs.73,600 @ 1% for 9 months (April 2023 to December 2023):

$$= \text{Rs.73,600} \times 1\% \times 9 \text{ months} = \text{Rs.6,624}$$

(ii) If advance tax of Rs.50,000 was paid:

- Assessed tax = Rs.(1,15,640 – 42,000) = Rs.73,640
- 90% of the assessed tax of Rs.73,640 = Rs.66,276
- Advance tax paid = Rs.50,000

As advance tax paid is less than 90% of the assessed tax, interest u/s 234B would be payable on shortfall of Rs.(73,640 – 50,000) = Rs.23,640

Shortfall rounded off = Rs.23,600

So, interest payable u/s 234B would be on Rs.23,600 @ 1% for 9 months (April 2023 to December 2023):

$$= \text{Rs.23,600} \times 1\% \times 9 \text{ months} = \text{Rs.2,124}$$

(iii) If advance tax of Rs.70,000 was paid:

- Assessed tax = Rs.(1,15,640 – 42,000) = Rs.73,640
- 90% of the assessed tax of Rs.73,600 = Rs.66,276
- Advance tax paid = Rs.70,000

As advance tax paid is not less than 90% of the assessed tax, no interest payable u/s 234B.

Interest Payable for deferment of Advance Tax [Section 234C]

In case an assessee [other than assessee computing profits on presumptive basis under section 44AD or section 44ADA], who is liable to pay advance tax under section 208 has failed to pay such tax in specified percentages by specified dates mentioned under section 211, shall pay interest under section 234C as follows:

When interest is payable u/s 234C	Rate of interest	Period of interest	Amount on which interest is Payable
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When advance tax paid on or before 15 th June is less than 12% of tax due on returned income	Simple interest @ 1%	3 months	15% of tax due on returned income minus advance tax paid up to 15th June
When advance tax paid on or before 15 th September is less than 36% of tax due on returned income	Simple interest @ 1%	3 months	45% of tax due on returned income minus advance tax paid up to 15th September
When advance tax paid on or before 15 th December is less than 75% of tax due on returned income	Simple interest @ 1%	3 months	75% of tax due on returned income minus advance tax paid up to 15th December
When advance tax paid on or before 15 th March is less than 100% of tax due on returned income	Simple interest @ 1%	1 month	100% of tax due on returned income minus advance tax paid up to 15th March

- ✓ For the above purpose, 'tax due on returned income' means the tax calculated on returned income, less any TDS/TCS, etc.
- ✓ It is not possible for an assessee to estimate some income, like capital gains, income from dividends, casual income (e.g. income from lotteries, crossword puzzles) etc. As a result, it has been provided that if any such income arises after the due date for any instalment, then the entire amount of the tax payable (after considering TDS, if any) on such capital gains, dividend income or casual income should be paid in the remaining instalments. Where no such instalment is left, the entire tax should be paid by 31st March of the relevant financial year. In such case, no interest under section 234C is payable on such late payment.

Problem 6:

The returned income of Mrs. Jasmine (age 55 years) for the assessment year 2023-24 is Rs.6,77,885. She has paid the following instalments of advance tax:

- Rs.7,000 on 14.06.2022
- Rs.9,000 on 11.09.2022
- Rs.22,000 on 15.12.2022
- Rs.2,000 on 13.03.2023

Compute interest payable u/s 234C by Mrs. Jasmine for the assessment year 2023-24.

Solution:

- Returned income Rs.6,77,885
 - Tax on returned income including Cess (Computed) Rs. 50,000
- Computation of interest u/s 234C of Mrs. Jasmine for the assessment year 2023-24

Due Date	Total Advance Tax payable by due date (Rs.)	Total Advance Tax Paid by due date (Rs.)	Shortfall (Rs.)	Interest Payable u/s 234C
15/06/2022	7,500 (Rs.50,000 × 15%)	7,000	500	As advance tax paid Rs.7,000 on or before 15/06/2022 is not less than 12% of Rs.50,000 i.e Rs.6,000, so, no interest.
15/09/2022	22,500 (Rs.50,000 × 45%)	16,000 (7,000+9,000)	6,500	As advance tax paid Rs.16,000 on or before 15/09/2022 is less than 36% of Rs.50,000 i.e Rs.18,000, interest would be: = Rs.6,500 × 1% × 3 months = Rs.195
15/12/2022	37,500 (Rs.50,000 × 75%)	38,000 (16,000+22,000)	Nil	As advance tax paid Rs.38,000 on or before 15/12/2022 is not less than 75% of Rs.50,000 i.e Rs.37,500, so, no interest.
15/03/2023	50,000 (Rs.50,000 × 100%)	40,000 (38,000+2,000)	10,000	As advance tax paid Rs.40,000 on or before 15/03/2023 is less than 100% of Rs.50,000, interest would be: = Rs.10,000 × 1% × 1 months = Rs.100

So, total interest payable u/s 234C is Rs. (195+100) = Rs.295.

15.6 LET US SUM UP

An assessee has to estimate its total income for a financial year in advance and pay tax thereon before the completion of the previous year. If the amount of estimated tax liability of an assessee during a previous year is calculated to be Rs.10,000 or more, then he is liable to pay specified percentage of such advance tax liability in four instalments within specified due dates under section 211. A resident senior citizen having no income from business/profession is also not liable to pay any advance tax. Advance tax liability can be paid by an assessee himself on the basis of his own calculation of current income; or in pursuance of order/amended order of Assessing Officer. If an assessee fails to pay such tax or pays less than 90% of the assessed tax during the previous year, he will be liable to pay interest under section 234B. In case an assessee has failed to pay such tax in specified percentages by specified dates (deferment of advance tax payment), he will be liable to pay interest under section 234C.

15.7 KEY WORDS

- Advance Tax
- Current Income
- Assessed Tax

- Tax Deducted at Source (TDS)
- Interest u/s 234B
- Interest u/s 234C

15.8 REVIEW QUESTIONS

Q1. What do you mean by advance tax? Who is liable to pay such tax?

Q2. Discuss due dates and instalments for payment of advance tax.

Q3. State the consequences for failure to pay advance tax as per the provisions of the Income Tax Act.

Q4. Mrs. Doshi (age 42 years) has furnished the following estimation relating to his income and deductions for the previous year 2022-23.

Income from house property	6,00,000
Income from business	8,00,000
Income from other sources	1,70,000
Deduction u/s 80C	1,50,000
Deduction u/s 80TTA	10,000
Tax Deductible at Source	24,420

Calculate the amount of advance tax payable by Mrs. Doshi on different dates u/s 211 [Ignore section 115BAC].

UNIT-16: TDS PROVISIONS

LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Understand the concept of Tax Deducted at Source (TDS).
- Comprehend and apply the provisions to deduct TDS in case of certain payments.
- Learn about different TDS related Certificates and Forms.

STRUCTURE

- 16.1 Introduction
- 16.2 Tax Deduction from Salary [Section 192]
- 16.3 Tax Deduction from Interest on Securities [Section 193]
- 16.4 Tax Deduction from Dividends [Section 194]
- 16.5 Tax Deduction from Interest Other than Interest on Securities [Section 194A]
- 16.6 Tax Deduction from Winnings from Lotteries or Puzzles or Card Games [Section 194B]
- 16.7 Tax Deduction from Winnings from Horse Races [Section 194BB]
- 16.8 Miscellaneous Provisions
- 16.9 Let Us Sum Up
- 16.10 Key Words
- 16.11 Review Questions

16.1 INTRODUCTION

Total income of an assessee earned during a financial year is liable to be taxed in the immediately succeeding year known as the assessment year. However, in some cases, collection and recovery of the tax are done in the previous year itself in the form of advance tax, TDS and TCS in order to make realisation of tax more effective and protect revenue loss. Tax deduction at source (TDS) means collecting tax at the time of origin of an income. A person, who is making payment of an income to another person, is entrusted with the responsibility to deduct tax at a specified rate from the income of the other person and deposit the tax so deducted with the Government. As for example, say A is an employee of B. Generally, A is liable to pay tax on his salary income received during a financial year from B in the relevant assessment year. But as per the provisions of the Act, B (the employer or payer) is now responsible to deduct tax at the time of payment of salary to A (the employee or payee or recipient) at the specified rate and deposit the tax so deducted to the Government's treasury within the stipulated time on behalf of A. This is known as tax deducted at source (TDS). Here, B, who has deducted the tax is known as the deductor/payer and A, from whose income the tax is so deducted is known as the deductee/payee. B will finally receive the salary from A net of TDS and enjoy credit of the tax deducted earlier from his income at the time of payment of tax by him later. Provisions regarding TDS is governed under sections 190 to 206CA of the Income Tax Act. However, here we shall limit our discussion only to cases under sections 192, 193, 194, 194A, 194B and 194BB and related provisions thereto.

16.2 TAX DEDUCTION FROM SALARY [SECTION 192]

Every person is responsible to deduct income tax from the amount of payment to any person on account of salary income at the average rate of income tax relevant for the financial year. The provisions of section 192 are detailed in the table below:

Nature of payment covered	Payment of any income chargeable under the head 'salaries'.
Person responsible to deduct tax (Deductor)	Employer who is paying any income chargeable under the head 'salaries'.
Recipient (Deductee)	Employee
Time of tax deduction at source	At the time of payment.
Rate of TDS	At the average rate of income tax applicable to the assessee employee for the relevant financial year. Income tax on estimated total income of the employee is to be computed applying tax rates (i.e. the slab rates applicable to individuals) including surcharge and cess in force for the relevant financial year. Total tax thus computed is then divided by number of months of his employment during the financial year to arrive at the average tax amount to be deducted per month. [An employee has to intimate his employer if he is interested to opt for concessional rate under section 115BAC. If he opts for section 115BAC, then employer will compute the amount of tax deduction using the provisions of the new section. If he doesn't intimate his intention then employer will not consider the provision of section 115BAC even if it is beneficial to the employee.]

Other Points:

- Employee may furnish details of his other income to the employer. But cannot declare any loss excepting loss from house property. Employer will deduct tax after considering details of such other income and house property loss furnished by the employee. Employer will also consider deduction, if any, allowable to the employee under chapter VI-A (sections 80C to 80U) to estimate total income of the assessee employee.
- However, employee has to furnish following proof of evidence or particulars to the employer in Form No.12BB to claim the benefits of certain exemptions and deductions as stated below:

To claim house rent allowance	Name, address, amount of rent paid, PAN of the landlord/landlords if aggregate rent paid during the year exceeds Rs.1 lakh.
To claim leave travel concession or assistance	Evidence of expenditure.
To claim deduction of interest under the head "Income from house property"	Name, address and PAN of the lender and amount of interest paid/payable.
To claim Deduction under Chapter VI-A (Section 80C, 80CCC, 80CCD, 80CCG, 80D, 80DD, 80ddb, 80E, 80GG, 80GGA, 80TTA, 80TTB and 80U)	Evidence of investment or expenditure.

- In case of Government employees or employees of companies, co-operative societies, local authorities, universities, institutions, associations or bodies, tax deduction from salary payment should be made after giving effect of relief under section 89(1), if any.
- In case an assessee is in employment under more than one employer, he has to furnish details of his salary income and tax deducted therefrom to any one of the employers (if he is working under both of them simultaneously) or current employer in Form No. 12BB. The employer to whom the information has been submitted will be under obligation to deduct tax aggregating salary income from both the employers for the relevant financial year.
- Employers normally deduct tax from salary which also includes value of non-monetary perquisites. However, an employer, at his option, may pay the tax on such non-monetary perquisites instead of deducting tax at source from the same.
- If salary paid/payable to an employee exceeds Rs.1,50,000, then the employer shall furnish Form No. 12BA to the employee giving complete details of perquisites or profits in lieu of salary provided to him. For other employees, such details shall be given in Form 16 itself.

Problem: Mr. Ratnakar is working in a private company with a salary of Rs.50,000 per month w.e.f. 1st January 2021. Increment of Rs.2,000 per month accrues every year from 1st January. Professional tax paid of Rs.200 per month. Compute tax to deducted at source by his company every month during financial year 2022-23. He furnished documents for his payment towards life insurance premium of Rs.23,505 to the company. Assume Mr. Ratnakar has not opted for section 115BAC.

Solution:

Computation of Tax to Deducted at Source

Particulars	Amount (Rs.)	Amount (Rs.)
Gross Salary [Rs.(50,000×9) + (52,000 × 3)]		6,06,000
Less: (i) Standard deduction	50,000	
(ii) Professional Tax	2,400	52,400
Net Salary cum Gross Total Income		5,53,600
Less: <u>Deductions under Chapter VI-A</u>		
Deduction u/s 80C		23,505
Total Income		5,30,095
Tax on Total Income:		
On First Rs.2,50,000	Nil	
On Next Rs.2,50,000 @ 5%	12,500	
On Balance Rs.30,095 @ 20%	6,019	18,519
Add: Health & Education Cess (HEC) @ 4%		741
Total Tax		19,260
Amount of Tax to Deducted at Source by the company every month u/s 192:		
Rs.19,260 / 12 = Rs.1,605		

16.3 TAX DEDUCTION FROM INTEREST ON SECURITIES [SECTION 193]

Every person is responsible to deduct income tax from the amount of payment to any person, resident in India, on account of interest on securities (e.g. interest on debentures, bonds) at the rate of 10%. The provisions of section 193 are detailed in the table below:

Nature of payment covered	Payment of interest on securities.
Person responsible to deduct tax (Deductor)	Any person paying interest on securities.
Recipient (Deductee)	A resident indian receiving the interest on securities.
Time of tax deduction at source	At the time of payment by any mode or at the time of credit to the account of the payee/deductee, whichever is earlier.
Rate of TDS	10% of such interest amount.
No TDS	Some cases where TDS is not deductible: 1. No TDS is deductible, if the aggregate amount of debenture interest paid or credited or likely to be paid or credited during a financial year by a widely held company to an individual or a HUF, resident in India,

	is up to Rs.5,000 and such interest is paid by an account payee cheque. 2. No TDS is deductible, if any interest is payable on any security issued by the Central Government or a State Government. However, TDS is to be deducted on interest exceeding Rs.10,000 payable on 8% Savings (Taxable) Bonds, 2003 or 7.75% Savings (Taxable) Bonds, 2018. 3. No TDS is deductible, if the interest is payable to Life Insurance Corporation of India (LIC), General Insurance Corporation of India (GIC), any of the four subsidiaries of GIC, any other insurance service providers. 4. No TDS is deductible, if interest is payable on debentures issued by any institution or authority, or public sector company, or co-operative society (including a co-operative land mortgage bank or a co-operative land development bank) notified by the Central Government. 5. No TDS is deductible, if interest is payable on any dematerialised listed security issued by a company.
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16.4 TAX DEDUCTION FROM DIVIDENDS [SECTION 194]

The principal officer of a domestic company is responsible to deduct income tax from the amount of dividend distributed or paid to its shareholders, who is resident in India, at the rate of 10%. The provisions of section 194 are detailed in the table below:

Nature of payment covered	Payment of dividend.
Person responsible to deduct tax (Deductor)	The principal officer of a domestic company.
Recipient (Deductee)	Any person who is receiving the dividend and is resident in India.
Time of tax deduction at source	Before making any payment by any mode in respect of any dividend or before making any distribution or payment any dividend to a shareholder.
Rate of TDS	10% of such dividend amount.

No TDS	1. No TDS is deductible, if the dividend is paid to: (i) an individual shareholder, (ii) by any mode other than cash, and (iii) the amount or aggregate amount of such dividends distributed or paid or likely to be distributed or paid during the financial year by the company is up to Rs.5,000. 2. No TDS is deductible, if the dividend is paid/credited to Life Insurance Corporation of India (LIC), General Insurance Corporation of India (GIC), any of the four subsidiaries of GIC, any other insurance service providers, business trust, or any other person as may be notified by the Central Government.
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16.5 TAX DEDUCTION FROM INTEREST OTHER THAN INTEREST ON SECURITIES [SECTION 194A]

Every person is responsible to deduct income tax from the amount of payment to any person, resident in India, on account of interest other than interest on securities (e.g. interest on bank's fixed deposits, fixed deposits with a public company) at the rate of 10%. The provisions of section 194A are detailed in the table below:

Nature of payment covered	Payment of interest other than interest on securities.
Person responsible to deduct tax (Deductor)	Any person (other than an individual or a HUF) paying interest other than interest on securities. An individual or a HUF, whose total sales, gross receipts or turnover from his business exceeds Rs.1 crore or from his profession exceeds Rs.50 lakhs during the financial year immediately preceding the financial year in which he is paying interest other than interest on securities.
Recipient (Deductee)	A resident Indian receiving the interest.
Time of tax deduction at source	At the time of payment by any mode or at the time of credit to the account of the payee/deductee, whichever is earlier.
Rate of TDS	10% of such interest amount.
No TDS	Some cases where TDS is not deductible: 1. No TDS is deductible, if the aggregate amount of interest paid or credited or likely to be paid or credited during a financial year:

	(i) by a bank/banking institute on their time deposits is up to Rs.40,000. [For senior citizens, the limit is up to Rs.50,000]. (ii) by a co-operative society carrying on banking business on their time deposits up to Rs.40,000 [For senior citizens, the limit is up to Rs.50,000]. (iii) by post office on deposits is up to Rs.40,000 [For senior citizens, the limit is up to Rs.50,000]. (iv) in any case other than (i), (ii), and (iii) above is up to Rs.5,000. 2. No TDS is deductible, if the interest is paid or credited to any banking company, co-operative society carrying on the banking business, public financial corporation, Life Insurance Corporation of India, Unit Trust of India, company or co-operative society carrying on insurance business, or such other notified institutions. 3. No TDS is deductible, if the interest is paid or credited by a firm to its partner/partners. 4. No TDS is deductible, if the interest is paid or credited by a co-operative society (other than a co-operative bank) to its members or to any other co-operative society subject to certain conditions. 5. No TDS is deductible, if the interest is paid or credited in respect of deposits under any notified scheme framed by the Central Government (e.g. National Savings Certificates, Kisan Vikas Patra, Post Office Time Deposits, Post Office Recurring Deposits, Post Office Monthly Income Scheme, etc.). However, TDS is deductible in case of Senior Citizen Savings Schemes.
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16.6 TAX DEDUCTION FROM WINNINGS FROM LOTTERIES OR PUZZLES OR CARD GAMES [SECTION 194B]

Every person is responsible to deduct income tax from the amount of payment exceeding Rs.10,000 to any person on account of winnings from any lottery or crossword puzzle or card game and other game of any sort at the rate of 30%. The provisions of section 194B are detailed in the table below:

Nature of payment covered	Payment on account of winnings from any lottery or crossword puzzle or card game and other game of any sort.
Person responsible to deduct tax (Deductor)	Any person paying the amount on account of winnings from any lottery or crossword puzzle or card game and other game of any sort.
Recipient (Deductee)	Any person, resident or non-resident.
Time of tax deduction at source	At the time of payment of the sum.
Rate of TDS	30% of such sum paid.
No TDS	No TDS is deductible for an amount up to Rs.10,000.

Other Points:

- In case where the winnings/prize is wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the TDS liability on the whole of the winnings/prize, the person responsible for making the payment shall, before releasing the winnings/prize, ensure that tax has been paid in respect of the winnings/prize.
- If prize money is paid in instalments, then TDS is to be deducted at the time of actual payment of every instalment.

Problem: Mr. Samudra won prize money of Rs.5,00,000 in a T.V. game show.

- State how much TDS would be deductible from the prize money by the payer.
- How much money will actually be received by Mr. Samudra?
- How much of this prize money will be taxable in the hands of Mr. Samudra?

Solution:

- Tax to be deducted u/s 194B by the payer from the prize money would be @ 30% (without surcharge and cess) of Rs.5,00,000 that is Rs.1,50,000.
- Mr. Samudra will receive net of TDS Rs.(5,00,000 – 1,50,000) = Rs.3,50,000.
- Total prize money (gross amount) of Rs.5,00,000 will be taxable as casual income under the head 'income from other sources' in the hands of Mr. Samudra. However, from the tax liability on total income including the prize money he will get credit/deduction of the TDS of Rs.1,50,000 paid earlier to the government on his behalf.

16.7 TAX DEDUCTION FROM WINNINGS FROM HORSE RACES [SECTION 194BB]

Every person is responsible to deduct income tax from the amount of payment exceeding Rs.10,000 to any person on account of winnings from horse races at the rate of 30%. The provisions of section 194BB are detailed in the table below:

Nature of payment covered	Payment on account of winnings from horse races.
Person responsible to deduct tax (Deductor)	Any bookmaker or a person licensed by the Government making payment on account of winnings from horse races.
Recipient (Deductee)	Any person, resident or non-resident.
Time of tax deduction at source	At the time of payment of the sum.
Rate of TDS	30% of such sum paid.
No TDS	No TDS is deductible for an amount up to Rs.10,000.

16.8 MISCELLANEOUS PROVISIONS

TDS Credit [Section 199]

TDS deducted and paid to the credit of the Central Government by the deductor shall be treated as payment of tax on behalf of the deductee (who receives the payment net of TDS). Credit of such tax (TDS) shall be given to the deductee in the computation of his tax liability for the relevant assessment year.

Consequences of Failure to Deduct or Pay [Section 201]

If a person fails to deduct TDS or after deducting fails to pay, the whole or any part of the tax, in accordance with the provisions of the Income Tax Act, then such person shall be deemed to be an assessee in default. In such case, the person may be liable to pay interest, penalty or has to face other consequences as per the Act.

Certificate for TDS [Section 203]

Every person deducting TDS has to issue a certificate for the same in a prescribed form to the deductee. This certificate of TDS stating the amount of income/payment on which tax has been deducted, amount of tax deducted, rate at which the tax has been deducted, and other details to be furnished under section 203.

In case of tax deducted from salary under section 192, certificate of TDS has to be furnished by the employer in Form No.16. In other cases (like under section 193, 194, 194A, 194B, 194BB, etc.), certificate of TDS has to be furnished by the deductor in Form No.16A.

However, if salary paid/payable to an employee exceeds Rs.1,50,000, then the employer is also responsible to furnish Form No. 12BA to the employee. The Form will contain complete details of perquisites or profits in lieu of salary provided by the employer to the employee. In case of other employees, such details shall be given in Form 16 itself.

Form No.16 shall be issued to the employee within 15th June of the relevant assessment year. For example, for the previous year 2022-23, Form 16 is to be issued to the employee on or before 15th June 2023. Whereas, Form No.16A shall be issued quarterly within 15 days from the due date for furnishing the quarterly statement of TDS as follows:

For the quarter ending	Form 16A should be given on or before
June 30	August 15
September 30	November 15
December 31	February 15
March 31	June 15

Non-furnishing of PAN

Under section 206AA, if PAN is not provided by the deductee, TDS would be deducted at:

- (i) the rate prescribed in the act, or
- (ii) the rate in force; or
- (iii) at the rate of 20%, whichever is higher.

Lower Rate of TDS or No TDS

A person other than a company and firm may apply in Form No. 15G to the deductor for non-deduction of TDS if he has no tax payable on his total income. Accordingly, the deductor will not deduct any tax on the basis of self-declaration made by the deductee. In case the person (deductee) is a senior citizen, he has to apply in Form No. 15H to the deductor for non-deduction of TDS.

In addition to the self-declaration above, an assessee can apply directly to the Assessing Officer for deduction of tax at a lower rate or for non-deduction of tax under sections 192, 193, 194, or 194A discussed earlier citing proper ground for such request. The Assessing Officer, if satisfied, may issue certificate for deduction of TDS at lower rates or no deduction of TDS under section 197. An assessee cannot make such request for sections 194B and 194BB.

16.9 LET US SUM UP

Tax deduction at source (TDS) is a tax recovery tool by which tax is collected during a financial year by way of deduction at the time of payment of an income to another person. A person, who is making payment of specified income to another person, is entrusted with the responsibility to deduct tax at a specified rate from the income of the other person and deposit the tax so deducted with the Government within the stipulated time on behalf of the later. Provisions regarding TDS is governed under sections 190 to 206CA of the Income Tax Act. Importantly, tax deduction from salary under section 192, tax deduction from interest on securities under section 193, tax deduction from dividends under section 194, tax deduction from interest other than interest on securities 194A, tax deduction from winnings from lotteries or puzzles or card games under section 194B and tax deduction from winnings from horse races under section 194BB have been discussed in this unit. Every person deducting TDS has to issue a certificate for the same in a prescribed form within a stipulated time to the deductee.

16.10 KEY WORDS

- Tax Deducted at Source
- Average Rate of Income Tax
- TDS Certificate
- TDS Credit
- Payer/Deductor
- Payee/Deductee
- Form No. 15G
- Form No. 15H

16.11 REVIEW QUESTIONS

- Q1. Write briefly the provisions regarding TDS from salary income.
- Q2. State when TDS would be deductible under section 194B and 194BB.
- Q3. Write a short note on 'TDS on Dividends'.
- Q4. State the purpose of Form No. 16 and 16A.
- Q5. What is the use of Form No. 15G and 15H?
- Q6. What would be the applicable TDS rate, if PAN is not provided by the deductee?

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