

## LLB

### Subject: Tax Law      Paper code: 411

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## Unit 1

### Introduction:

The Indian Income Tax department is governed by the Central Board for Direct Taxes (CBDT) and is part of the Department of Revenue under the Ministry of Finance. The government of India imposes an income tax on taxable income of individuals, Hindu Undivided Families (HUFs), companies, firms, co-operative societies and trusts (Identified as body of Individuals and Association of Persons) and any other artificial person. Levy of tax is separate on each of the persons. The levy is governed by the Indian Income Tax Act, 1961 and Rules framed there under.

<http://www.saraltaxoffice.com/resources/it.php>

Section 1 of Income-Tax Act, 1961 [as amended by finance act, 2015] *An Act to consolidate and amend the law relating to income-tax and super-tax* enacted by Parliament in the Twelfth Year of the Republic of India as follows :—

- (1) This Act may be called the Income-tax Act, 1961.
- (2) It extends to the whole of India.
- (3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962.

**Definitions: Income:** Most systems define income subject to tax broadly for residents, but tax nonresidents only on specific types of income. What is included in income for individuals may differ from what is included for entities. The timing of recognizing income may differ by type of taxpayer or type of income.

Income generally includes most types of receipts that enrich the taxpayer, including compensation for services, gain from sale of goods or other property, interest, dividends, rents, royalties, annuities, pensions, and all manner of other items. Many systems exclude from income part or all of superannuation or other national retirement plan payments. Most tax systems exclude from income health care benefits provided by employers or under national insurance systems. (source: [https://en.wikipedia.org/wiki/Income\\_tax](https://en.wikipedia.org/wiki/Income_tax) accessed on 13-06-15)\

Income" includes—

- (i) Profits and gains;
- (ii) Dividend;
- (iii) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.

*Explanation.*—For the purposes of this sub-clause, "trust" includes any other legal obligation ;

- (iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17 ;
- (iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit ;
- (iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living ;
- (iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;
- (iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;
- (v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59 ;
- (va) any sum chargeable to income-tax under clause (iiia) of section 28 ;
- (vb) any sum chargeable to income-tax under clause (iiib) of section 28 ;
- (vc) any sum chargeable to income-tax under clause (iiic) of section 28 ;
- (vd) the value of any benefit or perquisite taxable under clause (iv) of section 28 ;
- (ve) any sum chargeable to income-tax under clause (v) of section 28 ;
- (vi) any capital gains chargeable under section 45 ;
- (vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule ;
- (viiia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;
- (viii) *[Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Original sub-clause (viii) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964;]*
- (ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

*Explanation.*—For the purposes of this sub-clause,—

- (i) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
- (ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game ;
- (x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees ;
- (xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

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

- (xii) any sum referred to in clause (va) of section 28;
- (xiii) any sum referred to in clause (v) of sub-section (2) of section 56;
- (xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;
- (xv) any sum of money or value of property referred to in clause (vii) or clause (vii a) of sub-section (2) of section 56;
- (xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (vii b) of sub-section (2) of section 56;
- [(xvii) *any sum of money referred to in clause (ix) of sub-section (2) of section 56;*]

Following sub-clause (xviii) shall be inserted after sub-clause (xvii) of clause (24) of section 2 by the Finance Act, 2015, w.e.f. 1-4-2016 :

- (xviii) *assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43;*

## **Agricultural Income**

It means: (a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes; (b) any income derived from such land by—

- (i) Agriculture; or
- (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause ;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that— (i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) The land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(A) In any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand<sup>3</sup>[\*\*\*]; or

<sup>4</sup>[(B) in any area within the distance, measured aerially,—

(I) not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

*Explanation 1.*—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section.

*Explanation 2.*—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

*Explanation 3.*—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

<sup>5</sup>[Explanation 4.—For the purposes of clause (ii) of the proviso to sub-clause (c), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;]

Source: <http://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx> (accessed on 13-06-15)

### Income partly agricultural and partly business activities

Income in respect of the below mentioned activities is initially computed as if it is business income and after considering permissible deductions. Thereafter, 40, 35 or 25 percent of the income as the case may be, is treated as business income, and the rest is treated as agricultural income.

Income	Business income	Agricultural income
Growing & manufacturing tea in India	40%	60%
Sale of latex or cenex or latex based crepes or brown crepes manufactured from field latex or coagulum obtained from rubber plants grown by a seller in India	35%	65%
Sale of coffee grown & cured by seller in India	25%	75%
Sale of coffee grown, cured, roasted & grounded by seller in India	40%	60%

For apportionment of a composite business-cum-agricultural income, other than the above-mentioned, the market value of any agricultural produce, raised by the assessee or received by him as rent-in-kind and utilized as raw material in his business, should be deducted. No further deduction is permissible in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind.

[https://en.wikipedia.org/wiki/Income\\_tax\\_in\\_India](https://en.wikipedia.org/wiki/Income_tax_in_India)

### Person:

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

### Assessee:

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

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

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

**Assessment year:** assessment year" means the period of twelve months commencing on the 1st day of April every year. It is the financial year in which income tax is calculated for the assessee. It is next year to the previous year. For Example Sonali started a business on 31<sup>st</sup> July 2014. Assessment year for calculating tax will be 2015-16 as previous year will be 2014-15.

### Previous year

**Defined. Section 3.** For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year : **Provided** that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year. Normally income tax is charged on previous year's income. Previous year is the year in which assesses earn income. For example : Preya started business on 7<sup>th</sup> July 2014. Previous year for Income tax will be 7<sup>th</sup> July 2014 to 31<sup>st</sup> March 2015.

### Gross Total income:

The Gross Total income of a person is segregated into five heads:-

- Income from salaries
- Income from house property
- Profits and gains of business or profession
- Capital gains and
- Income from other sources

So Gross Total Income: Income is divided into 5 heads in income tax. 1. Salary 2. House Property 3. Business and Profession 4. Capital Gains and 5. Other Sources. Aggregate income of five heads is called Gross Total Income.

### Total Income:

**Gross total income minus following deductions of Section 80 is called Total income**

Deductions allowed under Chapter VI-A i.e., sections 80C to 80U, cannot exceed gross total income of an assessee excluding short term capital gains under section 111A and any long term capital gains. Some deductions under sections 80C to 80DDB are listed below.

**Section 80C deductions:** Deduction under this section is available only to an individual or an HUF. Section 80C of the Income Tax Act allows certain investments and expenditure to be deducted from total income up to the maximum of Rs 1,50,000 from the Financial Year 2014-15.

**Section 80CCC (pension) :** Payments made to LIC or to any other approved insurer under an approved pension plan is admissible for deduction under this section. Then pension plan policy

should be for individual himself out of his taxable income. The deduction is least of the amount paid or Rs 1,50,000

**Section 80CCD:** Contribution made by the assessee and by employer to New Pension Scheme is admissible for deduction under this section. The assessee should be an individual who is employed on or after 1 January 2004. The deduction shall be equal to the amount contributed by the assessee and/or by the employer, not exceeding 10% of his salary (basic+dearness allowance). Even a self-employed person can claim this deduction which will be restricted to 10% of gross total income.

The total deduction available to an assessee under sections 80C, 80CCC & 80CCD is restricted to 150,000 per annum. However, employer's contribution to Notified Pension Scheme under section 80CCD is not a part of the limit of 150,000.

**Sec 80D:** (1) In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted such sum, as specified in sub-section (2) or sub-section (3), payment of which is made by any mode 95[as specified in sub-section (2B),] in the previous year out of his income chargeable to tax.

(2) Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:— (a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family 96[or any contribution made to the Central Government Health Scheme] 96a[or such other scheme as may be notified by the Central Government in this behalf] 97[or any payment made on account of preventive health check-up of the assessee or his family] as does not exceed in the aggregate fifteen thousand rupees; and (b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee 97[or any payment made on account of preventive health check-up of the parent or parents of the assessee] as does not exceed in the aggregate fifteen thousand rupees. Explanation.—For the purposes of clause (a), "family" means the spouse and dependent children of the assessee. 97[(2A) Where the amounts referred to in clauses (a) and (b) of sub-section (2) are paid on account of preventive health check-up, the deduction for such amounts shall be allowed to the extent it does not exceed in the aggregate five thousand rupees.

(2B) For the purposes of deduction under sub-section (1), the payment shall be made by— (i) any mode, including cash, in respect of any sum paid on account of preventive health check-up; (ii) any mode other than cash in all other cases not falling under clause (i).]

(3) Where the assessee is a Hindu undivided family, the sum referred to in sub-section (1) shall be the whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in the aggregate fifteen thousand rupees.

(4) Where the sum specified in clause (a) or clause (b) of sub-section (2) or in sub-section (3) is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, the provisions of this section shall have effect as if for the words "fifteen thousand rupees", the words "twenty thousand rupees" had been substituted. Explanation.—For the purposes of this sub-section, "senior citizen" means an individual resident in India who is of the age of 60[sixty years] or more at any time during the relevant previous year.

(5) The insurance referred to in this section shall be in accordance with a scheme<sup>99</sup> made in this behalf by— (a) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalization) Act, 1972 (57 of 1972) and approved by the

Central Government in this behalf; or (b) any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

### Amount of Deduction U/Sec 80D

	HUF	Individual		
On whose health insurance policy can be taken	Anymember	Individual himself, spouse, Dependent children	Parents whether dependent or not	Total
General deduction	15000	15000	15000	30000
Additional deduction if insured is a senior citizen	5000	5000	5000	10000
Total	20000	20000	20000	40000

Deduction under Section 80D is also available in respect of contribution to Central Government Health Scheme. However this deduction is not available to HUF. Deduction is available to an individual and only in respect of health insurance policy taken for Individual himself, spouse and dependent children. If an individual takes an insurance policy on health of Parents whether dependent or not, deduction under this Section will not be available. Deduction under this section within the existing limit, in respect of any payment or contribution made by the assessee to such other health scheme as may be notified by the Central Government.

### **Section 80DDB : Deduction in respect of medical treatment, etc**

Deduction is allowed to resident individual or HUF(Hindu Undivided Family ) in respect of expenditure actually during the PY incurred for the medical treatment of specified disease or ailment as specified in the rules 11DD for himself or a dependent relative or a member of a HUF

### **Section 80E : Education loan interest**

Interest payment on education loan for education in India gets deduction under this section. Education loan should be for self, spouse, child or the legal guardian.

**Section 80TTA : Interest on Savings Account** Up to Rs 10,000 earned as interest from savings account in bank, post office or a co-operative society can be claimed for deduction under this section. This rebate is applicable for individuals and HUFs \

**Section 80U : Disability:** Disabled persons can get a flat deduction on Income Tax on producing their disability certificate. If disability is severe Rs 1 lakh can be claimed else Rs 50,000.server here mean disability 80% or more as per this section

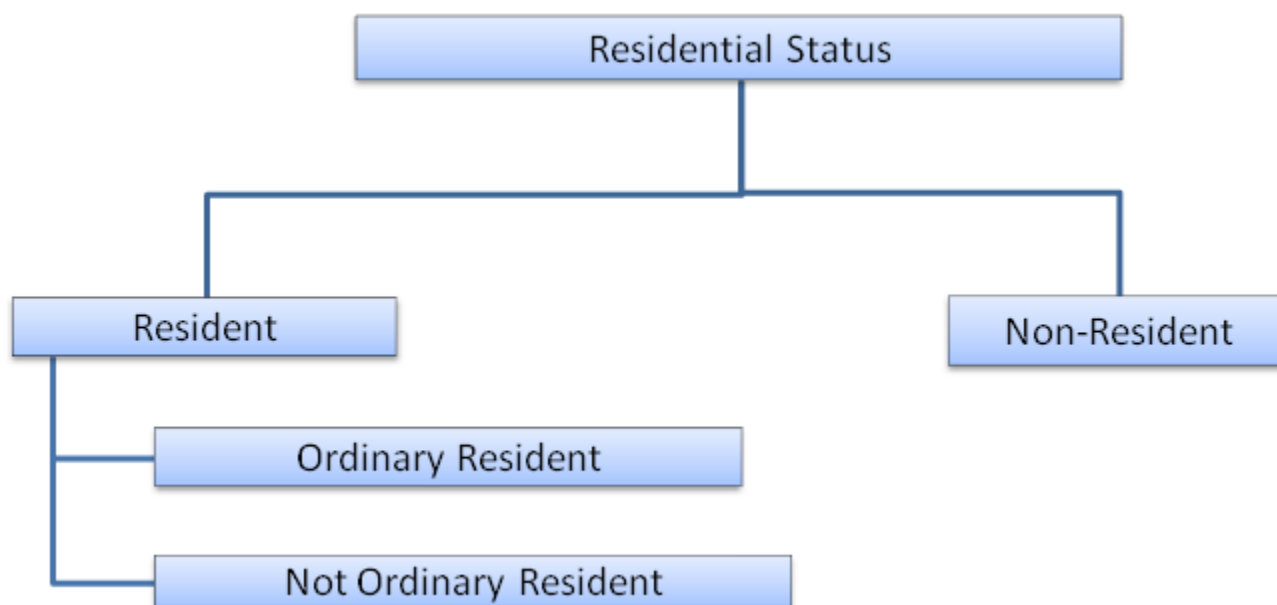
### **Maximum Marginal Rate of Tax**

Maximum marginal rate - Section 164 is the charging section by itself and all that it says is that the 'maximum marginal rate' of tax is to be applied on the computed income. "Maximum marginal rate" is defined as the rate of tax applicable in relation to the highest slab of income provided for association of persons in the relevant Finance Act. The definition is not capable of any doubt, and the only meaning that it admits of is that the rate on the maximum slab of income for AOP is to be treated as the maximum marginal rate of tax for the purposes of section 164. When the statute says that the "maximum marginal rate" is the rate applicable on the highest slab

of income, there is no scope for enquiry on the meaning of “marginal” - CIT v. C.V. Divakaran Family Trust [2002] 254 ITR 222/122 Taxman 405 (Ker.).**Source:** <http://www.caclubindia.com/forum/what-is-the-maximum-marginal-rate-under-income-tax--12693.asp>

### **Residential Status of an assessee**

The determination of **Residential Status** of a person is very important for the purpose of levy of income tax, as income tax is levied based on the residential status of a taxpayer. The Residential Status of a taxpayer can be divided in the following categories



### **Determination of Residential Status of Individual**

#### **Basic Conditions**

The *Residential Status* of an Individual is to be determined on the basis of period of stay of the taxpayer in India and is computed separately for each year. If an individual satisfies any one of the following conditions, he is said to be Resident in India for that financial year. The conditions are:-

- He is in India for a period of 182 days or more in that financial year

OR

- He is in India for 60 days or more during that financial year and has been in India for 365 days or more during 4 previous years immediately preceding the relevant financial year.

If any one of the above basic conditions is satisfied, the individual is said to be resident in India. However, if none of the conditions is satisfied, he is said to be a Non Resident Indian (NRI)

#### **Exceptions to Residential Status**

There are 2 exceptions to the above rule of classification of Residential Status:-

1. In case of an individual, who is a citizen of India and who leaves India in any financial year for the purpose of employment outside India, the 2<sup>nd</sup> condition stated above shall not be applicable and only the 1<sup>st</sup> condition of 182 days or more would be applicable
2. In case of an individual who is a citizen of India or is a person of Indian origin and who being outside India comes on a visit to India in any financial year, the 2<sup>nd</sup> conditions stated above shall not be applicable and only the 1<sup>st</sup> condition of 182 days or more would be applicable.

### **Additional Conditions:**

Classification of Ordinary Resident & Non Ordinary Resident: **As per Section 6(6), a person shall be not ordinary resident in India if he satisfies any one of the following conditions:-**

- He has been a non-resident (in the manner computed above) in 9 out of 10 years immediately preceding the Financial Year

OR

- He has been in India for a period of 729 days or less in 7 previous years immediately preceding the financial year.

If any 1 of the above additional conditions is satisfied, the person is said to be resident but not-ordinary resident in India. However, if none of the above conditions is satisfied, the person is said to be Resident and Ordinary Resident in India.

### **Relevant points regarding Residential Status**

**Receipt of Income:** For the purpose of levy of income tax, what is important is the 1<sup>st</sup> receipt. If an amount is received outside India and then subsequently remitted to India, it shall be a receipt outside India. Merely, because it has been remitted to India would not make it an income received in India. For eg: A non-resident receives income equivalent to Rs. 80,000 in USA but then remits it to India. This income would not be taxable in his hands in India because it is neither earned in India nor received (1<sup>st</sup> receipt) in India.

**Citizenship of a Country and Residential Status:** Citizenship of a country and residential status are separate concepts. A person may be an Indian national/citizen but may not be a resident in India. On the other hand, a person may be a foreign national/citizen but may be a resident in India.

**Computation of Period of Stay:** In computing the period of stay for the purpose of residential status, it is not necessary that the stay should be for a continuous period. What is to be seen is the total number of days of stay in India during that financial year. It is also not necessary that the stay should be only at 1 place and can be anywhere in India.

For the purpose of computing the period of 182 days for the determination of residential status, the day he enters India and the day he leaves India should both be treated as stay in India. However, in borderline cases where stay in India is very close to 182 days, his stay in India has to be calculated on hourly basis and a total of 24 hours will be taken as 1 day.

<http://www.charteredclub.com/residential-status/>

### **Scope of total income on the basis of residential status**

Determination of Residential Status of a taxpayer is very important at the time of filing of income tax return as **income tax is levied** based on the Residential status of the taxpayer. The following types of incomes are taxable in the hands of the different categories of taxpayers:-

Particulars	Resident and Ordinary Resident	Not ordinary Resident	Non-Resident
Income received or deemed to be received in India whether earned in India or elsewhere	Yes	Yes	Yes
Income which accrue or arise or is deemed to accrue or arise in India during the previous year, whether received in India or elsewhere	Yes	Yes	Yes
Income which accrue or arise outside India and received outside India from a business controlled from India	Yes	Yes	No
Income which accrue or arise outside India and received outside India in the previous year from any other source	Yes	No	No
Income which accrues or arises outside India and received outside India during the year preceding the year and remitted to India during the previous year	Yes	No	No

From the above table, it is clearly visible that the maximum income tax is levied in case of an Ordinary Resident, lesser in case of Not-Ordinary Resident and the least in the case of a Non Resident Indian (NRI).

### Dividend Income

At the time of filing of income tax returns, many taxpayers are confused regarding the fact whether **tax on dividends** is payable or is tax free.

For all the investors, it is pertinent to note here that as per Section 10(34) of the Income Tax Act, the dividends received from any Indian Company are tax free in the hands of the investors. Moreover, as per Section 10(35) of the Income Tax Act, any income received in respect of investment in any Mutual fund is also exempted from the levy of tax.

Thus, as per Sec 10(34) and Sec 10(35), dividends received from any Indian Company or any Mutual Funds are tax free in the hands of all investors.

### Reason for Zero Tax on Dividends

Earlier, tax on dividends was liable to be paid as per the Income Tax Slab Rates. However, there were very few taxpayers who used to genuinely disclose the dividends received and pay taxes thereon.

Therefore so as to ensure proper collection of taxes on dividends, the govt has changed the manner of charging *tax on dividends*. They have now made dividends received from any domestic company as tax free in the hands of the investors.

However to compensate the loss that would be arising from making such dividends as tax free, they have enforced an extra tax on the companies at the time of announcing dividends. As per Section 115-O, at the time of payment of dividend, they have to pay a dividend distribution tax from the profits of the company.

Although the Indian Govt has exempted the dividends from the levy of tax in the hands of the taxpayers, they have indirectly collected the tax on dividends from the companies by enforcing Dividend Distribution Tax. This can be explained with the help of an example:-

For example, a company intends to declare a dividend of Rs. 100 to its shareholders and the rate of Dividend Distribution Tax is 15%. Now, the company will first have to pay 15% of Rs. 100 i.e. Rs. 15 as Dividend Distribution Tax to the Govt. As the company has been made to pay Rs. 15 to the govt for declaring the dividend, effectively it is left with only Rs. 85 to pay as dividends to the shareholders.

Thus, with the introduction of the dividend distribution tax, the govt has indirectly collected the tax on dividends directly from the company at the time of declaration of dividends and the investors have been paid dividend from the balance amount after payment of dividend distribution tax.

## Dividend Distribution Tax Rates

The Dividend Distribution Tax Rates are as follows

Particulars	Rate of Tax
Domestic Companies	15% + 10% Surcharge + 3% Cess = 16.995%
Equity Mutual Funds	NIL
Other Mutual Funds	25% + 10% Surcharge + 3% Cess = 28.325%

This Dividend Distribution Tax is only required to be paid by Indian Companies. In case of any foreign company, dividend distribution tax won't be payable and tax on dividends received would be payable as per the normal Income Tax Slabs

<http://www.caclubindia.com/articles/taxation-of-dividends-under-income-tax-act-1961--15460.asp>

**Income deemed to accrue or arise in India**

Section 5 of the Income Tax Act, 1961 (Act), both for residents in sub-section (1) and for non-residents in sub-section (2), brings within the fold of chargeable total income, all income which is received or is deemed to be received in India or which accrues or arises or is deemed to accrue or arise in India to the assessee in a particular previous year. Section 9 of the Act defines the term "Income deemed to accrue or arise in India". There are certain income, which generally remains outside the scope of taxable income, by virtue of section 9 comes within the ambit of taxation. As decided in case of **CIT v R.D. Aggarwal & Co. and others 56 ITR 20 (SC)**, it must in all cases be remembered that the fiction embodied in section 9 does not apply to the income which actually accrues or arises to the assessee in India. Similar views has been expressed in case of **Sakalchand Babulal v ITO 47 ITR 673 (Mad)**, **Annamalais Timber Trust & Co. v CIT 41 ITR 781 (Mad)**, **Turner Morrison & Co. Ltd. v CIT 23 ITR 152 (SC)**, **Hira Mills Ltd. v ITO 14 ITR 417 (All)** and **Anglo-French Textile Company Ltd. v CIT 25 ITR 27 (SC)**. But the income accruing or arising outside India shall not be deemed to be received in India by reason only of the fact that it is taken in to account in the balance sheet prepared in India. Further, the income which has been included in the total income of a person on the basis that it has accrued or arisen or deemed to have accrued or arisen shall not again be included on the basis that it is received or deemed to be received by him in India.

It is important to know that in respect of a resident, his income, whether accruing or arising in India or outside India is includible in his total income. It is only in respect of non resident that his income accruing within India is subjected to tax. However, there are certain income which accrue or arise outside India but are treated as deemed to accrue or arise in India. Hence the importance of this basis of charge is mostly in respect of non-residents.

Section 9 enumerates various categories of income which shall be deemed to accrue or arise in India under certain circumstances. The income dealt with in each clause is distinct and independent of the other. It may be noted that in case of specific class of income one must look at the specific clause and not to general provisions of clause (i). [**Meteor Satellite Ltd. v ITO 121 ITR 311 (Guj)** and **CIT v Copes Vulcan Inc. 167 ITR 884 (Mad)**]

It may be noted that Rule 10 of Income Tax Rules provides that, in the case where the income accruing or arising to a non resident can not be definitely ascertained, the Assessing officer can determine the income either at such percentage of the turnover / profits and gains of the business or such other manner as he may deem suitable.

### **BUSINESS CONNECTION AND OTHERS - SECTION 9(1)(i)**

Section 9(1)(i) provides that income is deemed to accrue or arise in India if it accrues, **directly or indirectly**

- through or from any business connection in India or
- through or from any property in India or
- through or from any asset or source of income in India or
- through the transfer of a capital asset situate in India

Explanation to section 9(1)(i) provides for following exemptions.

- In the case of business of which all the operations are not carried out in India, only such part of the income as is reasonably attributable to the operations carried out in India would be the income deemed to accrue or arise in India.
- No income shall be taxable in India if the operations of the non-resident is confined to the purchase of goods in India for the purpose of export
- In case of non-resident engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be taxable in India if the activities confined to the collection of news and views in India for transmission out of India
- In case of non-resident no income shall be taxable in India if the operations are confined to the shooting of any cinematograph film in India.

The deeming provisions of section 9 is careful to describe the connection or the nexus between such income and India. The nexus is either

- business connection in India or
- the property in India or
- asset or source in India or
- capital asset in India

### Business Connection :

The expression "business" is defined in the Act as any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture, but the Act contains no definition of the expression "business connection". The expression "business connection" undoubtedly means something more than "business". A business connection in section 9 involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in the taxable territories which contributes directly or indirectly to the earning of those profits or gains. It predicates an element of continuity between the business of the non resident and the activity in the taxable territories. An isolated transaction is

normally not to be regarded as a business connection. A relation to be a "business connection" must be real and intimate, and through or from which income must accrue or arise whether directly or indirectly to the non resident. [**CIT v R.D. Aggarwal & Co. and others 56 ITR 20 (SC) and Barendra Prasad Roy v ITO 129 ITR 295 (SC)**]. Various courts have taken different views in different cases where "business connection" was found to exist or otherwise. CBDT vide its circular no. 23 dated 23/7/1969 have clarified by way of certain illustrations where a non resident is said to have business connection in India. From the reading of all these judgements and circular one could conclude that for a relation to be a business connection following conditions are needed to be satisfied :

- a business in India
- a connection between non resident and that business
- a non resident has earned an income through such connection
- continuity about the business connection

However, in each case the question whether there is a business connection from or through which income arises or accrues must be determined upon the facts and circumstances of that case. [**Blue Star Engg. Co. (Bom.) P. Ltd. v CIT 73 ITR 283 (Bom.)**]

It may be noted that Supreme Court in case of **Carborandum Co. v CIT reported in 108 ITR 335** has taken a view that in order to rope in the income of a non resident under the deeming provision it must be shown by the department that some of the operations were carried out in India in respect of which the income is sought to be assessed. Taking into consideration the decision of the apex court it can be said that onus of proof is on revenue to show that the operations were carried out in India.

For income accruing or arising from any business connection in India even though the income may accrue or arise outside India is deemed to be income accruing or arising in India provided operations in connection with such business, either all or a part, are carried out in India. Income attributable to all activities is not taxed in India. Only that income which is attributable to activities in India will be taxable. If no operation are carried out in India, no income can be deemed to accrue or arise in India even though there may be a "business connection" in India [**CIT v Toshoku Ltd. 125 ITR 525 (SC)**].

### Property in India :

Any income which arises from any property which is situated in India is deemed to accrue or arise in India. The term property includes any tangible property both movable or immovable. Intangible assets are covered within the term "asset".

### Asset or source in India :

The term asset will include all intangible rights, unlike property which covers only tangible properties. The term source means not a legal concept but something which a practical man would regard as a real source of income. **[CIT v Lady Kanchanbai 77 ITR 123 (SC)]**. Bombay high court in case of Kusumben D. Mahadevia v CIT reported in 47 ITR 214 have observed that the expression source in section 9(1)(i) and the expression "head of income" in section 14 are used in one and the same sense and it means property, movable or immovable, belonging to an assessee or activity of a assessee that yields or brings income to him within the meaning of the Act. This clause is wide enough to cover the income accruing to non resident from undisclosed sources. **[Hazoora Singh v CIT 160 ITR 746 (Punj. & Har.)]**

### Capital Asset in India :

Income accruing or arising, directly or indirectly through the transfer of capital asset is deemed to accrue or arise in India provided such capital asset is situated in India. The capital asset may be movable or immovable, tangible or intangible. Such income should be chargeable under the head "Capital Gain" under section 45 of the Act. The fact that the documents of transfer are registered outside India or consideration for transfer is paid outside India is irrelevant for income to be chargeable under this clause.

### SALARIES - SECTION 9(1)(ii) and 9(1)(iii)

Section 9 (1)(ii) of the Act requires that salaries is to be considered as deemed to be accrued or arise in India only if it is **"earned in India"**. Further, to done away with the decisions of Gujarat High Court in case of CIT v S.G.Pgnatale reported in 124 ITR 391, it has been clarified by way of explanation to sub section that salary payable for **"service rendered in India"** and the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment shall be regarded as income earned in India. Although this explanation has been inserted with retrospective effect from 1/4/1979, it can be argued that as the Explanation specifically makes the aforesaid provision "for the removal of doubts", it should be taken to reflect the true legislative intention in regard to the relevant provisions from the commencement of the Income Tax Act, 1961. In view of the above, salaries payable for services rendered in India shall be regarded as income earned in India, though it may be paid in India or outside. i.e. the payment or receipt of salary is immaterial. What is important is the place of rendering of services. Section 9(2) makes an exception to the aforesaid rule in the case of certain retired civil servants and judges permanently residing out side India.

Section 9(1)(iii) provides that the salaries are chargeable to tax if the same is payable by the Government to a Indian Citizen for services rendered outside India. The residential status and the place of receipt of salary are not relevant for the purpose of this sub section. For income to be treated as deemed to accrue or arise in India following four conditions needs to be satisfied :

- Income should be chargeable under the head "Salaries"
- Salary should be payable by Government of India
- The recipient should be an Indian Citizen, irrespective of their residential status
- The services should be rendered out side India

It is important to note that all allowances or perquisites paid out side India by the Government to the Indian Citizens for their rendering services out side India are exempt under section 10(7).

<http://www.lexsite.com/services/network/caa/ar23-e.shtml>

### Foreign income and its taxability

The scheme of advance rulings was introduced by the Finance Act, 1993. Chapter XIX-B of the Income-tax Act, which deals with advance rulings, came into force with effect from 1-6-1993. Under the scheme the power of giving advance rulings has been entrusted to an independent adjudicatory body. Accordingly, a high level body headed by a retired judge of the Supreme Court has been set-up. This is empowered to issue rulings, which are binding both on the Income-tax Department and the applicant. The procedure prescribed is simple, inexpensive, expeditious and authoritative.

Advance Ruling means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. It has been defined in section 245N(a) of the Income-tax Act, 1961 as amended from time-to-time.

### **Applicant —**

Under section 245N an advance ruling can be obtained by the following persons:-

1. a non-resident
2. a resident-undertaking proposing to undertake a transaction with a non-resident can obtain advance ruling in respect of any question of law or fact in relation to the tax liability of the non-resident arising out of such transaction
3. a notified public sector company
4. any person, being a resident or non-resident, can obtain an advance ruling to decide whether an arrangement proposed to be undertaken by him is an impermissible avoidance arrangements and may be subjected to General Anti Avoidance Rules or not

### **Salient features: —**

- a. Available only for Income-tax:—
- The procedure of advance ruling is available only under the Income-tax Act, 1961.
- b. relates to a transaction entered into or proposed to be entered into by the applicant: -
- The advance ruling is to be given on questions specified in relation to such a transaction by the applicant.
- c. Questions on which ruling can be sought:—
  1. Even though the word used in the definition is "question", it is clear that the non-resident can raise more than one question in one application. This has been made amply clear by Column No. 8 of the form of application for obtaining an advance ruling (Form No. 34C)
  2. Though the word "question" is unqualified, it is only proper to read it as a reference to questions of law or fact, pertaining to the income tax liability of the non-resident qua the transaction undertaken or proposed to be undertaken.
  3. The question may be on points of law as well as on facts; therefore, mixed questions of law and fact can also be included in the application. The questions

should be so drafted that each question can be replied in brief answer. This may need breaking-up of complex questiona into two or more simple questions.

4. The questions should arise out of the statement of facts given with the application. No ruling will be given on a purely hypothetical question. A question not specified in the application cannot be urged. Normally a question is not allowed to be amended but in deserving cases the Authority may allow amendment to one or more questions.
  5. Subject to the limitations, the question may relate to any aspect of the non-resident's liability including international aspects and aspects governed by double tax agreements. The questions may even cover aspects of allied laws that may have a bearing on tax liability such as the law of contracts, the law of trusts and the like, but the question must have a direct bearing on and nexus with the interpretation of the Indian Income-tax Act.
  6. Advance Rulings can be obtained to determine whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not (General Anti Avoidance Rules).
- d. Time-limit for advance ruling:—
  - The Authority shall pronounce it advance ruling within 6 months of receipt of the application.
  - e. Binding nature of advance ruling:—

The effect of the ruling is stated to be limited to the parties appearing before the authority and the transaction in relation to which the ruling is given. This is because the ruling is rendered on a set of facts before the Authority and cannot be for general application.

**Question precluded:** Under section 245R, certain restrictions have been imposed on the admissibility of an application, if the question concerned is pending before other authorities. According to it, the Authority shall not allow an application where the question raised by the non-resident applicant (or a resident applicant having transaction with a non-resident) is already pending before any income-tax authority or appellate Tribunal or any Court of law. Further, the authority shall not allow the application where the question raised in it:—

1. involves determination of fair market value of any property; or
2. it relates to a transaction or issue which is designed, prima facie for the avoidance of income-tax.

**Procedure of application for advance ruling:** An applicant desirous of obtaining an advance ruling should apply to the Authority in the prescribed form stating the question on which the ruling is sought. The application has to be made in quadruplicate in Form Nos:—

**34C** - applicable to a non-resident applicant

**34D** - applicable to a resident having transactions with a non-resident

**34E** - Applicable to Public Sector Company as notified by government via Notification No.11456, dated 3/8/2000

**34EA** - for determining whether an arrangement is an impermissible avoidance arrangement as referred to in Chapter X-A or not

The application is to be accompanied by an account-payee demand draft for 10,000 Indian rupees drawn in favour of the Authority for Advance Ruling and made payable at New Delhi.

The application may be withdrawn within 30 days from the date of the application.

Country	Dividend (not being covered under Section 115- O)		Interest		Royalty		Fee for Technical Services	
	Tax Treaty	I-T Act (Note 6)	Tax Treaty	I-T Act (Note 7)	Tax Treaty	I-T Act (Note 4)	Tax Treaty	I-T Act (Note 4)
Albania	10%	20%/10%	10%[Note 1]	20%/10%/5%	10%	10%	10%	10%
Armenia	10%	20%/10%	10%[Note 1]	20%/10%/5%	10%	10%	10%	10%
Australia	15%	20%/10%	15%	20%/10%/5%	10%/15% [Note 2]	10%	10%/15% [Note 2]	10%
Austria	10%	20%/10%	10%[Note 1]	20%/10%/5%	10%	10%	10%	10%
Bangladesh	a) 10% (if at least 10% of the capital of the comp	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	No separate provision	10%



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	any payin g the divid end is held by the recipi ent comp any); b) 15% in all other cases							
Belarus	a) 10%, if paid to a comp any holdi ng 25% share s; b) 15%, in all other cases	20%/10 %	10% [Note1]	20%/10%/5 %	15%	10%	15%	10%
Belgium	15%	20%/10 %	15% (10% loan is if granted by a bank)	20%/10%/5 %	10%	10%	10%	10%
Bhutan	10%	20%/10 %	10%[Note 1]	20%/10%/5 %	10%	10%	10%	10%
Botswana	a) 7.5%, if share	20%/10 %	10%[Note 1]	20%/10%/5 %	10%	10%	10%	10%



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	holder is a company and holds at least 25% shares in the investee company; b) 10%, in all other cases							
Brazil	15%	20%/10%	15% [Note1]	20%/10%/5%	25% for use of trademark; 15% for others	10%	15%	10%
Bulgaria	15%	20%/10%	15% [Note1]	20%/10%/5%	15% of royalty relating to literary, artistic, scientific works other than films or tapes used for radio or television broadcasting ; 20% in other cases	10%	20%	10%
Canada	a) 15%, if at	20%/10%	15% [Note1]	20%/10%/5%	10%-15%	10%	10%-15%	10%



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	least 10% of the voting powers in the company, paying the dividends, is controlled by the recipient company; b) 25%, in other cases							
China	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Columbia	5%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Croatia	a) 5% (if at least 10% of the capital of the company	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%



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	payin g the divid end is held by the recipi ent comp any); b) 15% in all other cases							
Cyprus	a) 10%, if at least 10% of the capit al of the comp any payin g divid end is held by the recipi ent comp any; b) 15%, in all other cases	20%/10 %	10% [Note1]	20%/10%/5 %	15%	10%	15%/10 %	10%



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Czech Republic [Note8]	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Denmark	5%, if at least 25% of the shares of the company paying the dividend is held by the recipient company; b) 25%, in other cases	20%/10%	a) 10% if loan is granted by bank ; b) 15% for others [Note1]	20%/10%/5%	20%	10%	20%	10%
Estonia	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Ethiopia	7.5%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Finland	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Fiji	5%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
France	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Georgia	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Germany	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Hungary	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Indonesia	a) 10%, if at least 25% of the	20%/10%	10% [Note1]	20%/10%/5%	15%	10%	No separate provisio	10%



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	shares of the company paying the dividend is held by the recipient company; b) 15%, in other cases						n	
Iceland	10%	20%/10%	10%[Note 1]	20%/10%/5%	10%	10%	10%	10%
Ireland	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Israel	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Italy	a) 15% if at least 10% of the shares of the company paying dividend is beneficially owned by the recipient company; b) 25% in other cases	20%/10%	15% [Note1]	20%/10%/5%	20%	10%	20%	10%
Japan	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Jordan	10%	20%/10%	10% [Note1]	20%/10%/5%	20%	10%	20%	10%
Kazakhstan	10%	20%/10%	10%	20%/10%/5%	10%	10%	10%	10%



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		%	[Note1]	%				
Kenya	15%	20%/10%	15% [Note1]	20%/10%/5%	20%	10%	17.5%	10%
Korea	a) 15%, if at least 20% of the capital of the company paying dividend is held by the recipient company; b) 20%, in other cases	20%/10%	a) 10%, if interest is paid to a bank ; b) 15%, for others [Note1]	20%/10%/5%	15%	10%	15%	10%
Kuwait	10% [Note 1]	20%/10%	10%	20%/10%/5%	10%	10%	10%	10%
Kyrgyz Republic	10%	20%/10%	10% [Note1]	20%/10%/5%	15%	10%	15%	10%
Latvia	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Lithuania	5%*, 15%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Luxembourg	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Malaysia	5%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Malta	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Mongolia	15%	20%/10%	15% [Note1]	20%/10%/5%	15%	10%	15%	10%
Mauritius	a) 5%, if	20%/10%	No Rates	20%/10%/5%	15%	10%	No	10%



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	at least 10% of the capital of the company paying the dividend is held by the recipient company; b) 15%, in other cases	%	Specified	%			separate provision	
Montenegro	5% (in some cases 15%)	20%/10%	10%[Note 1]	20%/10%/5%	10%	10%	10%	10%
Myanmar	5%	20%/10%	10%[Note 1]	20%/10%/5%	10%	10%	No separate provision	10%
Morocco	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Mozambique	7.5%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	No separate provision	10%
Namibia	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Nepal	5%**, 10%	20%/10%	10% [Note1]	20%/10%/5%	15%	10%	No separate provision	10%
Netherlands	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
New Zealand	15%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%



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Norway	10%	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	10%	10%
Oman	a) 10%, if at least 10% of shares are held by the recipient company; b) 12.5%, in other cases	20%/10 %	10% [Note1]	20%/10%/5 %	15%	10%	15%	10%
Philippines	a) 15%, if at least 10% of the shares of the company paying the dividend is held by the recipient company; b) 20%, in other cases	20%/10 %	a) 10%, if interest is received by a financial institution or insurance company; b) 15% in other cases [Note1]	20%/10%/5 %	15% if it is payable in pursuance of any collaboration agreement approved by the Government of India	10%	No separate provision	10%
Poland	10%	20%/10 %	10% [Note1]	20%/10%/5 %	15%	10%	15%	10%
Portuguese Republic	10%*** /15 %	20%/10 %	10%	20%/10%/5 %	10%	10%	10%	10%
Qatar	a) 5%, if at least 10% of the shares of the company paying the	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	10%	10%



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	dividend is held by the recipient company; b) 10%, in other cases							
Romania	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Russian Federation	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Saudi Arabia	5%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	No separate provision	10%
Serbia	a) 5%, if recipient is company and holds 25% shares; b) 15%, in any other case	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Singapore	a) 10%, if at least 25% of the shares of the company paying the dividend is held by the recipient company; b) 15%, in other	20%/10%	a) 10%, if loan is granted by a bank or similar institute	20%/10%/5%	10%	10%	10%	10%



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	cases		including an insurance company ; b) 15%, in all other cases					
Slovenia	a) 5%, if at least 10% of the shares of the company paying the dividend is held by the recipient company; b) 15%, in other cases	20%/10 %	10%	20%/10%/5 %	10%	10%	10%	10%
South Africa	10%	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	10%	10%
Spain	15%	20%/10 %	15% [Note1]	20%/10%/5 %	10%/20% [Note 3]	10%	20% [Note 3]	10%
Sri Lanka	7.5%	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	10%	10%
Sudan	10%	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	10%	10%
Sweden	10%	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	10%	10%



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Swiss	10%	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	10%	10%
Syrian Arab Republic	a) 5%, if at least 10% of the shares of the company paying the dividend is held by the recipient company; b) 10%, in other cases	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	No separate provision	10%
Tajikistan	a) 5%, if at least 25% of the shares of the company paying the dividend is held by the recipient company; b) 10%, in other cases	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	No separate provision	10%
Tanzania	5%****, 10%	20%/10 %	10% [Note1]	20%/10%/5 %	10%	10%	No separate provision	10%
Thailand	a) 15%, if dividend is	20%/10 %	a) 10%, if it is	20%/10%/5 %	15%	10%	No separate	10%



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	paid by an industrial company and at least 10% of capital of such company is held by the recipient company; b) 20%, in other cases		received by a financial institutions or insurance company ; b) 25% for others [Note1]				provision	
Trinidad and Tobago	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Turkey	15%	20%/10%	a) 10% if loan is granted by a bank, etc.; b) 15% in other cases [Note1]	20%/10%/5%	15%	10%	15%	10%
Turkmenistan	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Uganda	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Ukraine	a) 10%, if at least 25% of the shares of the company paying the dividend is held by the recipient	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%



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	company; b) 15%, in other cases							
United Arab Emirates	10%	20%/10%	a) 5% if loan is granted by a bank/similar financial institute; b) 12.5%, in other cases	20%/10%/5%	10%	10%	No separate provision	10%
United Mexican States	10%		10% [Note1]	20%/10%/5%	10%	10%	10%	10%
United Kingdom	15%/10% (Note 5)	20%/10%	a) 10%, if interest is paid to a bank; b) 15%, in other cases [Note1]	20%/10%/5%	10%/15% [Note 2]	10%	10%/15% [Note 2]	10%
United States	a) 15%, if at least 10% of the voting stock of the company paying the dividend is held by	20%/10%	a) 10% if loan is granted by a bank/similar institute including insurance company;	20%/10%/5%	10%/15% [Note 2]	10%	10%/15% [Note 2]	10%



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	the recipient company; b) 25% in other cases		b) 15% for others					
Uruguay	5%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Uzbekistan	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Vietnam	10%	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%
Zambia	a) 5%, if at least 25% of the shares of the company paying the dividend is held by a recipient company for a period of at least 6 months prior to the date of payment of the dividend; b) 15% in other cases	20%/10%	10% [Note1]	20%/10%/5%	10%	10%	10%	10%

\*If the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends.

\*\*5% if beneficial owner of shares is a company and it holds at least 10% of shares of the company paying the dividends.

\*\*\* if the beneficial owner is a company that, for an uninterrupted period of two fiscal years prior to the payment of the dividend, owns directly at least 25 per cent of the capital stock of the company paying the dividends.

\*\*\*\*5% if recipient company owns at least 25% share in the company paying the dividend.

1. Dividend/Interest earned by the Government and certain specified institutions, inter-alia, Reserve Bank of India is exempt from taxation in the country of source.

2. Royalties and fees for technical services would be taxable in the country of source at the rates prescribed for different categories of royalties and fees for technical services. These rates shall be subject to various conditions and nature of services/royalty for which payment is made. For detailed conditions refer to relevant Double Taxation Avoidance Agreements.

3. Royalties and fees for technical services would be taxable in the country of source at the following rates:

- a. 10 per cent in case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment;
- b. 20 per cent in case of fees for technical services and other royalties.

4. From Assessment Year 2016-17, Royalty and fees for technical service received by a foreign company or a non-resident non-corporate assessee from government or an Indian concern shall be taxed at the rate of 10% if agreement is made at any time after 31 March 1976.

5. (a) 15 per cent of the gross amount of the dividends where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax;

(b) 10 per cent of the gross amount of the dividends, in all other cases

6. Dividend:

- a) Rate of tax shall be 10% on income from Global Depository Receipts under Section 115AC(1)(b) of Income-tax Act, 1961 (other than dividends referred to in section 115-O).
- b) Rate of tax shall be 20% under Section 115A on dividend (other than dividends referred to in section 115-O) received by a foreign company or a non-resident non-corporate assessee
- c) Rate of tax shall be 20% under Section 115AD on dividend (other than dividends referred to in section 115-O) received by a Foreign institutional investor.

7. Interest

- a) Rate of tax shall be 20% under Section 115A on interest received by a foreign company or a non-resident non-corporate assessee from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency.
- b) Rate of tax shall be 10% under Section 115AC on income from bonds of an Indian company issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, or on bonds of a public sector company sold by the Government, and purchased by non-resident in foreign currency
- c) Rate of tax shall be 5% in following cases:

- (i) Interest received from an infrastructure debt fund as referred to in section 10(47)
- (ii) Interest received from an Indian company specified in section 194LC.
- (iii) Interest of the nature and extent referred to in section 194LD (applicable from the assessment year 2014-15).
- (iv) Distributed income being interest referred to in section 194LBA(2) (section 194LBA is inserted by the Finance (No. 2) Act, 2014 w.e.f. 01-10-2014)

8. The CBDT has clarified that DTAA signed with Government of the Czech Republic on the 27th January 1986 continues to be applicable to the residents of the Slovak Republic. [Notification No. 25, dated 23-03-2015]

<http://www.incometaxindia.gov.in/Pages/international-taxation/advance-ruling.aspx><http://www.incometaxindia.gov.in/Pages/international-taxation/advance-ruling.aspx>

<http://www.incometaxindia.gov.in/pages/international-taxation.aspx>

### UNIT 2

## Incomes which do not form part of total income or Exempted income under section 10

Income tax act provides multiple tax exemptions to every individual. A lot of such exemptions fall under section 10 of income tax act. Following are the tax exemptions provided under section 10: **Agricultural Income:** Income received from agriculture is totally exempt from tax if it is the only source of income in the financial year. However, if it is accompanied by income from other sources, it is taxable. **Leave Travel Allowance (LTA):** LTA is exempt to a certain extent for domestic travel under section 10(5) of income tax. The exemption is subject to the LTA limit specified in the individual's salary. **Life Insurance:** The payment proceeds of a life insurance policy are exempt under section 10(10D). This includes maturity amount as well as death claims. **Gratuity:** Gratuity amount received by a government employee is totally exempt from tax. For others covered under payment of gratuity act, it is exempt to the least of the following:

- 1) 15 days salary based on last drawn salary for each year of service.
- 2) Rs. 10,00,000
- 3) Gratuity received

For those not covered under gratuity act, it is exempt to the least of:

- 1) Half month average salary for each year of service completed.
- 2) Rs. 10,00,000
- 3) Gratuity received

**Leave Encashment:** For a government employee, leave encashment upon retirement or leaving the job is tax free under section 10. For a non-government employee, it is exempt up to least of the following:

- 1) Earned leave (no. of months) \* Average monthly salary
- 2) 10 \* Average monthly salary
- 3) Rs. 3,00,000
- 4) Actual leave encashment received

### Commuted Pension

Commuted pension for govt. employees is fully exempt. For others, it is exempt to least of the following:

- 1) If gratuity is received, up to  $\frac{1}{3}$ <sup>rd</sup> of the pension received.
- 2) If gratuity not received,  $\frac{1}{2}$  of the pension received.

**Compensation under VRS:** Compensation received under VRS scheme upon voluntary retirement is exempt up to maximum of Rs. 5,00,000. **Provident Fund:** Payments received from Provident Fund (PF) are exempt as part of section 10. However, PF withdrawal is taxable for less than 5 years of service. Also, EPF balance can be withdrawn only subject to few conditions.

**HRA:** House Rent Allowance (HRA) for an employee is exempt to the least of the following:

- 1) HRA received
- 2) Rent paid – 10% of salary
- 3) 50% of salary for Delhi, Mumbai, Kolkata and Chennai and 40% elsewhere.

**Dividends received:** Dividends announced by any company in case of mutual funds or stocks are exempt from tax in the hands of an individual, irrespective of the company paying tax on it.

**Equities held for more than 1 year:** Any equity instrument, share or mutual fund held for more than 1 year is free from tax at the time of sale. This is also known as long term capital gains.

**Superannuation fund:** Any amount received from an approved superannuation fund is exempt from tax in the hands of an individual.

**Transport allowance:** Transport allowance is exempt up to Rs. 800 per month i.e. Rs. 9,600 per annum.

Transport allowance here means expenditure incurred for travel between place of residence and place of work.

**Education and Hostel allowances for children:** Education allowance is exempt up to Rs. 100 per month per child for a maximum of 2 children. Hostel allowance is exempt for hostel expenditure up to Rs. 300 per month per child for a maximum of 2 children.

**Interest on Securities:** Income from securities in the form of interest, premium, etc from certificates, bonds and deposits is exempt from tax.

<http://www.investmetyogi.com/exemptions-under-section-10-of-income-tax-act/>

**special provision in respect of newly established industrial undertaking in free trade zones**

**Special provision in respect of newly established undertakings in free trade zone, etc. Section 10A.**

The benefit in respect of newly established Industrial Undertaking in FTZ, EHTP SEZ or STP is Available to **all** Assesseees on Export of Certain Articles or things or software

**Subject to the following Conditions: –**

- (i) Should not be formed by splitting up or reconstruction of unit already in existence
- (ii) Should not be formed by transferring machinery or plant previously used. In certain conditions as specified in the Act second hand machinery is allowed.
- (iii) Sale proceeds should be brought in convertible forex within 6 months from the end of P.Y.
- (iv) Report in Form No.56F
- (v) Filing of return within due date under Section 139(1)
- (vi) **Tax Holiday: – For units which have begun prior to AY 2003-04**, 100% profit from export of such article, thing, software for 10 consecutive A.Y. from the A.Y. relevant to P.Y. in which it begun to manufacture subject to some conditions and restrictions mentioned in the Act. However for AY 2003-04 it is 90%. **For units which have begun on or after AY 2003-04** the deduction is 100% for first 5 years and 50% for next 2 years and next 3 years 50% subject to creation of “Special Economic Zone Reinvestment Allowance Reserve Account” and fulfillment of conditions relating thereto failing which the unutilized or wrongly utilised Reserve would be deemed income as per the provisions of the Act and the Rules.

**(vii) No deduction for A.Y.2012 – 13 or thereafter**

(viii) The computation of profits is as per the following formula:-

Profit from		Export Turnover
the business	X	_____
of the under-		Total Turnover
taking		of Undertaking

(ix) No deduction shall be allowed under Section 80HH or Section 80HHA or Section 80-I or Section 80-IA or Section 80-IB in relation to the profits and gains of the undertaking

(x) No loss referred to in sub-section (1) of Section 72 or subsection (1) or sub-section (3) of Section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years [ending before the 1st day of April, 2001]

(xi) In computing the depreciation allowance under Section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(xii) Market value of goods to be transferred to be as per market rate on the date of transfer and as per arms length price as per the provisions of sub-section (8) and sub-section (10) of Section 80-IA.

(xiii) The provisions of this section does not apply to any undertaking, being a Unit referred to in clause (zc) of section 2 of the Special Economic Zones Act, 2005, which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after AY 2006-07 in any Special Economic Zone.

**(xiv) Provisions related to amalgamation and demerger:-** The benefit under this section is not available to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and it is available to the the amalgamated or the resulting company as it would have been available to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

**2. Definitions.** – For the purposes of this section, –

1. “computer software” means –

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) any customized electronic data or any product or service of similar nature, as may be notified by the Board,

which is transmitted or exported from India to any place outside India by any means;

2. “export turnover” means the consideration in respect of export [by the undertaking] of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight,

telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

### 3. The Assessing Officer should look into the following important factual areas:

#### Section 10A:

- i) The year in which the manufacture or production begins must be noted as this is very crucial for the allowance of deduction.
- ii) The undertaking must be a new undertaking and must not be formed by splitting or re-construction or transfer of old machinery, plant etc.
- iii) The undertaking must be in a Free Trade Zone, or Economic Trade Zone or Software Technology Park or SEZ.
- iv) The sale proceeds must be obtained in foreign exchange from export outside India within 6 months from the end of previous year.
- v) There must be an audit report as prescribed along with the return of income.
- vi) The assessee must not be claiming deduction under Sections 80HH, 80HHA, 80I, 80IA, 80IB with respect to the same undertaking.
- vii) The assessee must be allowed, even if not claimed, depreciation under Section 32.
- viii) The sale proceeds of the goods must be on market value and not understated.
- ix) If the claim is made for the 8<sup>th</sup>, 9<sup>th</sup> or 10<sup>th</sup> year, then it is only allowed on creation of reserved account. This must be seen.
- x) If reserved account is not utilized within the specified period, or utilized for some other purpose, it would be a deemed income.
- xi) Deduction is not available for A.Y.2012-13 and subsequent years.
- xii) The export turnover does not include freight, telecommunication charges or insurance attributable to the goods outside India or any expenses incurred in foreign exchange in rendering of services outside India.
- xiii) The deduction is not available on other income like interest etc.

#### 4. Critical Areas in draft of assessment order:

- The date of issue and service of original and first notice under Section 143(2) must be mentioned in the beginning of the assessment order.
- While drafting the assessment order, the Assessing Officers must bring out the facts very clearly on the basis of which the deduction is being reduced or disallowed.
- If any inquiry has been made, then report of the inquiry or the statement recorded which are being used against the assessee must be confronted to the assessee before making the disallowance or reducing the claim. The fact of confronting the inquiry report to the assessee must also be brought on record and mentioned in the assessment order.
- If statement of any third party is being relied upon against the assessee then cross-examination opportunity must be provided to the assessee. These facts of providing cross-

examination opportunity must be brought on record and mentioned in the assessment order.

- The reply of the assessee to the inquiry report or the statement recorded under cross-examination must also be part of assessment order.

#### **B Section 10AA.**

#### **Special provisions in respect of newly established Units in Special Economic Zones.**

The benefit in respect of newly established Industrial Undertaking in SEZ is Available to all Assesseees on Export of Certain Articles or things or software

Subject to the following Conditions: –

- i. Begin its production, etc. on or after 01-04-2005 relevant to AY 2006-07.
- ii. Should not be formed by splitting up or reconstruction of unit already in existence
- iii. Should not be formed by transferring machinery or plant previously used. In certain conditions as specified in the Act second hand machinery is allowed.
- iv. Report in Form No.56Fv. **Tax holiday:-** 100% of the profits from the export for the first 5 years from the beginning and 50% for next 5 years and for further 5 Years 50% subject to creation of “Special Economic Zone Reinvestment Allowance Reserve Account” and fulfillment of conditions relating thereto failing which the unutilized or wrongly utilised Reserve would be deemed income as per the provisions of the Act and the Rules.
- vi. The computation of profits is as per the following formula:- Profit from Export Turnover the business X of the under-Total Turnover taking of Undertaking
- vii. Loss referred to in sub-section (1) of Section 72 or subsection (1) or sub-section (3) of Section 74, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.

- viii. No deduction shall be allowed under Section 80HH or Section 80HHA or Section 80-I or Section 80-IA or Section 80-IB in relation to the profits and gains of the undertaking
- ix. No loss referred to in sub-section (1) of Section 72 or subsection (1) or sub-section (3) of Section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years [ending before the 1st day of April, 2006]
- x. In computing the depreciation allowance under Section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.
- xi. The Market value of goods to be transferred to be as per market rate on the date of transfer and as per arms length price as per the provisions of sub-section (8) and sub-section (10) of Section 80-IA.
- xii. The profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.
- xiii. Subject to some conditions mentioned in the Act the Deduction is available only for unexpired period if claim made under Section 10A**
- xiv. **Provisions relating to amalgamation or demerger:-** The benefit under this section is not available to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and it is available to the the amalgamated or the resulting company as it would have been available to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

## 2. Definitions

- a. “export turnover” means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;
- b. “export in relation to the Special Economic Zones” means taking goods or providing services out of India from a Special Economic Zone by land, sea, air, or by any other mode, whether physical or otherwise;

## 3. The Assessing Officer should look into the following important factual areas:

### Section 10AA:

- i) This is applicable to newly established units in SEZs and must have begun manufacture or production or articles in A.Y.2006-07 onwards.

- ii) The unit must not be formed by splitting or re-construction of an already existing business and old machineries must not be used.
- iii) The assessee must file audit report along with the Income-tax return.
- iv) The assessee must not be claiming deduction under Sections 80HH, 80HHA, 80I, 80IA, 80IB with respect to the same undertaking.
- v) The assessee must be allowed, even if not claimed, depreciation under Section 32.
- vi) The sale proceeds of the goods must be on market value and not understated.
- vii) If the unit/undertaking has already claimed benefit under Section 10A, then under this section benefit is available only for unexpired period.
- viii) The benefit is available for 6<sup>th</sup> year onwards only on creation of SEZ re-investment reserve account.
- ix) If the amount credited to the reserve account is not utilized before the expiry of the specified period or utilized for some other purpose, then it will be treated as deemed income.
- x) The export turnover does not include freight, telecommunication charges or insurance attributable to the goods outside India or any expenses incurred in foreign exchange in rendering of services outside India.
- xiv) The deduction is not available on other income like interest etc.

#### **4. Critical Areas in draft of assessment order:**

- The date of issue and service of original and first notice under Section 143(2) must be mentioned in the beginning of the assessment order.
- While drafting the assessment order, the Assessing Officers must bring out the facts very clearly on the basis of which the deduction is being reduced or disallowed.
- If any inquiry has been made, then report of the inquiry or the statement recorded which are being used against the assessee must be confronted to the assessee before making the disallowance or reducing the claim. The fact of confronting the inquiry report to the assessee must also be brought on record and mentioned in the assessment order.
- If statement of any third party is being relied upon against the assessee then cross-examination opportunity must be provided to the assessee. These facts of providing cross-examination opportunity must be brought on record and mentioned in the assessment order.
- The reply of the assessee to the inquiry report or the statement recorded under cross-examination must also be part of assessment order.

### Special provisions in respect of newly established hundred percent export-oriented undertakings. Section 10B

The benefit in respect of newly established 100% Export Oriented Units is Available to **all** Assesseees on Export of Certain Articles or things or software

#### Subject to the following Conditions:

- (i) Undertaking must be approved as a 100% EOU.
- (ii) The Income Tax Return must be filed on or before the due date under Section 139(1).
- (iii) The assessee has a choice not to claim the deduction for any particular AY if he makes a declaration before the AO, before the due date of filing of return for that AY.
- (iv) Manufacture of any article thing or software
- (v) Should not be formed by splitting up or reconstruction of unit already in existence
- (vi) Should not be formed by transferring machinery or plant previously used. In certain conditions as specified in the Act second hand machinery is allowed.
- (vii) There must be repatriation of sale proceeds into India within 6 months.
- (viii) Report in Form No.56G
- (ix) Audit of Books of Accounts.
- (x) **Tax Holiday:** – 100% profit from export of such article, thing, software for 10 consecutive A.Y. from the A.Y. relevant to P.Y. in which it begun to manufacture. The deduction is 90% for AY 2003-04.
- (xi) No deduction for A.Y.2012 – 13 or thereafter
- (xii) The computation of profits is as per the following formula:-

Profit from		Export Turnover		
the business	X		_____	
of the under-		Total Turnover		
taking		of Undertaking		

(xiii) No loss referred to in sub-section (1) of Section 72 or subsection (1) or sub-section (3) of Section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set-off where such loss relates to any of the relevant assessment years [ending before the 1st day of April, 2001];

(xiv) No deduction shall be allowed under Section 80HH or Section 80HHA or Section 80-I or Section 80-IA or Section 80-IB in relation to the profits and gains of the undertaking; and

(xv) In computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(xvi) The Market value of goods to be transferred to be as per market rate on the date of transfer and as per arms length price as per the provisions of sub-section (8) and sub-section (10) of section 80-IA.

(xvii) The profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India

(xviii) For the purposes of this section, “manufacture or produce” shall include the cutting and polishing of precious and semi-precious stones

**(xix) Provisions relating to amalgamation or demerger:-** The benefit under this section is not available to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and it is available to the the amalgamated or the resulting company as it would have been available to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

## 2. Definitions

- “export turnover” means the consideration in respect of export [by the undertaking] of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;
- “hundred per cent export-oriented undertaking” means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;

### 3. The Assessing Officer should look into the following important factual areas:

#### Section 10B:

- i) This is applicable to newly established 100% export oriented undertakings.
- ii) No deduction is allowed under this section for any undertaking for A.Y.2012-13 and subsequent years.
- iii) For claiming the deduction return has to be furnished on or before due date of filing the return.
- iv) The undertaking must be a new undertaking and must not be formed by splitting or re-construction or transfer of old machinery, plant etc.
- v) The sale proceeds must be obtained in foreign exchange from export outside India within 6 months from the end of previous year.
- vi) There must be an audit report as prescribed along with the return of income.
- vii) The assessee must not be claiming deduction under Sections 80HH, 80HHA, 80I, 80IA, 80IB with respect to the same undertaking.
- viii) The assessee must be allowed, even if not claimed, depreciation under Section 32.
- ix) The sale proceeds of the goods must be on market value and not understated.
- x) The export turnover does not include freight, telecommunication charges or insurance attributable to the goods outside India or any expenses incurred in foreign exchange in rendering of services outside India.
- xi) The deduction is not available on other income like interest etc.

#### 4. Critical Areas in draft of assessment order:

- The date of issue and service of original and first notice under Section 143(2) must be mentioned in the beginning of the assessment order.
- While drafting the assessment order, the Assessing Officers must bring out the facts very clearly on the basis of which the deduction is being reduced or disallowed.
- If any inquiry has been made, then report of the inquiry or the statement recorded which are being used against the assessee must be confronted to the assessee before making the disallowance or reducing the claim. The fact of confronting the inquiry report to the assessee must also be brought on record and mentioned in the assessment order.

- If statement of any third party is being relied upon against the assessee then cross-examination opportunity must be provided to the assessee. These facts of providing cross-examination opportunity must be brought on record and mentioned in the assessment order.
- The reply of the assessee to the inquiry report or the statement recorded under cross-examination must also be part of assessment order.

## **D. CASE LAWS RELEVANT FOR Section 10A, 10AA & 10B**

### **1. Condition that return should be filed within due date is mandatory.**

M/s. Saffire Garments vs. ITO (ITAT Special Bench) (Rajkot) 04.12.2012

S. 10A: Condition that ROI should be filed within due date is mandatory. For AY 2006-07, the assessee filed a ROI on 31.1.2007 when the due date was 31.12.2006. The assessee claimed s. 10A deduction. The AO & CIT(A) rejected the claim by relying on the Proviso to s. 10A(1A). The Special Bench had to consider whether the Proviso to s. 10A(1A) was mandatory or directory and whether s. 10A deduction could be allowed even to a belated return. HELD by the Special Bench: The Proviso to s. 10A(1A) provides that “no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under Section 139(1)”. The assessee’s argument that the said Proviso is merely directory and not mandatory is not acceptable. The Proviso is one of the several consequences (such as interest under Section 234A) that befall an assessee if he fails to file a ROI on the due date. As the other consequences for not filing the ROI on the due date are mandatory the consequence in the Proviso cannot be held to be directory (**Shivanand Electronics** 209 ITR 63 (Bom) & other judgements distinguished).

### **2. Specific conditions of sections under which claim is made has to be followed.**

**Commissioner of Income tax VS. Regency Creations Ltd.** [2012] 27 taxmann.com 322 (DELHI) Assessment years 2003-04, 2004-05, 2006-07 and 2007-08 – **Whether though considerations which apply for granting approval under Sections 10-A and 10-B may to an extent, overlap, yet deliberate segregation of these two benefits by statute reflects Parliamentary intention, that to qualify for benefit under either, specific procedure enacted for that purpose has to be followed – Held, yes – Whether, therefore, approval granted to a 100 per cent EOU set up under Software Technology Park Scheme cannot be deemed to be an approval under section 10-B – Held, yes** [Para 14] [In favour of revenue] Circulars and Notifications : Circular Nos. 1 of 2005, dated 6-1-2005, 149/194/2004/TPL, dated 6-1-2005, 200/20/2006, dated 31-3-2006 and 694, dated 23-11-1994; Instruction No. 1 of 2006, dated 6-1-2005

### **3. Reopening under Section 147 justifiable even after 4 years under certain conditions.**

**Siemens Information Systems Ltd. VS. Assistant Commissioner of Income-tax**[2012] 20 taxmann.com 666 (BOM.) / [2012] 207 TAXMAN 132 (BOM.) (MAG.) / [2012] 343 ITR 188 (BOM.) Assessment year 2004-05 – Assessee-company claimed deduction under section 10A which was allowed by Assessing Officer without specifically dealing with eligibility of assessee to said claim – During course of assessment proceedings for subsequent assessment year 2006-07, materials on record revealed that units of assessee were not independent units; no independent accounts were maintained and there was an overlapping of work and use of resources amongst units and several non section 10A activities were being carried on in section 10A units – On basis of such disclosure Assessing Officer sought to reopen assessment – **Whether even if reopening of assessment had taken place beyond a period of four years of end of relevant assessment year reopening assessment under section 147 was justified – Held, yes** [In favour of revenue]

**4. Deduction is to be allowed only after allowing depreciation.****Siemens Information Systems Ltd. VS. Deputy Commissioner of Income-tax, Circle 7(2)** [2012] 19 taxmann.com 6 (MUM.) / [2012] 135 ITD 196 (MUM.) / [2012] 146 TTJ 303 (MUM.) Assessment year 2006-07 – **Whether deduction under section 10A/10B has to be allowed only after deducting depreciation from profits of eligible business even though such a claim for depreciation has not been raised by assessee – Held, yes** [In favour of revenue]

#### **5. Conditions for Adjustment of unabsorbed depreciation.**

- **Phoenix Lamps Ltd. VS. Additional Commissioner of Income-tax, Range, Noida** [2009] 29 SOT 378 (DELHI) / [2009] 126 TTJ 945 (DELHI) – Assessment year 2003-04 – **Whether in view of Circular No. 7/2003, dated 5-9-2003 where unabsorbed depreciation for assessment years 1993-94 to 1995-96 pertained to period ended before 1-4- 2001, same could not be set off against income of assessment year 2003-04 – Held, yes.** CBDT's Circular No. 7 of 2003, dated 5-9-2003
- **Commissioner of Income-tax, Cochin VS. Patspin India Ltd.** [2011] 15 taxmann.com 122 (KER.) / [2011] 203 TAXMAN 47 (KER.) / [2011] 245 CTR 97 (KER.)- Assessment years 200 1-02 to 2005-06 – **Whether deduction under Section 10B on export profit of EOU has to be computed after setting off carried forward unabsorbed depreciation as provided under Section 32(2) – Held, yes**
- **Commissioner of Income-tax, Karnataka I, Bangalore VS. HimatasingikeSeide Ltd.** [2006] 156 TAXMAN 151 (KAR.) / [2006] 206 CTR 106 (KAR.) / [2006] 286 ITR 255 (KAR.) Assessment year 1994-95 – Assessee was 100 per cent export oriented industrial unit in terms of Section 10B – Assessee filed nil return claiming exemption under Section 10B and it also adjusted brought forward unabsorbed depreciation against income from other sources – Assessing Officer, accepting assessee's claim, assessed total income at nil – Commissioner, in exercise of powers under Section 263, set aside assessment order holding that exemption under Section 10B was allowed on an inflated amount without deducting unabsorbed depreciation from export income – **Whether since Section 10B provides 100 per cent exemption for export income and not for other income,**

**assessee could not have adjusted unabsorbed depreciation against other income so as to take exemption from payment of tax even for other income – Held, yes – Whether, therefore, order of Commissioner was to be sustained – Held, yes**

- **Assistant Commissioner of Income-tax VS. Jewellery Solutions International (P.) Ltd. [2009] 28 SOT 405 (MUM.) – Assessment year 2003-04 – Whether deduction under Section 10B is to be allowed from total income of assessee after adjusting unabsorbed depreciation – Held, yes**

**6. Carry forward of lossesSword Global (I) (P.) Ltd. VS. Income-tax Officer, Co. Ward-II(1), Chennai [2010] 122 ITD 103 (CHENNAI) / [2008] 119 TTJ 427 (CHENNAI) – Assessment year 2003-04- Whether carry forward losses of earlier assessment years have to be set off first against total income of relevant assessment year and, it is out of balance income only that deduction under Section 10B can be granted – Held, yes**

**7. Conversion of existing unit• Infracsoft Technologies Ltd. Vs. Deputy Commissioner of Income-tax, Circle 11(1 ), New Delhi [2012] 19 taxman.com 86 (DELHI)/[2012] 135 ITD 19 (DELHI)/[2012] 114 TTJ 622 (DELHI) – Assessment Year 2002-03 – Assessee-company set up its industrial undertaking in assessment year 1996-97 in domestic tariff area – Assessee-company received approval of STPI on 28/3/2000 – Thereupon, assessee claimed deduction under Section 10A which was rejected on two grounds (i) there was conversion of undertaking established in assessment year 1996-97 into STPI unit and (ii) ownership/beneficial interest had been transferred in year under consideration in terms of Section 10A(9) read with Explanation 1 – On instant appeal, it was noted that there was neither any whisper of a word in STP registration application suggesting that assessee had intended to set up a new unit nor such intention could be gathered from conduct of assessee while seeking STP from competent authority – Rather, assessee had categorically mentioned in application for conversion of existing unit – It was also apparent that assessee had included infrastructure, staff and skilled labour etc. of existing unit in STP registration application form – **Whether on facts, finding of Commissioner (Appeals) that it was a case of conversion of an existing software export unit to STP unit which would connote conversion of a unit already set up, was to be upheld – Held, yes – Whether, moreover, since it was apparent that share holding of five persons as on 31/3/2002 had declined to 37.66 per cent from 100 per cent in the previous year when undertaking was set up, assessee’s case was squarely covered by provisions of section 10A(9) – Held, yes – Whether in view of aforesaid, revenue authorities were justified in rejecting assessee’s claim – Held, yes.****

• **Chenab Information Technologies (P.) Ltd. VS. Income-tax Officer, Ward 8(1)2[2008] 25 SOT 432 (MUM.) – Assessment year 2001-02 – Assessee had established a software unit at SEEPZ which was not eligible for exemption under Section 10A – In order to take benefit of new policy of Government to exempt income from Software Technology Park Unit (STP Unit), assessee set up a new unit which was approved as STP unit – However, assessee’s claim for exemption under Section 10A for certain amount being income of new unit was rejected by Assessing Officer holding that software development activity in new unit had been carried out mainly by employees of existing unit and, thus, it was a mere case of splitting/reconstruction of**

existing business – On appeal, Commissioner (Appeals) upheld order of Assessing Officer – **Whether since existing business of assessee was development of software and in new unit also, assessee had done same business using same employees, it could not be a case of different business requiring different specialization, being taken up for which setting up of a new unit could be said to have become a business necessity – Held, yes – Whether, moreover, merely because customers in new unit were different, it could not be a basis to hold that new unit was separate and independent – Held, yes – Whether, therefore, authorities below rightly concluded that new unit had been set up by splitting up of business of old unit and was, thus, not eligible for deduction under Section 10A – Held, yes**

• **Income-tax Officer Ward-(1), Range-1, Trivandrum VS. Stabilix Solutions (P.) Ltd.** [2010] 8 taxmann.com 45 (COCH) – Assessment year 2004- 05 – Assessee-company set up a 100 per cent export oriented undertaking by taking on sub-lease 4000 sq.ft. built up area from STPL which held leasehold rights in total area of 6000 sq.ft. – STPL also leased out plant and machinery to assessee-company in excess of statutory limit of 20 per cent – Both companies manufactured same product i.e., computer software and sold same to a particular company abroad – Even employees of both companies, who represented human capital were headed by same functional head – **Whether, on facts, it could be concluded that assessee’s undertaking stood formed almost wholly by transfer of resources, including plant and machinery, from STPL, and, therefore, it was not entitled to deduction under Section 10B as it failed to fulfill conditions stipulated under section 10B(2) – Held, yes**

#### 8. Sale proceeds must be brought in India in foreign exchange.

- **Commissioner of Income-tax, Cochin VS. Electronic Controls & Discharge Systems (P.) Ltd.** [2011] 13 taxmann.com 193 (KER.) / [2011] 202 TAXMAN 33 (KER.) / [2011] 245 CTR 465 (KER.) Assessment years 2003-04 and 2004-05 – **Whether Section 1 0A provides for exemption only on profits derived on export proceeds received in convertible foreign exchange – Held, yes – Whether, therefore, benefit of exemption under section 1 0A cannot be extended to local sales made by units in Special Economic Zone, whether as part of domestic tariff area sales or as inter-unit sales within zone or units in other zones – Held, yes [In favour of revenue]**
- **Swayam Consultancy (P.) Ltd. VS. Income-tax Officer**[2012] 20 taxmann.com 803 (AP.) / [2011] 336 ITR 189 (AP)- Assessment year 2007-08 – **Delivery of goods to a foreign buyer in India does not amount to export.**
- **Assistant Commissioner of Income-tax, Range 1, Hyderabad VS. Bodhtree Consulting Ltd.** [2010] 41 SOT 230 (HYD.) / [2010] 134 TTJ 214 (HYD.) – Assessment year 2004-05 –**Whether in order to avail deduction under section 1 0B sale proceeds must be receivable in convertible foreign exchange – Held, yes – Whether sale proceed received in convertible foreign exchange means ‘actual receipt’ and not deemed receipt – Held, yes – Whether if that object is kept in mind, amount received by an assessee in form of investment in equity shares in foreign exchange cannot be considered to be received in form of convertible foreign exchange – Held, yes – Whether merely because an assessee takes permission from RBI to receive**

foreign exchange in form of equity investment it does not lead to conclusion that assessee has received export proceeds in foreign exchange, as RBI has no role to play to suggest whether any investment/income for capitalization of expenditure is genuine or otherwise in terms of section 10B – Held, yes – Whether, therefore, an assessee would not be eligible for benefit of section 10B on such investments – Held, yes

**9. Transactions must be at Arm's Length pricing and the basis of calculation of export turnover and total turnover should be same.**

**ADP (P.) Ltd. VS. Deputy Commissioner of Income-tax, Circle 1(1) [2011] 45 SOT 172 (HYD.) / [2011] 10 taxmann. com 160 (HYD.) / [2012] 144 TTJ 520 (HYD.) / [2012]15 ITR(TRIB.) 203 (HYD.) Assessment year 2004-05 –Whether in view of provisions of Rule 10B(4), data to be used in analyzing comparability of an uncontrolled transaction with an international transaction shall be data relating to financial year in which international transaction has been entered into, with only exception being that data of earlier two years may also be considered, if such data reveals facts which could have an influence on determination of transfer prices in relation to transactions being compared – Held, yes – Whether in view of above, data of subsequent period cannot be considered for comparison while determining arm's length price – Held, yes. Section 10A of the Income-tax Act, 1961 – Free trade zone – Assessment year 2004-05 – Whether while computing amount of exemption under section 10A in respect of software development services, if data link charges are reduced from export turnover, then same should also be reduced from total turnover – Held, yes**

**10. What is manufacture**

• **Deputy Commissioner of Income-tax VS. Girnar Industries [2010] 35 SOT 11 (COCH)(URO)/[2009] 124 TTJ 517 (COCH) – Assessment year 2004-05 – Assessee-firm, engaged in activities of blending and export of different grades of tea, claimed exemption under section 10A – Whether since term 'manufacture' as mentioned in section 10A did not include activity of 'blending' at relevant time, assessee's claim could not be allowed – Held, yes**

• **ToniraPharma Ltd. VS. Assistant Commissioner of Income-tax, Bharuch Circle, Bharuch [2010] 39 SOT 28 (AHD.) – Assessment year 2002-03 – Whether in order to claim benefit of section 10B, essence of determining whether new article or thing is manufactured or produced lies in identity and use of commodity before undergoing processing and after processing – Held, yes – Whether if identity and character of article remain same then there is no manufacturing or production but where identity and character get transformed then it would be a manufacturing or production of new article or thing – Held, yes – Assessee company was engaged in business of manufacturing and export of bulk drugs, drugs intermediates, fine chemicals (organic/inorganic), etc. – During relevant assessment year,**

assessee purchased ascorbic acid FCC Grade IV and after processing, sold it as ascorbic acid IP Grade – Assessee's claim for exemption under section 10B was rejected –

Whether since there was no material on record to show that use of ascorbic acid FCC Grade IV and ascorbic acid IP Grade was different, it was to be held that no manufacturing or production of any new article or thing had taken place and, therefore, assessee's claim was rightly rejected by authorities below – Held, yes

### 11. Income having direct nexus with export only is eligible.

- **Deputy Commissioner of Income-tax, Company Circle I(1), Chennai VS. Astron Document Management (P.) Ltd.** [2011] 16 taxmann.com 33 (CHENNAI) / [2012] 49 SOT 46 (CHENNAI)(URO) – Assessment year 2004-05 – **Whether gains derived by an assessee on conversions of funds from EEFC account into Indian rupee account, does not have any proximate or direct nexus with export transaction and, therefore, will not be eligible for deduction under section 10B – Held, yes** – Section 10B of the Income-tax Act, 1961 – Export oriented undertaking – Assessment year 2004-05 –

**Whether telecommunication charges attributable to delivery of software outside India by assessee exporter had to be excluded from export turnover for working out deduction under section 10B whether or not billings of assessee specifically included such telecommunication expenses – Held, yes**

- **Orchid Chemicals & Pharmaceuticals Ltd. VS. Joint Commissioner of Income-tax, Special Range-X**[2005] 97 ITD 277 (CHENNAI) / [2005] 98 TTJ (CHENNAI) 32 – Assessment year 1997-98 – **Whether an assessee is entitled to claim deduction under section 10B of amount which it derives as direct profit by export of goods manufactured in its newly established hundred per cent export oriented unit [EOU] and any indirect or incidental profit cannot be regarded as profit earned out of main business activity – Held, yes – Whether deduction under section 10B can be allowed on interest income earned by EOU from margin money deposited with bankers for obtaining letter of credit for import of raw materials – Held, no**
- **Tocheunglee Stationery Mfg. Co. (P.) Ltd. VS. Income-tax Officer, Company Ward III(1)** [2006] 5 SOT 428 (CHENNAI) – Assessment years 2000-01 and 2001-02 –

Whether for purpose of claiming deduction under section 10B, income should be derived from export business and form part of export turnover and assessee should show that profit was received from export for assessment year under consideration – Held, yes – Whether interest received by assessee on deposit made for purpose of getting bank guarantee in favour of Government of India to import goods free of duty was eligible for deduction under section 10B – Held, no

Whether excess provision towards incentives and bonus for earlier years written back in books of account under section 41(1), refund of sales-tax, and resale value of special import licence, could be construed as income from export or as forming part of export turnover so as to be eligible for deduction under section 10B – Held, no

- **Tricom India Ltd. VS. Assistant Commissioner of Income-tax, Central Circle 41, Mumbai** [2010] 36 SOT 302 (MUM.) – Assessment year 2005-06 – Assessee was engaged in business of providing I.T. (Information Technology) enabled services and BPO transactions – During relevant assessment year, it claimed deduction under section 10B – On examination of details of profits, Assessing Officer found that profit declared by assessee included interest on fixed deposits, miscellaneous income, etc. – Assessing Officer opined that under section 10B(1), deduction was allowable only on profits derived from export of articles or things or computer software and, therefore, no deduction was possible on interest income – Commissioner (Appeals) upheld order of Assessing Officer –

**Whether expression ‘derived from’ cannot be ignored in Section 10B(1) because said expression involves only those items of profit eligible for deduction which are derived from such undertaking – Held, yes – Whether since, in instant case, interest income was generated from interest, on FDRs and surplus funds, same could not be held to have been derived from export of I.T. Services – Held, yes – Whether, therefore, authorities below rightly rejected assessee’s claim in respect of interest income – Held, yes.** Words & Phrases : Words ‘derived from’ as occurring in section 10B of the Income-tax Act, 1961

- **Taj International Jewelers VS. Income-tax Officer, Ward 33(2), New Delhi** [2008] 19 SOT 587 (DELHI) – A.Y.2004-05 – Assessee entered into agreement with export house for export of its goods through them – In course of business assessee disclaimed certain export benefits in favour of export house and in lieu thereof received commission as reimbursement of expenses – Assessee claimed that said amount should have been treated as its business income for purpose of deduction allowable under section 10B – Assessing Officer did not accept assessee’s claim and held amount in question as income from other sources; consequently, he denied exemption under section 10B – Commissioner (Appeals) upheld order of Assessing Officer –

**Whether since assessee had disclaimed export benefits in respect of certain goods and incentive was received in lieu of said disclaimer, proximate source of receipt was disclaimer of benefits and not export activities per se – Held, yes – Whether, therefore, while income might be attributable to export oriented unit of assessee, it could not be said that same was derived from unit – Held, yes – Whether, in such circumstances, authorities below rightly rejected assessee’s claim – Held, yes**

## 12. Interest Income.

- **Cadila Exports (P.) Ltd. VS. Deputy Commissioner of Income-tax** – [1994] 51 ITD 217 (AHD.) / [1994] 50 TTJ (AHD.) 603 Assessment year 1986-87 –

Whether income earned by way of interest on deposits of surplus funds could be regarded as incidental to production of goods at industrial undertaking established in free trade zone and, therefore, exemption under section 10A could be allowed on such income – Held, no.

- **India Comnet International VS. Income-tax Officer**[2009] 185 TAXMAN 51 (MAD.) / [2008] 304 ITR 322 (MAD.) – Assessment year 2002-03 –

Whether interest income earned by assessee-company, being a 100 per cent export-oriented unit, on amount of export proceeds kept in foreign currency deposit account as permitted by FERA under Banking Regulations, would qualify for exemption under section 10A – Held, no

- **Commissioner of Income-tax VS. MenonImpex (P.) Ltd.** [2003] 128 TAXMAN 11 (MAD.) / [2003] 180 CTR 40 (MAD.) / [2003] 259 ITR 403 (MAD.) – Assessment year 1985-86 – Assessee had set up a new industrial undertaking in free trade zone – In course of business, assessee was required to open letters of credit with banks for which deposits were made – Interest earned on such deposits was claimed to be exempt on ground that it was derived from newly set up industrial undertaking – Such claim was negated by Assessing Officer but was allowed by Tribunal –

**Whether mere fact that deposit made was for purpose of obtaining letters of credit which letters of credit were, in turn, used for purpose of business of industrial undertaking did not establish a direct nexus between interest and individual undertaking, and, therefore, assessee was not entitled to get benefit under section 10A – Held, yes**

- **MKR Frozen Food Exports Ltd. VS. Income-tax Officer, Ward 6(1), New Delhi** [2010] 126 ITD 1 (DELHI) – Assessment year 1998-99 – Assessee was engaged in business of export of frozen foods and meals – For this purpose, overdraft facilities were taken from bank to meet liquidity requirements – Subsequently, when assessee earned profit, money so generated was placed in fixed deposits with a bank – Assessee contended that deposits were placed with a view to reduce interest liability, and, therefore, interest income would partake character of profits and gains of business and became eligible for deduction under section 10B – **Whether since interest earned from bank deposits did not have direct or proximate connection with business of export of EOU, same would be taxable under residuary head, i.e., ‘Income from other sources’ and was not eligible for deduction under section 10B – Held, yes**
- **Assistant Commissioner of Income-tax VS. Shiva Shankar Granites (P.) Ltd.** [2004] 89 ITD 625 (HYD.) / [2004] 83 TTJ (HYD.) 802 – Assessment year 1993-94 –

Whether interest on deposit towards bank guarantee money in favour of Central Excise & Customs Department as well as interest on deposit with State Electricity Board cannot be said to

have been derived from industrial undertaking, and as such, are not eligible for benefit of exemption under section 10B – Held, yes

- **CG International (P.) Ltd. VS. Assistant Commissioner of Income-tax, Cir. 10(3), Mumbai [2007] 13 SOT 280 (MUM.)** Assessment year 2001- 02 – Assessee-company, a hundred per cent export oriented unit, was engaged in business of manufacturing of plain and studded Jewellery and export thereof – Assessee claimed exemption qua interest income on ground that interest was earned during ordinary course of export business as same was earned by it from fixed deposits kept with bank for issue of bank guarantees for business purposes and from EEFC account maintained with Bank of India – **Assessing Officer rejected assessee's reply and assessed interest income as assessee's income from other sources and, accordingly, held same as not exempt under section 10B – Whether Assessing Officer was justified – Held, yes**

**13. For computing the deduction all expenses relatable to that unit must be deducted.** **Nahar Spinning Mills Ltd. VS. Joint Commissioner of Income-tax, Range VII, Ludhiana [2012] 25 taxmann. com 342 (CHD.) / [2012] 54 SOT 134 (CHD.) (URO)-** Assessment year 2007-08 – **Whether while computing profits and gains of eligible units under section 10B all expenditure relatable to such units are to be deducted for computing eligible profits – Held, yes – Whether therefore, remuneration paid to managing director being common expenditure between eligible units and non-eligible unit run by assessee-company it needed to be allocated in order to determine eligible profits of business under section 10B – Held, yes**

**14. Onus is on the successor company to prove that it is the successor.** **Synergies Casting Ltd. VS. Dy. Commissioner of Income-tax, Circle 3(2)/ Assistant Commissioner of Income-tax, Circle 3(3), Hyderabad [2011] 13 taxmann.com 17 (HYD.) / [2011] 139 TTJ 627 (HYD.) / [2011] 47 SOT 82 (HYD.) (URO)-** Assessment years 2006-07 and 2007-08 – **Whether unless assessee who claims benefit under section 10B for unexpired period, establishes that it is a successor of a lessor and it fulfils all other necessary conditions in each year, it cannot claim benefit under section 10B for balance unexpired period – Held, yes – ‘SDAL’ had an industrial undertaking with facilities of manufacturing of aluminium alloy wheels and was claiming relief under section 10B – Assessee-company took said unit on lease-license for operating and maintaining same to carry on manufacturing activity – Assessee claimed continuation of relief under section 10B for balance unexpired period, which was denied by revenue – Whether since assessee-company had not proved that it was a successor to predecessor who was enjoying benefit of Section 10B and it was found to be only a lessee, having a right to use plant and machinery, claim of exemption under section 10B could not be allowed – Held, yes** Circulars and Notifications : CBDT Circular F. No. 15/5/63-IT[A1]

**15. First year of claim must be established.**

- **Sami Labs Ltd. VS. Assistant Commissioner of Income-tax [2012] 20 taxmann.com 785 (KAR.) / [2011] 239 CTR 510 (KAR.) / [2011] 334 ITR 157 (KAR.)-** Assessment year 2002-03 –

**Starting point of limitation for claiming benefit flowing from section 10B would commence from year of manufacture or production of undertaking; assessee would not be able to claim such deduction in subsequent years unless said initial test on date of starting point of limitation has been satisfied**

• **Income-tax Officer, Ward 31(4), New Delhi VS. VinodChhabra**[2008] 20 SOT 328 (DELHI) – Assessment year 2001-02 – For relevant assessment year, assessee, a hundred per cent export oriented undertaking (EOU), claimed exemption under section 10B – Assessing Officer denied exemption under section 10B for certain reasons – He, however, allowed deduction under section 80HHC to assessee in respect of profits and gains derived from export of goods out of India – Commissioner (Appeals), on basis of exemption allowed under section 10B to assessee for assessment year 1994-95, allowed assessee's claim for exemption under section 10B – **Whether since from assessment order for assessment year 1994-95 it was not clear as to in which year assessee started hundred per cent EOU and further since neither Assessing Officer nor Commissioner (Appeals) had examined matter in light of provisions of section 10B, issue was required to be remitted to file of Assessing Officer to examine claim of assessee in light of provisions of section 10B – Held, yes – Whether if exemption under section 10B would be allowed, assessee would not be eligible for deduction under section 80HHC – Held, yes.** Assessment year 2001-02 – Assessee was deriving income from a hundred per cent EOU (Export Oriented Unit) and claimed deduction under section 10B in respect of interest earned on FDRs – **Whether since interest income earned by assessee on FDRs was not derived from export of eligible goods of hundred per cent EOU, assessee would not be eligible for exemption under section 10B in respect of interest income – Held, yes**

#### **16. Speculation profit not eligible.**

**Assistant Commissioner of Income-tax, Circle-11(5), Bangalore VS. K. Mohan & Co. (Exports) (P.) Ltd.** [2010] 126 ITD 59 (BANG.) / [2010] 130 TTJ 719 (BANG.) / [2011] 7 ITR(TRIB.) 507 (BANG.) – Assessment year 2005-06 – Assessee was engaged in business of manufacture and export of readymade garments – In order to avoid risk of loss due to foreign exchange fluctuation, it entered into forward contracts in respect of foreign exchange to be received as a result of export – During relevant assessment year, assessee claimed deduction under section 10B in respect of its entire income including profits derived from forward contracts – **Whether since forward contracts had been taken in respect of 46 per cent of export turnover and it was not an isolated transaction, in view of Explanation 2 to section 28, profit from forward contracts was to be assessed as profit from speculation business – Held, yes – Whether since for purpose of computing deduction under section 10B, speculation business cannot be considered as business of undertaking, Assessing Officer was justified in rejecting assessee's claim for deduction in respect of profits derived from forward contracts – Held, yes.**

#### **Income from property held for charitable or religious purpose**

**Income from property held for charitable or religious purposes**

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income.

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not excess of twenty-five per cent of the income from the property of rupees ten thousand, whichever is higher;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and where such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent of the income from the property held under trust in part;

(c) income from property held under trust—

(i) created on or after the 1st day of April, 1952 for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952 to the extent to which such income is applied to such purposes outside India:

**Provided** that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.

*Explanation*—For the purposes of clauses (a) and (b) in computing twenty-five per cent of the income from any such property as is referred to in the said clauses for any previous year, the income from such property for the year immediately preceding the previous year may be adopted, if that income is higher than the income for the previous year.

(2) Where the persons in receipt of the income have complied with the following conditions, the restriction specified in clause (a) or clause (b) of sub-section (1) as respects accumulation or setting apart shall not apply for the period during which the said conditions remain complied with—

(a) such persons have, by notice in writing given to the Income-tax Officer in the prescribed manner, specified the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years ;

(b) the money so accumulated or set apart is invested in any Government security as defined in clause (2) of section 2 of the Public Debt Act, 1944, or in any other security which may be approved by the Central Government in this behalf.

(3) Any income referred to in sub-section (1) or sub-section (2) as is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf shall be deemed to be the income of such person of the previous year in which it is so applied, or ceases to be so

accumulated or so set apart or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income-tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment ; and where any income so determined is in excess of the income as shown in the account of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes and accordingly chargeable to tax within the meaning of sub-section (3).

## **Incomes of trusts or institutions from contributions**

### **Income of trusts or institution from voluntary contributions**

**12.** (1) Any income of a trust for charitable or religious purposes or of a charitable or religious institution derived from voluntary contributions and applicable solely to charitable or religious purposes shall not be included in the total income of the trustees or the institution, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), where any such contributions as are referred to in sub-section (1) are made to a trust or a charitable or religious institution by a trust or a charitable or religious institution to which the provisions of section 11 apply, such contributions shall, in the hands of the trust or institution receiving the contributions, be deemed to be income derived from property for the purposes of that section and the provisions of that section shall apply accordingly

## **Conditions as to registration of trusts:**

### **How to register a public charitable trust?**

1. Trust registration is created with a document named Trust deed. ( Trust Deed which may be shaped to registered with a stamp duty paper in the Registrar office as per the Registration Act.) Model Trust deeds for Charitable Trust and several other types of trust are available here which you can buy online
2. Trust is created by the Founder (author or settler) with the trust of Trustees (who are the body of Trust)
3. Trust shall be created under irrevocable nature.
4. Trust deed consists of objects of the trust, Operation of Trust, Trustee information, Trustee powers, rights, duties and liabilities.
5. There are some procedures in creation of a trust deed. Chartered accountants (Auditors) and Lawyers (Attorney) shall help you for creation of Trust deed. After creation of Trust deed, That organization TRUST shall be registered with the Registrar or Sub-registrar office as per the laws relevant to the specific states.
6. After the registration of trust, you shall get the copy of the registration from the Registrar and you shall apply for PAN card, and you have to apply for proper Income tax registration with

Income tax department ( Here the 12 A plays the role). You shall buy the Income Tax for NGOs book here.

7. After you have properly got the Income tax certificate for the Trust (12A), you can also apply for tax exemption certificates like 80g, 35ac and so many other forms of income tax exemption as per the objects of your trust and as per the applicable rules. You shall buy Tax related books in below Links

8. A trust shall be a public charitable trust or Private trust. Public charitable trust is able to raise funds from public to serve the social causes of the nation.

9. A trust must be registered whether with movable or immovable properties.

10. Trust should be registered with a "Registered office address of the trust" with proper landmarks.

11. A Trust shall be registered by the founder only with the minimum of 2 members.

So in this way you can understand how to form a trust. If you like to know more details about the Indian laws and regulations of Trust, you shall buy the book in any nearby law book stall in your city or town, which is named " Formation & Management of a Trust along with Tax Planning 1996-97 ", which is a Practical Handbook for Private, Charitable & Religious Trust which was published by A NABHI PUBLICATION. The another recent NGO book will also be most useful to know more about trust, which is published by Universal Law Publishing Co. Pvt. Ltd, which has the book name as " Formation and Management of NGOs " written by Anita Abraham, Advocate. In all law book shops these above two books are available.

**TRUST Registration Explained once more:**

Trust are formed under a Trust deed and registered with Registrar office and Income Tax Authority. In general a Trust deed will be created (Trust bye-law or instrument of trust) with the objects of Trust.

Trust deeds are created and declared either by will or inter-vivos by agreement and as testamentary instrument or a non testamentary instrument. Some type of trust may be created even verbally. However, it's advisable to have written trust deed. The basic need of a trust deed is must to be in writing and registered with the Registrar of the Trust ( In local Registrar office or as per the law related to Trust), which is the only prima facie evidence for the existence of trust It also simplifies devolution of trust property. The written trust and trust deed is the essential for registration towards conveyance of Immovable property. It helps to claim income tax exemption as per Income tax act. It is useful to control, regulate and manage the works and operations of the trust. It spells several procedures for appointment and removal of the trustees, and their powers, rights and duties. That is, a Trust is created in written by a will which is related to movable or immovable property, whether it may be a public or private trust, duly registered with Registrar of local office and Income tax department.

### **Section 11 not applies in certain cases:**

**13.** Nothing contained in section 11 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(a) any part of the income from the property held under a trust for private religious purposes which does not ensure for the benefit of the public;

(b) in the case of a <sup>1</sup>[trust for charitable purposes or a charitable institution] created or established after the commencement of this Act, any income thereof,

(i) if the trust or institution is created or established for benefit of any particular religious community or caste ; or

<sup>1</sup>[(ii) if under the terms of the trust or the rules governing the institution, any part of such income enures, directly, or indirectly, or if any part of such income or any property of the trust or the institution is during the previous year used or applied, directly or indirectly, for the benefit of the author of the trust or the founder of the institution or any person who has made a substantial contribution to such trust or institution or any relative of such author, founder or person and where such author, founder or person is a Hindu undivided family, any part of such income enures, or any part of such income or any such property is during the previous year used or applied, directly, or indirectly, for the benefit of any member of the Hindu undivided family or any relative of any member of the family :

**Provided** that in a case where this section applies by reason only that under the terms of the trust or the rules governing the institution any part of such income enures directly or indirectly or that any part of the income or any property of the trust or institution is, during the previous year, used or applied directly or indirectly for the benefit of any relative of such author, founder, person or member, and the amount of income so enuring or used or applied for the benefit of such relative, together with the value of the benefit derived by him from the user or application of such property, if any, during the previous year, does not exceed a sum calculated at the rate of twenty-five per cent of the income of the trust or institution of the previous year, the provisions of this section shall have effect only in respect of that part of the income of the trust or institution which does not exceed the amount so enuring or used or applied together with the value of the benefit aforesaid.]

*Explanation 1*—For the purposes of sections 11 and 12 and this section, "trust" includes any other legal obligation and for the purposes of this section "relative" also includes a lineal descendant of a brother or sister.

*Explanation 2.*—A trust or institution created or established for the benefit of scheduled castes, backward classes scheduled tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of sub-clause (i) of clause (b) of this section.

## **Special provision relating to incomes of political parties**

### **Special provision relating to incomes of political parties.**

**13A.** Any income of a political party which is chargeable under the head <sup>42</sup>[\*\*\*] “Income from house property” or “Income from other sources” or <sup>43</sup>[“Capital gains” or] any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party :

**Provided** that—

(a) such political party keeps and maintains such books of account and other documents as would enable the <sup>44</sup>[Assessing] Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of <sup>45</sup>[twenty] thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 :

<sup>46</sup>[**Provided further** that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.]

<sup>47</sup>[*Explanation.*—For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).]

## Unit 3

### Heads of Income

#### Salaries

1. Relationship of employer and employee must exist to create salary income.
2. Only receipts from employer are taxable under this head. Receipts from a person other than employer are taxable under "Other Source".
3. In case Salary is received after deduction of following items... these are added back to get fully Salary:
  - (i) Own Contribution to Provident Fund.
  - (ii) Tax Deducted at Source (TDS)
  - (iii) Repayment of Loan etc.
  - (iv) LIC Premium, if deducted from salary.
  - (v) Group Insurance Scheme.
  - (vi) Rent of house provided by employer.

Previous Year in case of Salaries is always Financial Year i.e. for the Assessment Year 2015-2016 it is 1-4-2014 to 31-3-2015.

Salary includes:

1. **Wages.** Fully Taxable.
2. **Annuity or Pension.** Fully Taxable
3. **Gratuity.** It has been treated separately.
4. (a) Any Fees -- Fully Taxable  
(b) Commission -- Fully Taxable  
(c) Bonus -- Fully Taxable  
(d) Perquisites -- (Perks) These are treated separately u/s 17(2)  
(e) Profit in lieu of Salary -- These are treated separately u/s 17(3)
5. **Salary in lieu of Leave / Leave Encashment.** Fully Taxable.
6. **Advance Salary.** Fully Taxable
7. **Arrears of Salary.** Fully Taxable.
8. Refund of Provident Fund (PF)
  - (a) If SPF -- Fully exempted
  - (b) If RPF -- Fully exempted if service is more than 5 years.
  - (c) If URPF -- Taxable portion is added in salary income. Taxable portion is equal to employer's contribution + interest on this part. Interest on own contribution to URPF is taxable under the head "Income from Other Sources."

### III. Allowances:

#### A. Fully Exempted Allowances:

Foreign Allowance given by Govt. to its employees posted abroad. HRA given to Judges of High Court & Supreme Court.

#### B. Fully Taxable Allowances:

- (i) Dearness Allowance / Additional D.A. / High Cost of Living Allowance -- Fully Taxable.
- (ii) City Compensation Allowances (CCA).

- (iii) Capital Compensatory Allowance
- (iv) Lunch Allowance
- (v) Tiffin Allowance
- (vi) Marriage / Family Allowance
- (vii) Overtime Allowance
- (viii) Fixed Medical Allowance.
- (ix) Electricity and Water Allowance
- (x) Entertainment Allowance. It is fully added in employee's Salary.

In case of Government employees a deduction is allowed u/s 16(ii) at the rate of least of following :

- (a) Statutory Limit Rs. 5,000 p.a.
- (b) 1/5 (20%) th of Basic Salary ; or
- (c) Actual Entertainment Allowance received.

### C. Partly Taxable Allowances:

#### 1. House Rent Allowance ( HRA)

- (a) Fully Exempted, if received by the Judges of High Court and Supreme Court.
- (b) Fully Taxable, if received by an employee who is living in his own house or in a house for which no rent is paid.
- (c) Exempted upto least of following for those employees who are living in rented houses:
  - (i) Actual HRA received by the employee.
  - (ii) Rent paid - 10% of Salary ; or
  - (iii) 40% of Salary in ordinary town ; 50% of Salary in Mumbai, Kolkata, Chennai or Delhi.

☐ *Taxable HRA = HRA Received - Least of Above.*

☐ *Salary = Pay + D.A. which enters into Pay for Service or Retirement Benefits + Commission on Turnover Achieved by Him.*

**Following Allowances are Exempted upto actual expenditure incurred for employment. Excess, if any, shall be taxable...**

- 2. Uniform Allowance
- 3. Conveyance Allowance
- 4. Traveling Allowance

**Following Allowance are Exempted up to amount so notified..**

- 5. Special Compensatory Allowance
- 6. Border Area Allowance
- 7. Tribal Area Allowance -- Exempted upto Rs. 200 p.m. if received in the States of M.P., Tamil Nadu, U.P., Karnataka, Tripura, Assam, West Bengal, Bihar, or Orissa.
- 8. Children's Education Allowance -- Exempted up to Rs.100 p.m. per child for education in India **of own two children only**.
- 9. Hostel Expenditure Allowance -- Exempted up to Rs. 300 p.m. per child for Hostel expenditure **on own two children only**.

### IA. Exempted Perquisites:

- 1. Leave Travel Concession subject to conditions & actual spent only for travels.
- 2. Computer/ Laptop provided for official / personal use.
- 3. Initial Fees paid for corporate membership of a club.
- 4. Refreshment provided by the Employer during working hours in office premises.
- 5. Payment of annual premium on Personal Accident Policy.
- 6. Subscription to periodicals and journal required for discharge of work.

7. Provision of Medical Facilities.
  8. Gift not exceeding Rs. 5,000 p.a.
  9. Use of Health Club, Sports facility.
  10. Free telephones whether fixed or mobile phones.
  11. Interest Free / concessional loan of an amount not exceeding Rs.20, 000 (limit not application in the case of medical treatment)
  12. Contribution to recognized Provident Fund / approved superannuation fund, pension or deferred annuity scheme & staff group insurance scheme.
  13. Free meal provided during working hours or through paid non transferable vouchers not exceeding Rs. 50 per meal or free meal provided during working hours in a remote area.
- The value of any benefit provided free or at a concessional rate (including goods sold at concessional rate) by a company to the Employees by way of allotment of shares etc., under the Employees stock option plan as per Central Government Guidelines.

### **B. Taxable Perquisites:**

1. Rent Free Accommodation
2. Provision of Motor Car or any other Conveyance for personal use of Employee.
3. Provision of Free or Concessional Education Facilities.
4. Reimbursement of Medical Expenditure.
5. Expenditure on Foreign Travel and stay during medical expenditure.
6. Supply of Gas, Electricity & Water.
7. Sale of an Asset to the Employee at concessional price including sale of Share in the Employer Company.

### **C. Perks Exempted for Employees but Taxable for Employer under Fringe Benefit Tax.**

Value of the following benefits is not taxable in the hands of an employee. The employer has to pay tax on deemed income calculated as percentage of expenditure incurred.

1. Any free or concessional ticket provided by the employer for private journeys of his employee or their family members
2. Any contribution by the employer to an approved superannuation fund for employees;
3.
  1. Expenditure incurred on entertainment ;
  2. Expenditure incurred on provision of hospitality of every kind by the employer to any person.
  3. Expenditure incurred on conference like conveyance, tour & travel (including foreign travel) , on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference.
  4. Expenditure incurred on sales promotions including publicity ;
  5. Expenditure incurred on employee's welfare ;
  6. Expenditure incurred on conveyance
  7. Expenditure incurred on Hotel, Boarding & Lodging facilities ;
  8. Expenditure incurred on Repair, Maintenance of Motor Cars and the amount of Depreciation there on.
  9. Expenditure incurred on use of telephone and Mobile Phones.
  10. Expenditure incurred on maintenance of any accommodation in the nature of Guest House other than used for Training purpose.
  11. Expenditure incurred on Festival Celebrations.
  12. Expenditure incurred on use of Health Club and similar facilities.
  13. Expenditure incurred on gifts ;

Fringe Benefit Tax (FBT) is not applicable in case of following type of employers.

1. An Individual or a sole Proprietor
2. A Hindu Undivided Family
3. Government
4. A Political Party
5. A person whose income is exempt u/s 10(23c)
6. A Charitable Institution registered u/s 12AA.
7. RBI
8. SEBI

**Receipts which are included under the head 'Salary' but Exempted u/s 10.**

1. **Leave Travel Concession (LTC)** - Exempt upto rules.
2. **Any Foreign Allowance or perks** - If given by Govt. to its employees posted abroad are fully exempted.
3. **Gratuity:** A Govt. Employee or semi-Govt. employee where Govt. rules are applicable -- Fully Exempted.

**A. For employees covered under Payment of Gratuity Act.--**

Exempt up to least of following :

- (a) Notified limit = Rs. 10,00,000
- (b) 15 days Average Salary for every one completed year of service (period exceeding 6 months =1 year)  
 $\frac{1}{2}$  month's salary = (Average monthly salary or wages x 15/26)
- (c) Actual amount received.

**B. Other Employees --** Exempted up to least of following provided service is more than 5 years or employee has not left service of his own :

- (a) Notified limit = Rs. 10,00,000
- (b)  $\frac{1}{2}$  month's average salary for every one year of completed service (months to be ignored.)
- (c) Actual amount received

*$\frac{1}{2}$  Average Salary = Salary for 10 months preceding the month of retirement divided by 10.*

#### 4. Commutation of Pension :

In case commuted value of pension is received --

- (a) If Govt. employee -- is Fully Exempted.
- (b) If other employee who receive gratuity also -Lump sum amount is exempted upto commuted value of  $\frac{1}{3}$ rd of Pension.

If other employee who does not get gratuity -- Lump sum amount is exempted upto commuted value of  $\frac{1}{2}$  of pension.

#### 5. Leave Encashment u/s 10(10AA)

- (a) If received at the time of retirement by a Govt. employee---Fully Exempted
- (b) If received during service---Fully taxable for all employees
- (c) If received by a private sector employee at the time of retirement exempted upto :
  - (i) Notified limit Rs. 3,00,000
  - (ii) Average salary x 10 months
  - (iii) Actual amount received.
  - (iv) Average Salary x No. of months leave due.

**6. Any Tax on perks paid by employer.** It is fully Exempted.

**7. Any payment received out of SPF .** Any payment received out of SPF is Fully Exempted.

**8. Any payment received out of RPF .** Any payment received out of RPF is Fully Exempted, If service exceeds 5 years.

**9. Any payment received out of an approved superannuation fund .** is Fully Exempted

## Deductions from Salary:

### Vi. Deduction Out Of Gross Salary [ Sec. 16]

#### 1. Entertainment Allowance [ U/s 16(ii)]

Deduction u/s 16(ii) admission to govt. employee shall be an amount equal to least of following :

1. Statutory Limit of Rs.5,000 p.a.
2. 1/5 th of Basic Salary
3. Actual amount of entertainment allowance received during the previous year.

#### 2. Tax on Employment u/s 16(iii)

In case any amount of professional tax is paid by the employee or by his employer on his behalf it is fully allowed as deduction.

### Vii. Deduction U/S 80C Out Of Gross Total Income (GTI)

The following are the main provisions of the newly inserted Section 80C. :

1. Under Section 80C , deduction would be available from Gross Total Income.
2. Deduction under section 80C is available only to individual or HUF.
3. Deduction is available on the basis of specified qualifying investments / contributions / deposits / payments made by the taxpayer during the previous year.
4. The maximum amount deduction under section 80C , 80CCC, and 80CCD can not exceed Rs.1 lakh.

Deduction u/s 80C shall be allowed only to the following assessee :

1. An Individual
2. A Hindu Undivided Family (HUF)

<http://incometaxmanagement.com/Pages/Gross-Total-Income/Salaries/Chat-Showing-Computation-of-Salary-Income.html>

### Income from House property

Income from house property is one among the taxable heads of income as per the Income Tax act. It constitutes the income earned from a property by his/her owner.

Property hereby refers to any building (house, office building, godown, factory, hall, shop, auditorium, etc.) and/or any land attached to the building (e.g. Compound, garage, garden, car parking space, playground, gymkhana, etc.).

This is the only head of income, which taxes notional income (except under some circumstances under capital gains, income from other sources). The taxability may not necessarily be of actual rent or income received but the potential income, which the property is capable of yielding.

While self-occupied and rental property is within the purview under this head, income from vacant house is dealt with under the head 'income from other sources'.

### Taxable value

The annual value of property consisting of any building or land appurtenant (belonging) thereto, except such property which is used by assessee for the purpose of business and profession, shall be the taxable value.

### How to determine Annual Value?

Gross Annual Value (GAV) of property will be required to determine the annual value, which is higher of:

- (a) The sum for which the property might reasonably be expected to let from year to year. In cases of properties where Standard Rent has been fixed, such sum cannot exceed this value.

However, where property was vacant during the whole or part of the previous year and rent actually received or receivable is less than expected rent, then rent actually received or receivable is taken as GAV.

(b) Where property is actually let out and the rent received or receivable is more than the amount determined in (a) above, the annual value would be the actual rent received.

### Exclusions

Following amounts will be excluded while determining GAV:

- The amount of municipal tax realized from a tenant.
- Notional interest on the amount received towards 'rent/security deposit' from the tenant
- Repairs carried out by the tenant.

### When Annual Value is 'NIL'?

The annual value of a property shall be considered 'nil' in following cases:-

(a) Self-occupied property, i.e. property which is in occupation of the owner for the purpose of his own residence and he does not derive any other benefit out of it.

(b) Similarly, if the owner of only one residential house is unable to occupy it on account of his employment, business or profession carried on in any other place and he is residing in a property not owned by him.

Let's illustrate this with an example. Mr. Piyush Arora, who bought a house in Mumbai had to shift to a rental accommodation in Bangalore due to his job. In this scenario, the annual value will be nil and still Mr. Piyush will get a tax deduction up to Rs. 1,50,000 for interest paid on borrowed capital.

Net Annual Value is arrived at after deducting the municipal taxes and the unrealized rent (subject to certain conditions). However, receipt of any unrealized rent shall be chargeable to tax in the year of receipt.

### Deductions u/s 24

Serial No	Particulars	Amount or Percentage Deduction
1	Standard deduction	30% of Net Annual Value

2	Property acquired/constructed after 1st April, 1999 with borrowed capital (deduction is allowed only where such acquisition or construction is completed within 3 years from the end of the financial year in which capital was borrowed)	Rs. 1,50,000
3	In all other cases except in point 2.	Rs. 30,000
4	In case of let out property	Full deduction of interest on borrowed capital.

\*Interest for the period prior to the acquisition or construction of the premises would be deductible in five equal instalments starting from the year in which property is acquired/constructed (possession).

### Tax Planning for Income from House property

You can minimize your tax out go in the following cases:-

(1) **Owing more than one property** – If you own more than one property, then only one house of your choice will be considered as self-occupied and others will be considered as let out or Deemed to be let out (if not let out). Therefore, you should carefully evaluate and choose a property with less tax liability.

*Illustration:*

If Shiva has two houses than he can choose one which will minimize his tax liability.

Particulars (If Deemed Let out)	House 1	House 2
Annual Value	3,60,000	7,00,000
Less: (Municipal Taxes)	(40,000)	(54,000)
Net Annual Value (NAV)	3,20,000	6,46,000
Deductions u/s 24		
(a) 30% of NAV	(96,000)	(1,93,800)

(b) Interest on borrowed capital	(1,75,000)	(2,50,000)
<b>Income from House Property</b>	<b>49000</b>	<b>2,02,200</b>

If Shiva considers House 1 as Self-occupied and House 2 as deemed to be let-out then his income from house property will be Rs. 52,200 and it will be negative Rs. (1,01,00) vice-versa. Therefore, he should consider House 1 as deemed let out and House 2 as self –occupied.

(2) **Joint Home Loan** – If you are a Joint owner and also apply for a joint home loan then both the co-borrowers can take a maximum deduction of 150000 each.

(3) **First house is in a single name and planning a second home** – If your first home is in single name then you can buy a second home in your spouse’s name to help you avoid tax on ‘deemed to be let-out’ property.

(4) **Joint Ownership** – Income from house property can be divided between both the co-owners which can reduce overall tax liability.

[http://www.business-standard.com/article/pf/how-to-calculate-tax-on-house-property-income-114031200127\\_1.html](http://www.business-standard.com/article/pf/how-to-calculate-tax-on-house-property-income-114031200127_1.html)

## Profits and Gains of Business and Profession

### Meaning of Business and Profession

Business simply means any economic activity carried on for earning profits. According to Sec 2(3) business is “any trade, commerce, manufacture or any adventure in the nature of trade commerce and manufacture”. Any transaction with a motive of selling at profits included under this concept. It is not necessary that there should be a series of transaction in a business and it should be carried on permanently.

Profession is an occupation requiring purely intellectual skills or manual skills controlled by the intellectual skill of the operator. e.g. Lawyer, doctor, engineer etc. So profession refers to those activities where the livelihood is earned by the persons through their intellectual or manual skill.

The following income shall be chargeable to income-tax under the head Profits and gains of business or profession,

- 1) The profits and gains of any business or profession which was carried on by the assessee at any time during the previous year
- 2) Any compensation or other payment due to or received by any person in connection with a business or profession
- 3) Income derived by a trade, professional or similar association from specific services performed for its members
- 4) Profits on sale of a license granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947) ;]
- 5) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India ;]
- 6) Any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971 ;]
- 7) Value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;

- 8) Any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm:
- 9) Any sum received under a Key man insurance policy including the sum allocated by way of bonus on such policy.
- 10) Interest on securities held as stock in trade

### **Computation of income from business or profession**

The following are the general principles to be followed while computing income of business or profession.

- 1) Profit should be computed according to an accepted method of accounting regularly employed by the assessee. E.g. cash system or mercantile system
- 2) Only expenses incurred in connection with the business or profession of the assessee will be allowed.
- 3) Losses, if any should be incidental to the operation of the business
- 4) Profit and losses of speculation business should be kept separate.
- 5) If any sum is allowed as deduction in any previous year and subsequently recovered, it will be taxable in the previous year in which it is received.
- 6) Any amount allowed as expenses in the earlier years if recovered during the current

### **Expenses expressly allowed**

#### **1. Rent, rates, taxes, repairs and insurance for buildings[Sec 30]**

Rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession is allowed as a deduction. If the business premises are owned by the assessee, no notional rent will be allowed.

#### **2. Repairs and insurance of machinery, plant and furniture[Sec 31]**

The amount paid on account of current repairs and the amount of any premium paid in respect of insurance against risk of damage or destruction of machinery, plant and furniture used in business or profession will be allowed as deduction

#### **3. Depreciation [Sec32]**

Depreciation is allowed in respect of tangible assets like buildings, machinery, plant or furniture and intangible assets acquired on or after the 1st day of April, 1998, like know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, owned wholly or partly, by the assessee and used for the purposes of the business or profession.

Depreciation is allowed on block of assets at the prescribed rates on the written down value of such block of asset. Block of assets means the group of assets falling within a same class of assets for which same rate of depreciation is prescribed.

Depreciation will be allowed only when the assets are owned wholly or partly by the assessee. If an asset is used partly for business purpose and partly for

personal purpose, depreciation shall be allowed only for that part which is used in business or profession.

Calculation of WDV	
Value of asset at the beginning of the previous year	XXXX
Add: value of assets acquired during the previous year	XXXX
	XXXX
Less: scrap value received on the sale of assets in the PY	<u>XXXX</u>
W.D.V of the asset	<b>XXXX</b>

In the case of an asset acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period less than 180 days in that previous year, the depreciation of such asset shall be restricted to 50% of the amount calculated at the prescribed rate.

### Treatment of depreciation

- a. If depreciation given P&L A/c and adjustment
  - i. Add depreciation given in the P&L a/c to Net profit
  - ii. Subtract depreciation given in the adjustment to net profit
- b. If depreciation is given only in P&L a/c[ and not in the adjustment
  - i. Ignore depreciation given in P&L a/c
- c. If the depreciation is given only in the adjustment [ and not in the P&L a/c
  - i. Subtract depreciation from the net profit

### Unabsorbed depreciation [Sec 32(2)]

If the full amount of depreciation cannot be charged due to absence or inadequacy of profit, the balance amount of depreciation which cannot be so allowed is called unabsorbed depreciation. Unabsorbed depreciation relating to the previous year can be set off against profit of other business and balance, if any can be set off against his income chargeable under any other head for that year. If still some part of such allowance remains unabsorbed, it can be carried forward. No time limit is fixed for the purpose of carrying forward of unabsorbed depreciation. It can be set off against any income. In the matter of set off, the order of priority is, first, current depreciation, second brought forward business losses and last, unabsorbed depreciation.

### Additional depreciation

Additional depreciation is available from the assessment year 2003-04, subject to the following conditions

1. It is available only in respect of plant and machinery acquired and installed after 31-3-2005
2. Additional depreciation is available at the rate of 20% of the actual cost. If however, the asset is put to use for less than 180 days in the year in which it is acquired, the rate of depreciation will be 10%

#### **4. Tea development account [Sec 33AB]**

If an assessee, who carrying on the business of growing and manufacturing tea, coffee or rubber, deposits an amount in the tea development account, he can avail this deduction. The amount of deduction least of the following

(a) a sum equal to the amount or the aggregate of the amounts so deposited ;  
or

(b) a sum equal to 40% per cent of the profits of such business

Withdrawal from deposits will not be allowed except for the specified purposes specified below. They are:

- (a) Closure of business;
- (b) Death of an assessee ;
- (c) Partition of a Hindu undivided family;
- (d) Dissolution of a firm;
- (e) Liquidation of a company.

#### **5. Expenditure on scientific Research[Sec 35]**

The following deductions shall be allowed, in respect of expenditure on scientific research

- a) Any revenue expenditure lay out or expended on scientific research related to the business.
- b) An amount equal to 125% of any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific Research:
- c) An amount equal to 125% of any sum paid] to a university, college or other institution to be used for research in social science or statistical research :
- d) Capital expenditure incurred, other than acquisition of a land, on scientific research related to the business carried on by the assessee. Where any deduction is allowed in respect of any capital expenditure represented by an asset, no depreciation will be provided on that asset under [Sec 32]
- e) Where the assessee pays any sum to a National Laboratory University or an Indian Institute of Technology or a specified person with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority, then a deduction of a sum equal to one and

one- fourth times the sum so paid is allowable. No deduction in respect of such sum shall be allowed under any other provision of this Act

f) Where a company engaged in the business of bio-technology or manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article, incurs any expenditure on scientific research on in-house research and development facility a sum equal to 150% of the expenditure is allowed as deduction

### **6. Expenditure on know-how [Sec 35AB]**

If the assessee has paid any lump sum amount for acquiring any know-how for the purposes of his business, the amount shall be allowable as deduction in 6 equal installments commencing from the year in which such an expenditure is incurred. If such know-how is developed in a laboratory owned or financed by the government or university, deduction is allowable in 3 equal installments

### **7. Amortization of certain preliminary expenses [Sec 35D]**

Preliminary expenses incurred by an Indian company or a person (other than a company) who is resident in India will be allowed as a deduction. If the expenses are incurred before 1<sup>st</sup> April 1998, it will be allowed in 10 equal installments and if such expenditure is incurred on or after 1<sup>st</sup> April 1998 the deduction will be allowable in 5 equal installments. Maximum amount eligible for this deduction is an amount equal to 5% (if expenditure incurred before 1<sup>st</sup> April 1998, it is 2.5%) of the cost of the project or in the case of an Indian company, at the option of the company, the amount of capital employed in the business.

Preliminary expenses includes the following

- expenditure in connection with preparation of feasibility report, preparation of project report, conducting market survey or any other survey necessary for the business of the assessee, engineering services relating to the business of the assessee
- legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;
- legal charges for drafting the Memorandum and Articles of Association of the company;
- printing charges of the Memorandum and Articles of Association
- Registration fee etc.
- shares and debentures issue expenses
- underwriting commission
- brokerage and charges for drafting, typing, printing and advertisement of the prospectus;

### **8. General Deduction [Sec 37]**

The following general deductions are allowable from business or professional income;

- Legal expenses
- Customs duty, excise duty and sales tax paid
- Sales tax appeal expenses
- Day to day expenses to carry on the business
- Gift to employees
- Workmen compensation fund

### **EXPENSES EXPRESSLY ALLOWED**

The following expenses are expressly disallowed from business or professional income.

1. Guest house expenses
2. Wealth tax
3. Income tax
4. Tax penalty
5. Advance income tax
6. Drawings
7. Salary to proprietor
8. Interest on capital
9. Life Insurance Premium
10. Expenses for family members
11. Provision like provision for bad debts, provision for taxation etc
12. Donations, gift and charity
13. Depreciation allowed above the prescribed limit
14. All expenses of capital nature
15. All expenses relating to other heads of income
16. Amount exceeding Rs.20,000 paid in cash
17. Medical insurance premium paid in cash

### **SCHEME OF TAXATION OF INCOME FROM BUSINESS**

<i>Particulars</i>	<i>Amount</i>
Net profit as per P&L A/c	

Add: Non business expenses

Add: Business income not credited in P&L A/c

Less: Non-business Income credited in P&L A/c

Less: Business expenses not debited in P&L A/c

### **SCHEME OF TAXATION OF INCOME FROM BUSINESS**

<i>Particulars</i>	<i>Amount</i>
Professional receipts	

Less: professional expenses

### ***Income from profession***

All rules of business income is applicable in the case of professional income

<http://www.mbaknol.com/tax-management/profits-and-gains-of-business-or-profession/>Source: Scribd.com

### **1 Chargeability:**

The following incomes are chargeable to tax under the head Profit and Gains from Business or Profession:

S. No.	Section	Particulars
1.	28(i)	Profit and gains from any business or profession carried on by the assessee at any time during the previous year
2.	28(ii)	Any compensation or other payment due to or received by any specified person
3.	28(iii)	Income derived by a trade, professional or similar association from specific services performed for its members
4.	28(iiia)	Profit on sale of a license granted under the Imports (Control) Order 1955, made under the Import Export Control Act, 1947
5.	28(iiib)	Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of Government of India
6.	28(iiic)	Any duty of Customs or Excise repaid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971.
7.	28(iiid)	Profit on transfer of Duty Entitlement Pass Book Scheme, under Section 5 of Foreign Trade (Development and Regulation) Act, 1992
8.	28(iiie)	Profit on transfer of Duty Free Replenishment Certificate, under Section 5 of Foreign Trade (Development and Regulation) Act 1992
9.	28(iv)	Value of any benefits or perquisites arising from a business or the exercise of a profession.
10.	28(v)	Interest, salary, bonus, commission or remuneration due to or received by a partner from partnership firm
11.	28(va)	Any sum received for not carrying out any activity in

relation to any business or not to share any know-how, patent, copyright, trademark, etc.

12. 28(vi) Any sum received under a Key man Insurance policy including the sum of bonus on such policy
13. 28(vii) Any sum received ( or receivable) in cash or in kind, on account of any capital assets (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital assets has been allowed as a deduction under section 35AD
14. Explanation to section 28 Income from speculative transactions. However, it shall be deemed to be distinct and separate from any other business.
15. 41(1)
  - Remission or cessation of liability in respect of any loss, expenditure or trading liability incurred by the taxpayers
  - Recovery of trading liability by successor which was allowed to the predecessor shall be chargeable to tax in the hands of successor. Succession could be due to amalgamation or demerger or succession of a firm succeeded by another firm or company, etc.
  - Any liability which is unilaterally written off by the taxpayer from the books of accounts shall be deemed as remission or cessation of such liability and shall be chargeable to tax.
16. 41(2) Depreciable asset in case of power generating units, is sold, discarded, demolished or destroyed, the amount by which sale consideration and/ or insurance compensation together with scrap value exceeds its WDV shall be chargeable to tax.
17. 41(3) Where any capital asset used in scientific research is sold without having been used for other purposes and the sale proceeds together with the amount of deduction allowed under section 35 exceed the amount of the capital expenditure, such surplus or the amount of deduction allowed, whichever is less, is chargeable to tax as business income in the year in which the sale took place.
18. 41(4) Where bad debts have been allowed as deduction under Section 36(1)(vii) in earlier years, any recovery of same shall be chargeable to tax.
19. 41(4A) Amount withdrawn from special reserves created and maintained under Section 36(1)(viii) shall be chargeable as

income in the previous year in which the amount is withdrawn.

20. 41(5) Loss of a discontinued business or profession could be adjusted from the deemed business income as referred to in section 41(1), 41(3), (4) or (4A) without any time limit.
21. 43CA Where consideration for transfer of land or building or both as stock-in-trade is less than the stamp duty value, the value so adopted shall be deemed to be the full value of consideration for the purpose of computing income under this head.
22. 43D As per RBI Guidelines, Interest on bad and doubtful debts of Public Financial Institution or Scheduled Bank or State Financial Corporation or State Industrial Investment Corporation, shall be chargeable to tax in the year in which it is credited to Profit and Loss A/c or year in which it is actually received, whichever happens earlier.
23. 43D Similarly as per NHB Guidelines, Interest on bad and doubtful debts of housing finance company, shall be chargeable to tax, in the year it is credited to P & L A/c or year in which it is actually received by them, whichever is earlier.

### 2 Deductions under Sections 30 to 37

Amount deductible, while computing, Profits and Gains of Business or Profession are:-

Section	Nature of expenditure	Quantum of deduction	Assessee
30	Rent, rates, taxes, repairs (excluding capital expenditure) and insurance for premises	Actual expenditure incurred excluding capital expenditure	All assessee
31	Repairs (excluding capital expenditure) and insurance of machinery, plant and furniture	Actual expenditure incurred excluding capital expenditure	All assessee
32	Depreciation on buildings, machinery, plant or furniture, know-how, patents, copyrights, trademarks, licenses, franchises, or any other	Allowed at prescribed percentage on WDV method for each block of assets	All assessee

	business or commercial rights of similar nature, being intangible assets (Subject to certain conditions)		
32AC	Deduction under section 32AC is available if actual cost of new plant and machinery acquired and installed by a manufacturing company during the previous year exceeds Rs. 25/100 Crores, as the case may be.(Subject to certain conditions)	15% of actual cost of new asset acquired and installed (if it exceeds Rs. 25 Crores/100 Crores, as the case may be)	Company engaged in business or manufacturing or production of any article or thing
33AB	Amount deposited in Tea/Coffee/Rubber Development Account by assessee engaged in business of growing and manufacturing tea/Coffee/Rubber in India	Deduction shall be lower of following: a) Amount deposited in account with National Bank for Agricultural and Rural Development (NABARD) or in Deposit Account of Tea Board, Coffee Board or Rubber Board in accordance with approved scheme; or b) 40% of profits from such business before making any deduction under section 33AB and before adjusting any brought forward loss. (Subject to certain conditions)	All assessee engaged in business of growing and manufacturing tea/Coffee/Rubber
33ABA	Amount deposited in Special Account with SBI/State Restoration Account by assessee carrying on business of prospecting for, or	Deduction shall be lower of following: a) Amount deposited in Special Account with SBI/State Restoration Account; or	All assessee engaged in business of prospecting for, or extraction or production of, petroleum or natural

	extraction or production of, petroleum or natural gas or both in India	b) 20% of profits from such business before making any deduction under section 33ABA and before adjusting any brought forward loss. (Subject to certain conditions)	gas or both in India
35(1)(i)	Revenue expenditure on scientific research pertaining to business of assessee is allowed as deduction (Subject to certain conditions).	Entire amount incurred on scientific research is allowed as deduction. Expenditure on scientific research within 3 years before commencement of business (in the nature of purchase of materials and salary of employees other than perquisite) is allowed as deduction in the year of commencement of business to the extent certified by prescribed authority.	All assessee
35(1)(ii)	Contribution to approved research association, university, college or other institution to be used for scientific research shall be allowed as deduction (Subject to certain conditions)	175% of sum paid to such association, university, college, or other institution is allowed as deduction.	All assessee
35(1)(ia)	Contribution to an approved company registered in India to be used for the purpose of scientific research is allowed as deduction (Subject to certain conditions)	125% of sum paid to the company is allowed as deduction	All assessee

35(1)(iii)	Contribution to approved research association, university, college or other institution with objects of undertaking statistical research or research in social sciences shall be allowed as deduction (Subject to certain conditions)	125% of sum paid to such association, university, college, or other institution is allowed as deduction	All assessee
35(1)(iv) read with 35(2)	Capital expenditure incurred during the year on scientific research relating to the business carried on by the assessee is allowed as deduction (Subject to certain conditions)	Entire capital expenditure incurred on scientific research is allowed as deduction. Capital expenditure incurred within 3 years before commencement of business is allowed as deduction in the year of commencement of business. <i>Note:</i> i. Capital expenditure excludes land and any interest in land; ii. No depreciation shall be allowed on such assets.	All assessee
35(2AA)	Payment to a National Laboratory or University or an Indian Institute of Technology or a specified person is allowed as deduction. The payment should be made with the specified direction that the sum shall be used in a scientific research undertaken under an approved programme.	200% of payment is allowed as deduction (Subject to certain conditions).	All assessee
35(2AB)	Any expenditure incurred by a company on scientific	200% of expenditure so incurred shall be as	Company engaged in business of bio-

	<p>research (including capital expenditure other than on land and building) on in-house scientific research and development facilities as approved by the prescribed authorities shall be allowed as deduction (Subject to certain conditions).</p> <p>Expenditure on scientific research in relation to Drug and Pharmaceuticals shall include expenses incurred on clinical trials, obtaining approvals from authorities and for filing an application for patent.</p>	<p>deduction.</p> <p><i>Note:</i></p> <p>i. Company should enter into an agreement with the prescribed authority for co-operation in such research and development and audit of accounts maintained for such facilities;</p> <p>ii. Deduction under this provision would be allowed only up to 31-3-2017.</p>	<p>technology or in any business of manufacturing or production of eligible articles or things</p>
35ABB	<p>Capital expenditure incurred for acquiring any license or right to operate telecommunication services shall be allowed as deduction over the term of the license.</p>	<p>Deduction would be allowed in equal installments starting from the year in which such payment has been made and ending in the year in which license comes to an end.</p>	<p>All Assessee engaged in telecommunication services</p>
35AC	<p>Expenditure by way of payment of any sum to a public sector company/local authority/approved association or institution for carrying out any eligible scheme or project (Subject to certain conditions).</p>	<p>Actual payment made to prescribed entities. However, a company can also claim deduction for expenditure incurred by it directly on eligible projects.</p>	<p>All assessee. However, deduction for direct expenditure is allowed only to a company</p>
35AD	<p>Deduction in respect of expenditure on specified businesses, as under:</p> <p>a) Setting up and operating a cold chain facility</p> <p>b) Setting up and operating</p>	<p>150% of capital expenditure incurred for the purpose of business is allowed as deduction provided the specified business has</p>	<p>All assessee</p>



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# FAIRFIELD

## INSTITUTE OF MANAGEMENT & TECHNOLOGY

( A Grade Institute By DHE, Govt. of NCT Delhi and Affiliated to GGSIP University, Delhi)

a warehousing facility for storage of agricultural produce

c) Building and operating, anywhere in India, a hospital with at least 100 beds for patients

d) Developing and building a housing project under a notified scheme for affordable housing

e) Production of fertilizer in India

(Subject to certain conditions)

commenced its operation on or after 01-04-2012.

*Note:* If such specified businesses commence operations on or before 31-03-2012 but after prescribed dates, deduction shall be limited to 100% of capital expenditure.

35AD

Deduction in respect of expenditure on specified businesses, as under:

a) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;

b) Building and operating, anywhere in India, a hotel of two-star or above category;

c) Developing and building a housing project under a scheme for slum redevelopment or rehabilitation

d) Setting up and operating an inland container depot or a container freight station

e) Bee-keeping and production of honey and beeswax

f) Setting up and operating

100% of capital expenditure incurred for the purpose of business is allowed as deduction provided specified businesses commence operations on or after the prescribed dates.

All assessee (Indian company in case of specified business of laying and operating a cross-country natural gas or crude or petroleum oil pipeline network)

a warehousing facility for storage of sugar  
g) Laying and operating a slurry pipeline for the transportation of iron ore  
h) Setting up and operating a semi-conductor wafer fabrication manufacturing unit  
(Subject to certain conditions)

35CCA	Payment to following Funds are allowed as deduction: a) National Fund for Rural Development; and b) Notified National Urban Poverty Eradication Fund	Actual payment to specified funds	All assessee
35CCC	Expenditure (not being cost of land/building) incurred on notified agricultural extension project for the purpose of training, educating and guiding the farmers shall be allowed as deduction, provided the expenditure to be incurred is expected to be more than Rs. 25 lakhs (Subject to certain conditions).	150% of the expenditure (Subject to certain conditions)	All assessee
35CCD	Expenditure incurred by a company (not being expenditure in the nature of cost of any land or building) on any notified skill development project is allowed as deduction (Subject to certain conditions).	150% of the expenditure (Subject to certain conditions) <i>Note:</i> No deduction shall be allowed to a company engaged in manufacturing alcoholic spirits or tobacco products.	Company engaged in manufacturing of any article or providing specified services

35D	An Indian company can amortize certain preliminary expenses (up to maximum of 5% of cost of the project or capital employed, whichever is more) (Subject to certain conditions and nature of expenditures)	Qualifying preliminary expenditure is allowable in each of 5 successive years beginning with the previous year in which the extension of undertaking is completed or the new unit commences production or operation.	Indian Company
35D	Non-corporate taxpayers can amortize certain preliminary expenses (up to maximum of 5% of cost of the project) (Subject to certain conditions and nature of expenditures)	Qualifying preliminary expenditure is allowable in each of 5 successive years beginning with the previous year in which the extension of undertaking is completed or the new unit commences production or operation.	Resident Non-corporate assessee
35DD	Expenditure incurred after 31-3-1999 in respect of amalgamation or demerger can be amortized by an Indian Company	Expenditure is allowed as deduction in five equal installments in 5 previous years starting with the year in which amalgamation or demerger took place.	Indian Company
35DDA	Expenditure incurred under Voluntary Retirement Scheme is allowed as deduction.	Each payment under VRS is allowed as deduction in five equal installments in 5 previous years.	All Assessee

35E	Qualifying expenditure incurred by resident persons on prospecting for the minerals or on the development of mine or other natural deposit of such minerals shall be allowed as deduction (Subject to certain conditions).	Eligible expenditure is allowed as deduction in ten equal installments in 10 previous years.	Resident persons
36(1)(i)	Insurance premium covering risk of damage or destruction of stocks/stores	Actual expenditure incurred	All Assessee
36(1)(ia)	Insurance premium covering life of cattle owned by a member of co-operative society engaged in supplying milk to federal milk co-operative society	Actual expenditure incurred	All Assessee
36(1)(ib)	Medical insurance premium paid by any mode other than cash, to insure employee's health under (a) scheme framed by GIC of India and approved by Central Government; or (b) scheme framed by any other insurer and approved by IRDA	Actual expenditure incurred	All Assessee
36(1)(ii)	Bonus or commission paid to employees which would not have been payable as profit or dividend if it had not been paid as bonus or commission	Actual expenditure incurred	All Assessee
36(1)(iii)	Interest on borrowed capital (Subject to certain conditions)	Actual interest incurred, except interest to be capitalized with actual cost of capital asset, shall be allowed as	All Assessee

		deduction	
36(1)(iiia)	Discount on Zero Coupon Bonds (Subject to certain conditions)	Pro-rata amount of discount on zero coupon bonds shall be allowed as deduction over the life of such bond	Specified Assessee
36(1)(iv)	Employer's contributions to recognized provident fund and approved superannuation fund [subject to certain limits and conditions]	Actual expenditure incurred	All Assessee
36(1)(iva)	Any sum paid by assessee-employer by way of contribution towards a pension scheme, as referred to in section 80CCD, on account of an employee.	Actual expenditure not exceeding 10% of the salary* of the employee *Salary = Basic Pay + Dearness Allowance (to the extent it forms part of retirement benefits)+ turnover based commission	All Assessee – Employer
36(1)(v)	Employer's contribution towards approved gratuity fund created exclusively for the benefit of employees under an irrevocable trust shall be allowed as deduction (Subject to certain conditions).	Actual expenditure not exceeding 8.33% of salary of each employee	All Assessee – Employer
36(1)(va)	Deposit of employee's contributions in their respective provident fund or superannuation fund or any fund set up under Employees' State Insurance Act, 1948	Actual amount received if credited to the employee's account in relevant fund on or before due date specified under relevant Act	All Assessee – Employer
36(1)(vi)	Allowance in respect of animals which have died or become permanently	Actual cost of acquisition of such animals less realization	All Assessee

	useless (Subject to certain conditions)	on sale of carcasses of animals	
36(1)(vii)	Bad debts which have been written off as irrecoverable (Subject to certain conditions)	Actual bad debts which have been written off from books of accounts	All Assessee
36(1)(viia)	Deductions for provision for bad and doubtful debts created by certain banks and financial institutions (Subject to certain conditions). <b>Note</b> Deduction in respect of bad debts actually written off under section 36(1)(vii) shall be limited to that amount of bad debts which exceed the provision for bad and doubtful debts created under section 36(1)(viia).	Deductions for provision for bad and doubtful debts shall be limited to following: a) <i>In case of scheduled and non-scheduled banks</i> : Sum not exceeding aggregate of 7.5% of total income (before any deductions under this provision and Chapter VI-A) and 10% of aggregate average advances made by rural branches of such bank; b) <i>In case of Financial Institutions</i> : Up to 5% of total income before any deductions under this provisions and Chapter VI-A; and c) <i>In case of foreign banks</i> : Up to 5% of total income before any deductions under this provisions and Chapter VI-A	Banks, Public Financial Institutions, State Financial Corporation, State Industrial Investment Corporations
36(1)(viii)	Deduction under this provisions is allowed to following entities in respect of amount transferred to special reserve account: a) Financial Corporation which is engaged in providing long-term	Deduction shall be allowed to the extent of lower of following: a) Amounts transferred to special reserve account b) 20% of profits derived from eligible	Specified financial corporations or public company

	<p>finance for industrial or agricultural development or development of infrastructure facility in India; or</p> <p>b) Public company registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of residential houses in India. [Subject to certain conditions]</p>	<p>business</p> <p>c) 200% of paid-up capital and general reserve (on last day of previous year) <i>minus</i> balance in special reserve account (on first day of previous year)</p>	
36(1)(ix)	Expenditure incurred by a company on promotion of family planning amongst employees is allowed as deduction	<p>1) Entire revenue expenditure is allowed as deduction</p> <p>2) Capital expenditure shall be allowed as deduction in five equal installment in five years</p>	Company
36(1)(xii)	Any expenditure incurred by a notified corporation or body corporate constituted or established by a Central, State or Provincial Act, for the objects and purposes authorized by the respective Act is allowed as deduction	Actual expenditure incurred (not being in the nature of capital expenditure)	Notified corporations
36(1)(xiv)	Contribution to Credit Guarantee Trust Fund for micro and small industries is allowed as deduction	Actual expenditure incurred	Public Financial Institutions
36(1)(xv)	Securities Transaction Tax paid	Actual expenditure incurred if corresponding income is included as income under the head profits and gains of business or profession	All Assessee

36(1)(xvi)	Amount equal to commodities transaction tax paid by an assessee in respect of taxable commodities transactions entered into in the course of his business during the previous year is allowed as deduction	Actual expenditure incurred if corresponding income is included as income under the head profits and gains of business or profession	All Assessee
37(1)	Any other expenditure [not being personal or capital expenditure and expenditure mentioned in sections 30 to 36] laid out wholly and exclusively for purposes of business or profession	Actual expenditure incurred	All Assessee
37(2B)	Expenditure on advertisement in any souvenir, brochure etc. published by a political party shall not be allowed as deduction	Not Allowed	All Assessee

### 3. Amount expressly disallowed under the Act

Section	Description
40(a)(i)	Any sum (other than salary) payable outside India or to a non-resident, which is chargeable to tax in India in the hands of the recipient, shall not be allowed to be deducted if it was paid without deduction of tax at source or if tax was deducted but not deposited with the Central Government till the due date of filing of return. However, if tax is deducted or deposited in subsequent year, as the case may be, the expenditure shall be allowed as deduction in that year.
40(a)(ia)	Any sum payable to a resident, which is subject to deduction of tax at source, would attract 30% disallowance if it was paid without deduction of tax at source or if tax was deducted but not deposited with the Central Government till the due date of filing of return. However, where in respect of any such sum, tax is deducted or deposited in subsequent year, as the case may be, the expenditure so disallowed shall be allowed as deduction in that year.
40(a)(ii)	Any sum paid on account of any rate or tax levied on the profits and gains of business or profession is not deductible

- 40(a)(iia) Wealth-tax or any other tax of similar nature shall not be deductible
- 40(a)(iib) Amount paid by way of royalty, license fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on (or any amount appropriated) a State Government undertaking by the State Government shall not be deductible.
- 40(a)(iii) Salaries payable outside India or in India to a non-resident, on which tax has not been paid/deducted at source is not deductible.
- 40(a)(iv) Payments to provident fund or other funds for employees' benefit shall not be deductible if no effective arrangements have been made to ensure deduction of at source from payments made from such funds to employees which shall be chargeable to tax as 'salaries'.
- 40(a)(v) Tax paid by the employer on non-monetary perquisites provided to employees is not deductible if the tax so paid is not taxable in the hands of employees by virtue of Section 10(10CC).
- 40(b) Following sum paid by a partnership firm to its partners shall not be allowed to be deducted:
- 1) Salary, bonus, commission or remuneration paid to non-working partners;
  - 2) Remuneration or interest paid to the partners is not in accordance with the terms of the partnership deed;
  - 3) Remuneration or interest to partners is in accordance with the terms of the partnership deed but relates to any period prior to the date of the deed;
  - 4) Interest to partners is in accordance with the terms of the partnership deed but exceeds 12% per annum;
  - 5) Remuneration to partners is in accordance with the terms of the partnership deed but exceeds the following permissible limit:
    - a) On first Rs. 3 Lakhs of book profit or in case of loss – Rs. 1,50,000 or 90% of book profit, whichever is more;
    - b) On the balance of the book profit – 60% of book profit
- 40(ba) Interest, salary, bonus, commission or remuneration paid by Association of Persons or Body of Individuals to its members shall not be allowed as deduction (Subject to certain conditions).
- 40A(2) Any payment to related parties (relatives, directors, partner, member of HUF/AOP, person who has substantial interest in business of the taxpayer, etc.) in respect of any expenditure shall be disallowed to the extent such expenditure is considered excessive or unreasonable by the Assessing Officer having regard to its fair market value.

- 40A(3)/(3A) An expenditure, which is otherwise deductible under any provision of the Act, shall be disallowed if payment thereof has been made otherwise than by account payee cheque/bank draft and it exceeds Rs. 20,000 (Rs. 35,000 in case of payment made for plying, hiring or leasing goods carriages) in a day (Subject to certain conditions and exceptions).
- 40A(7) Provision for payment of gratuity to employees, other than a provision for contribution to approved gratuity fund, shall not be allowed as deduction (Subject to specified conditions).  
Gratuity actually paid (or payable) during the year and contribution to approved gratuity fund is allowed as deduction.
- 40A(9) Any sum paid as an employer for setting up or as contribution to any fund, trust, company, AOP, BOI, Society or other institution (other than recognized provident fund, approved superannuation fund, approved gratuity fund or pension scheme referred to in section 80CCD) shall not be allowed as deduction if such contribution or payment is not required by any law.

#### 4. Expenses deductible on actual payment basis

The following expenses shall be allowed as deduction if such expenditure are actually paid on or before the due date of filing of return of income:-

##### Section Particulars

- 43B(a) Any Tax, Duty, Cess or Fees under any Law
- 43B(b) Any contribution to Provident Fund/Superannuation Fund/Gratuity Fund/Welfare Fund
- 43B(c) Bonus or Commission paid to employees which would not have been payable as profit or dividend
- 43B(d) Interest on Loan or Borrowings from Public Financial Institutions/State Financial Institutions etc.
- 43B(e) Interest on loan or advance from bank
- 43B(f) Payment of Leave Encashment

#### 5. Other provisions

##### Section Particulars

##### Provision

- |  |  |
|--|--|
| <p>42 Special allowance in case of business of prospecting etc. for mineral oil (including petroleum and natural gas) in relation to which the Central Government has entered into an agreement with the taxpayer for the association or participation</p> | <p>Following deductions shall be allowed as deductions:</p> <p>a) Any infructuous exploration expenditure</p> <p>b) Expenditure on drilling or exploration activities or services, etc.</p> <p>c) Allowance in relation to</p> |
|--|--|

	(Subject to certain conditions).	depletion of mineral oil, etc.
43A	Special provisions consequential to changes in rate of exchange of Currency (Subject to certain conditions).	Any increase or decrease in the liability incurred in foreign currency (to acquire a capital asset) pursuant to fluctuation in the foreign exchange rates shall be adjusted with the actual cost of such asset only on actual payment of the liability.
43C	Acquisition of any asset (except stock-in-trade) by the taxpayer in the scheme of amalgamation or by way of gift, will etc.	Cost of acquisition of any asset (except stock-in-trade) acquired by the taxpayer in the scheme of amalgamation or by way of gift, will etc. from the transferor (who sold it as stock-in-trade) shall be the cost of acquisition in the hands of transferor as increased by cost of any improvement made

### 6. Provisions applicable to Non-Resident/Foreign Company

Section	Particulars	Limit of exemption or Computation of income/deduction	Available to
44B read with 172	Income from shipping business shall be computed on presumptive basis (Subject to certain conditions).	7.5% of specified sum shall be deemed to be the presumptive income	Non-resident engaged in shipping business
44BB	Income of a non-resident engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils shall be computed on presumptive basis (Subject to certain conditions).	10% of specified sum shall be deemed to be the presumptive income	Non-resident engaged in activities connected with exploration of mineral oils

44BBA	Income of a non-resident engaged in the business of operation of aircraft shall be computed on presumptive basis (Subject to certain conditions).	5% of specified sum shall be deemed to be the presumptive income	Non-resident engaged in the business of operating of aircraft
44BBB	Income of a foreign company engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with turnkey power projects shall be computed on presumptive basis (Subject to certain conditions).	10% of specified sum shall be deemed to be the presumptive income	Foreign Company
44C	Deduction for Head office Expenditure (Subject to certain conditions and limits)	<p>Deduction for head-office expenditure shall be limited to lower of following:</p> <p>a) 5% of adjusted total income*</p> <p>b) Head office exp. as attributable to business or profession of taxpayer in India</p> <p>* In case adjusted total income of the assessee is a loss, adjusted total income shall be substituted by average adjusted total income</p> <p>** Adjusted total income or average adjusted total income shall be computed after prescribed adjustments i.e. unabsorbed depreciations, carry forward losses, etc.</p>	Non-resident

44DA	Deduction of expenditure from royalty and FTS received under an agreement made after 31-03-2003 which is effectively connected to the PE of non-resident in India (Subject to certain conditions)	Expenditure incurred wholly and exclusively for the business of PE or fixed place of profession in India shall be allowed as deduction.	Non-resident
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### 7. Accounts and Audit

Section	Particulars	Threshold
44AA	Compulsory maintenance of prescribed books of account – Specified Profession (Subject to certain conditions and circumstances)	Persons carrying on specified profession and their gross receipts exceed Rs. 1,50,000 in all the three years immediately preceding the previous year
44AA	Compulsory maintenance of books of account – Other business or profession (Subject to certain conditions and circumstances)	1) If total sales, turnover or gross receipts exceeds Rs. 10,00,000 in any one of the three years immediately preceding the previous year; or 2) If income from business or profession exceeds Rs. 1,20,000 in any one of the three years immediately preceding the previous year
44AB	Compulsory Audit of books of accounts (Subject to certain conditions and circumstances)	1) If total sales, turnover or gross receipts exceeds Rs. 1 Crore in any previous year, in case of business; or 2) If gross receipts exceeds Rs. 25 Lakhs in any previous year, in case of profession.

### 8. Presumptive Taxation

Section	Nature of business	Presumptive income
44AD	Income from eligible business can be computed on presumptive basis under Section 44AD (Subject to certain conditions).	Presumptive income of eligible business shall be 8 % of gross receipt or total turnover (if turnover of eligible business does not exceed Rs. 1 crore).
44AE	Presumptive income of business of plying, hiring or leasing of goods carriage if taxpayer does not own	Rs. 7,500 for every month during which the goods carriage is owned by the taxpayer

more than 10 goods carriage  
(Subject to certain conditions)

<http://taxguru.in/income-tax/profits-gains-business-profession.html>

## Capital Gains

Any Income derived from a Capital asset movable or immovable is taxable under the head Capital Gains under Income Tax Act 1961. The Capital Gains have been divided in two parts under Income Tax Act 1961. One is short term capital gain and other is long term capital gain.

**1.Short Term Capital Gains :** If any taxpayer has sold a Capital asset within 36 months and Shares or securities within 12 months of its purchase then the gain arising out of its sales after deducting therefrom the expenses of sale(Commission etc) and the cost of acquisition and improvement is treated as short term capital gain and is included in the income of the taxpayer.

The deduction u/s 80C to 80U can be taken from the income from short term capital gain apart from the short term capital gain u/s 111A

**Taxability of short term capital gains:** Section 111A of the Income tax Act provides that those equity shares or equity oriented funds which have been sold in a stock exchange and securities transaction tax is chargeable on such transaction of sale then the short term capital gain arising from such transaction will be chargeable to tax @10% upto assessment year 2008-09 and 15% from assessment year 2009-10 onwards.

The short term capital gains other than those u/s 111A shall be added to the income of the assessee and no such benefit is available on short term capital gains arising in other cases and they will be taxed normally at slab rates applicable to the assessee.

If an assessee does the business of selling and purchasing shares he cannot take advantage of section 111A or section 10(38). In this case income will be treated as business income.

**Capital gains in case of depreciable assets :** According to section 50 of Income tax act if an assessee has sold a capital asset forming part of block of assets (building, machinery etc) on which the depreciation has been allowed under Income Tax Act, the income arising from such capital asset is treated as short term capital gain.

**Where some assets are left in block of assets:** If a part of such capital asset forming part of a block of asset has been sold and after deducting the net consideration received from sale of such asset from the written down value of the block of such asset the written down value comes to NIL then the gain arising shall be treated as short term capital gain and in such case where written down value has become NIL no depreciation shall be available on such block of asset even if some assets are physically left in the block of assets.

**When no assets are left in block of assets:** If the whole of the capital assets forming part of a block of assets have been sold during a year and the assessee has suffered a loss after deducting the net sale consideration from the written down value of the block of assets then such loss shall be treated as short term capital loss and no depreciation shall be allowed from such block of assets.

It was decided by Chandigarh tribunal in (2004) 3 S.O.T. 521/ 83 T.T.J. 1057 if the whole of capital assets in a block have been sold in a year and some gain arises after the sale such gain shall not be treated as short term capital gain if some new asset has been purchased within the same year in the same block of assets and the total value of new and old capital assets in the same block is more than the sale consideration of the assets sold, since the block of asset does

not cease to exist in such case as is required u/s 50(2). This can be explained with an example as below:

Written down value of 5 Machinery as on 01-04-2015 500000, 5 machinery sold on 01-05-2015 600000, New Machinery purchased on 01-06-2015 250000

now in above cases the difference between the w.d.v and sale value i.e Rs 100000 cannot be treated as short term capital gain in the year 2008-09 since new machinery has been purchased in the same block of asset afterwards in the same year and the total of new and old machinery is more than the sale value of the machineries sold as a result the block of asset continue to exist.

**Short term capital gain where land & building are sold together:** Sometimes it happens that in a block of assets namely land & building, the whole of land & building is sold together. In such cases the capital gain on land and building should be calculated separately.

The Supreme Court has held in (1967) 65ITR 377 that depreciation is available on the value of building and not on the value of plot. Considering the above decision of Supreme Court, the Rajasthan High court in (1993)201 ITR 442 has held that Plot and building are different assets. If the assessee has purchased plot more than 3 years back and constructed building on it less than 3 years back then the gain arising on sale of plot shall belong term capital gain and the benefit of indexation shall be given on it whereas the gain arising on sale of building shall be short term capital gain and will be added to the income of the assessee. Therefore both should be calculated separately.

Where the plot has been purchased more than three years back and the building has been constructed on it less than 3 years back, it is advisable that in the sale deed the sale value of plot and building should be shown separately for more clarity and if the consolidated sale value of the Plot and building has been written in the sale deed then the valuation of plot and building should be done separately from a registered valuer.

**Capital asset transferred by the partner to the partnership firm:** As per section 45(3) of the Income Tax Act 1961 if any partner in a firm transfers his asset to the firm then the capital gain on such asset as arising to the partner shall be calculated by presuming the sale value of such asset as is shown in the books of accounts of the firm and not the market value of the asset.

whether such gain is treated as long term or short term will be decided as below:

- If the depreciation has been claimed on the asset transferred to the firm then in view of section 50(2) the gain arising there from will be treated as short term capital gain.
- If the partner has been the owner of the asset for more than 36 months and no depreciation has been claimed on it then the gain arising from such asset shall be treated as long term capital gain.

**Capital gain in case of Dissolution of a Firm:** As per section 45(4) of the Income Tax Act where any partnership firm or AOP or BOI is dissolved and the Capital assets of the such firm or AOP or BOI are transferred by way of distribution of assets to the partners at the time of Dissolution in such case the gain arising from such transfer to the partners will be treated as capital gain and the firm will be liable for paying tax on it in the year of distribution of the assets. For the purpose of section 48 the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.

**2. Long Term Capital Gain:** A Capital Asset held for more than 36 months and 12 months in case of shares or securities is a long term capital asset and the gain arising therefrom is a long term capital gain. Long term capital gains are arrived at after deducting from the net sale consideration of the long term capital asset the indexed cost of acquisition and the indexed cost of improvement of the asset.

The Central govt notifies cost inflation index for every year. The indexed cost of acquisition is calculated by multiplying the actual cost of acquisition with C.I.I of the year in which the capital asset is sold and divided by C.I.I of the year of purchase of capital asset. Similarly the indexed cost of improvement can be calculated by using the C.I.I of the year in which the capital asset is improved. Where the capital asset was acquired before the year 1981 then the cost of acquisition shall be the fair market value or the actual cost of its acquisition which ever is higher. The Fair market value of a capital asset can be known by the valuation of the registered valuer.

**The cost inflation index table as notified is here below:**

Financial Year	Cost Inflation Index	Financial Year	Cost Inflation Index
1981 – 82	100	1997 – 98	331
1982 – 83	109	1998 – 99	351
1983 – 84	116	1999 – 00	389
1984 – 85	125	2000 – 01	406
1985 – 86	133	2001 – 02	426
1986 – 87	140	2002 – 03	447
1987 – 88	150	2003 – 04	463
1988 – 89	161	2004 – 05	480
1989 – 90	172	2005 – 06	497
1990 – 91	182	2006 – 07	519
1991 – 92	199	2007 – 08	551
1992 – 93	223	2008 – 09	582
1993 – 94	244	2009 – 10	632
1994 – 95	259	2010 – 11	711
1995 – 96	281	2011 – 12	785
1996 – 97	305	2012-13	852
<b>2013-2014</b>	<b>939</b>	<b>2014 – 2015</b>	<b>1024</b>

<https://cadiary.org/cost-inflation-index-capital-gain/>

If a capital asset has been subjected to depreciation then no indexation benefit is allowed on sale of such capital asset in view of section 50(2) as discussed above.

**Capital gain from Plot and building should be separately calculated:** As discussed above plot and building are separate assets and the capital gain on above should be calculated separately. If the plot is purchased more than 3 years back and building has been constructed within 3 years the capital gain on plot will be considered as long term and the capital gain on building will be treated as short term capital gain.

**Taxation of Long term capital gains:** The long term capital gains are taxed @ 20% after the benefit of indexation as discussed above. No deduction is allowed from the long term capital gains from section 80C to 80U. But in case of individual and HUF where the income is below the basic exempted limit the shortage in basic exemption limit is adjusted against the long term capital gains.

Section 112(1) provides that any capital gain arising from a long term capital asset being the listed securities which are sold outside the stock exchange the long term capital gain shall be calculated on such securities as below:

- a) Tax arrived at @ 20% on such long term capital gain after indexation u/s 48 or
  - b) Tax arrived at @ 10 % on such long term capital gain without indexation
- Whichever is less.

The long term capital gain on equity shares or units of equity oriented mutual fund which are sold in the stock exchange and on which securities transaction tax is paid, is exempt u/s 10(38).

**Section 50C:** Section 50C has been introduced with effect from 01-04-2003 and is a very important section while calculating capital gain on land & building. Section 50C provides that Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed *or assessable* by stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed *or assessable* shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

It means that the capital gain will be calculated by considering the sale value of the capital asset as equal to the value adopted or assessed by the stamp valuation authority for that capital asset if the actual sale value is less than the value assessed by stamp valuation authority.

If the assessee claims that the value adopted by the stamp valuation authority exceeds the fair market value then the assessing officer may refer to the valuation officer for valuation of the fair market value of the asset. If the fair market value declared by the valuer is more than the value adopted or assessed or assessable by the stamp valuation authority, the value so adopted assessed or assessable by the stamp valuation authority will be taken as full value of consideration of the capital asset.

CBDT vide its circular No 8/2002 dt 27-08-2002 has declared that if the valuation officer has declared the fair market value of the capital asset less than the value adopted, assessed or assessable by the stamp valuation authority then the capital gain shall be calculated on the value so declared by the valuer.

After the adding of word assessable u/s 50C in 2009 now it has become clear that even those immovable properties in which no sale deed is entered into and which have been sold on a full and final agreement will be within the ambit of section 50C.

[http://www.moneycontrol.com/news/tax-report/calculate-your-capital-gains-tax4-steps\\_176908.html](http://www.moneycontrol.com/news/tax-report/calculate-your-capital-gains-tax4-steps_176908.html)

## Income from Other Sources

It is residuary head of Income which must satisfy the following conditions:-

1. There must be an income;
2. This income is NOT exempt under the IT Act 1961; and
3. This income is not chargeable to tax under the other heads of income viz. "Salary", "House property", "Business or Profession" and "Capital Gains".

### Example of Income from Other Sources

Some examples of certain incomes normally taxed under this head are given below:-

- Interest on bank deposits, loans or company deposits,
- Dividend;
- Family pension (received by legal heirs of an employee),
- Income from sub-letting of house property by a tenant,
- Agricultural income from agricultural land situated outside India,
- Interest received from IT Dept. on delayed refunds,
- Remuneration received by Members of Parliament,
- Casual receipts and receipts of non-recurring nature,
- Insurance commission,
- Examiner-ship fees received by a teacher (not from employer),
- Income from royalty,
- Director's commission for standing as guarantor to bankers,
- Winnings from Lotteries, Crossword Puzzles, Horse Races and Card Games,
- Interest on securities,
- Income from letting out of machinery, plant or furniture, etc.
- Any sum exceeding Rs. 50,000/- received without consideration shall be treated as income provided that the sum of money is not received from any relative or on the occasion of marriage of the individual or under a will or inheritance etc. <http://finotax.com/income-tax/info/income-os>

### Deductions allowed under 'income from other sources'

The income, chargeable under the head 'income from other sources,' shall be computed after making the following deductions

- In the case of interest on securities, any reasonable sum, paid by way of commission or remuneration to a banker or to any other person for the purpose of realizing such dividend or interest on behalf of the assessee;
- In the case of income, received by the assessee from his employees as contributions to any provident fund or Superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees, which is chargeable to income tax under the head "Income from other sources" deductions so far, as may be in accordance with provisions of S 36(1) (va).
- In the case of income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income -- tax under the head "Profits and gains of business or profession or where an assessee lets on hire machinery, plant or

furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income tax under the head "Profits and gains of business or profession", deductions, so far as may, be in accordance with the provisions of clause (a), clause (3) of Section 30, Section 31, and subsections (1) and (2) of Section 32 and subject to the provisions of S 38.

- In the case of income in the nature of family pension, a deduction of a sum equal to thirty three and one third per cent of such income or fifteen thousand rupees, whichever is less.
- Any other expenditure (not being capital expenditure) laid out or used wholly and exclusively for the purpose of making or earning such income.

[http://www.moneycontrol.com/tax/other\\_source/deductions-allowed-under-incomeother-sources\\_628527.html](http://www.moneycontrol.com/tax/other_source/deductions-allowed-under-incomeother-sources_628527.html)

## Unit 3

### Total Income and Tax computation: Income from other person included in assessee's total income

**Clubbing of income means Income of other person included in assessee's total income**, for example: Income of husband which is shown to be the income of his wife is clubbed in the income of Husband and is taxable in the hands of the husband. Under the Income Tax Act a person has to pay taxes on his income. A person cannot transfer his income or an asset which is his one of source of his income to some other person or in other words we can say that a person cannot divert his income to any other person and says that it is not his income. If he do so the income shown to be earned by any other person is included in the assessee's total income and the assessee has to pay tax on it.

SECTION	NATURE OF TRANSACTION	CLUBBED IN THE HANDS OF	CONDITIONS/EXCEPTIONS	RELEVANT REFERENCE
60	Transfer of Income without transfer of Assets.	Transferor who transfers the income.	Irrespective of: 1. Whether such transfer is revocable or not. 2. Whether the transfer is effected before or after the commencement of IT Act.	1. Income for the purpose of Section 64 includes losses. [P. Doriswamy Chetty 183 ITR 559 (SC)] [also see Expl. (2) to Section 64] 2. Section 60 does not <u>apply</u> if corpus itself



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				is transferred. [Grandhi Narayana Rao 173 ITR 593 (AP)]
61	Revocable transfer of Assets.	Transferor who transfers the Assets.	Clubbing not applicable if: 1. Trust/transfer irrevocable during the lifetime of beneficiaries/transferee or 2. Transfer made prior to 1-4-1961 and not revocable for a period of 6 years. Provided the transferor derives no direct or indirect benefit from such income in either case.	Transfer held as revocable 1. If there is provision to re- transfer directly or indirectly whole/part of income/asset to transferor; 2. If there is a right to reassume power, directly or indirectly, the transfer is held revocable and actual exercise is not necessary. [S. Raghbir Singh 57 ITR 408 (SC)] 3. Where no absolute right is given to transferee and asset can revert to transferor in prescribed circumstances, transfer is held revocable. [Jyotendrasinhji vs. S. I. Tripathi 201 ITR 611 (SC)]
64(1)(ii)	Salary, Commission, Fees or remuneration paid to spouse from a concern in which an individual has a substantial* interest.	Spouse whose total income (excluding income to be clubbed) is greater.	Clubbing not applicable if: Spouse possesses technical or professional <u>qualification</u> and remuneration is solely attributable to application of that knowledge/qualification.	1. The relationship of husband and wife must subsist at the time of accrual of the income. [Philip John Plasket Thomas 49 ITR 97 (SC)] 2.



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				Income other than salary, commission, fees or remuneration is not clubbed under this clause
64(1)(iv)	Income from assets transferred directly or indirectly to the spouse without adequate consideration.	Individual transferring the asset.	<p>Clubbing not applicable if: The assets are transferred; 1. With an agreement to live apart.2. Before marriage. 3. Income earned when relation does not exist.4. By Karta of HUF gifting co-parcenary <u>property</u> to his wife. L. Hirday Narain vs. ITO 78 ITR 26 (SC) 5. Property acquired out of pin money. R.B.N.J. Naidu vs. CIT 29 ITR 194 (Nag.)</p>	<p>1. Income earned out of Income arising from transferred assets not liable for clubbed. [M.S.S. Rajan 252 ITR 126 (Mad)]2. Cash gifted to spouse and he/she invests to earn interest. [Mohini Thaper vs. CIT 83 ITR 208 (SC)] 3. Capital gain on sale of property which was received without consideration from spouse [Sevential M. Sheth vs. CIT 68 ITR 503 (SC)] 4. Transaction must be real. [O.N. Mohindroo 99 ITR 583 (Delhi)]</p>
64(1)(vi)	Income from the assets transferred to son's wife.	Individual transferring the Asset.	<p><u>Condition:</u> The transfer should be without adequate consideration.</p>	Cross transfers are also covered [C.M.Kothari 49 ITR 107 (SC)]
64(1)(vii),(viii)	Transfer of assets	Individual	Condition: 1. The transfer	1. Transferor



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	by an individual to a person or AOP for the immediate or deferred benefit of his: (vii) – Spouse. (viii) – Son's wife.	transferring the Asset.	should be without adequate consideration.	need not necessarily have taxable income of his own. [P. Murugesan 245 ITR 301 (Mad)] 2. Wife means legally wedded wife. [Executors of the will of T.V. <u>Krishna</u> Iyer 38 ITR 144 (Ker)]
64(1A)	Income of a minor child [Child includes step child, adopted child and minor married daughter].	1. If the marriage subsists, in the hands of the parent whose total income is greater; or; 2. If the marriage does not subsist, in the hands of the person who maintains the minor child. 3. Income once included in the total income of either of parents, it shall continue to be included in the hands of some parent in the subsequent year unless	Clubbing not applicable for:— 1. Income of a minor child <u>suffering</u> any <u>disability</u> specified u/s. 80U. 2. Income on account of manual work done by the minor child. 3. Income on account of any activity involving application of skills, talent or specialized knowledge and experience.	1. Income out of property transferred for no consideration to a minor married daughter, shall not be clubbed in the parents' hands. [Section 27] 2. The parent in whose hands the minor's income is clubbed is entitled to an exemption up to Rs. 1,500 per child. [Section 10(32)]

		AO is satisfied that it is necessary to do so (after giving that parent opportunity of being heard)		
64(2)	Income of HUF from property converted by the individual into HUF property.	Income is included in the hands of individual & not in the hands of HUF.	Clubbing applicable even if: The converted property is subsequently partitioned; income derived by the spouse from such converted property will be taxable in the hands of individual.	Fiction under this section must be extended to computation of income also. [M.K. Kuppuraj 127 ITR 447 (Mad)]

\* An individual shall deemed to have substantial interest in a concern for the purpose of Section 64(1)(ii)

IF THE CONCERN IS A COMPANY	IF THE CONCERN IS OTHER THAN A COMPANY
Person's beneficial shareholding should not be less than 20% of voting power either individually or jointly with relatives at any time during the Previous Year. (Shares with fixed rate of dividend shall not be considered)	Person either himself or jointly with his relatives is entitled in aggregate to not less than 20% of the profits of such concern, at any time during the previous year.

Note :The clubbed income retains the same head under which it is earned.

<http://taxguru.in/income-tax/clubbing-of-income-under-the-income-tax-act-1961.html>

## Aggregation of Income

Aggregation of income under the class 'Income from Ordinary Sources'

- (1) Subject to other provisions of this section, the income from each source falling under a head of income for a financial year shall be aggregated and the income so aggregated shall be the income from that head for the financial year.
- (2) The income from the transfer of each investment asset during the financial year, as computed under section 49, shall be aggregated and the net result of such aggregation shall be the income from the capital gains, for the financial year.
- (3) The income from capital gains shall be aggregated with the unabsorbed preceding year capital loss, if any, and the net result of such aggregation shall be the current income under the head "Capital gains".

- (4) The income under the head "Capital gains" shall be treated as "nil" if the net result of aggregation under sub-section (3) is negative and the absolute value of the net result shall be the amount of "unabsorbed current capital loss", for the financial year.
- (5) The income from each business other than speculative business referred to in sub-section (3) of section 31 shall be aggregated and the income so aggregated shall be the income from the non-speculative business.
- (6) The income from each speculative business shall be aggregated and the income so aggregated shall be the gross income from the speculative business.
- (7) The gross income from the speculative business shall be aggregated with unabsorbed preceding year speculative loss, if any, and the net result of such aggregation shall be the income from the speculative business.
- (8) The aggregate of from the speculative business shall be treated as nil, if the "nil" result of aggregation in sub-section (7) is negative and the absolute value of the net result of aggregation shall be the amount of unabsorbed current speculative loss for the financial year.
- (9) The aggregate of income from the speculative business and income from the nonspeculative business shall be the income under the head "income from business".
- (10) The income from the activity of owning and maintaining horses for the purpose of horse race shall be aggregated with unabsorbed preceding year horse race loss, and the net result of such aggregation shall be the income from activity of owning and maintaining horse race and it shall be taken to be "nil", if the net result of such aggregation is negative and the absolute value of net result shall be the amount of unabsorbed current horse race loss for the financial year.
- (11) The income of every kind referred to in section 58, other than income from the activity of owning and maintaining horses for the purpose of horse race, shall be aggregated with income from the activity of owning and maintaining horse race and the income so aggregated shall be the income under the head "income from residuary sources".

### Aggregation of income from Ordinary Sources

- (1) The current income from ordinary sources shall be the aggregate of
  - (a) income under the head "income from employment";
  - (b) income under the head "income from house property";
  - (c) income under the head "income from bussiness";
  - (d) income under the head "capital gains", and;
  - (e) income under the head "income from residuary sources".
- (2) The current income from ordinary sources shall be aggregated with the unabsorbed preceding year loss from the ordinary sources, if any; and the net result of the aggregation shall be the gross total income from ordinary sources, for the financial year.
- (3) The gross total income from ordinary sources, for the financial year, shall be treated as "nil" if the net result of the aggregation under sub-section (2) is negative; and the absolute value of the net result shall be the amount of unabsorbed current loss from ordinary sources, for the financial year.

### Aggregation of income from special sources.

- (1) The income from a special source referred to in Part III of the First Schedule shall be the current income from the special source for the financial year.
- (2) The current income from the special source referred to in sub-section (1) shall be aggregated with the unabsorbed preceding year loss from the special source, if any; and

the income so aggregated shall be the gross total income from the special source, for the financial year.

- (3) Where the gross total income from the special source referred to in sub-section (2) is negative, such income shall be treated as "nil" and the absolute value of the net result shall be the amount of unabsorbed current loss from the special source for the financial year.
- (4) The gross total income from special source in respect of each special source computed under sub-sections (2) and (3) shall be aggregated and the net result of the aggregation shall be the total income from special sources for the financial year. Aggregation of income from Special Sources.

<http://bba.pz10.com/2013/06/aggregation-of-income.html>

1. Set Off of Loss from one Source against Income from another source under the same head of income. [Sec.70]
2. Set Off of Loss from one Head against income from another. [Sec.71]
3. Carry forward and set off of Loss under the head 'Income from House Property'. [Sec.71 B]
4. Carry Forward and Set Off of Business Losses [Sec.72]
5. Losses in Speculation Business [Sec.73]
6. Losses under the head "Capital Gains". [Sec.74]
7. Losses from certain specified sources falling under the head 'Income from Other Sources'. [Sec.74 A]
8. Table showing Set Off and Carry Forward of Losses

**INTRODUCTIONS:** The process of setting off of losses and their carry forward may be covered in the following Steps:

**Step-1 :** Inter-Source adjustment under the same head of income

**Step-2 :** Inter-head adjustment in the same assessment year and will be applied only if a loss cannot be set off under *Step-1*.

**Step-3 :** Carry Forward of Loss is applied only if a loss cannot be set off under *Step-1* & *Step-2*

### **1. SET OFF OF LOSS FROM ONE SOURCE AGAINST INCOME FROM ANOTHER SOURCE UNDER THE SAME HEAD OF INCOME [Sec. 70 ]**

If the net result for any assessment year in respect of any source falling under any head of income, other than "Capital gains", is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head. **Exceptions :**

1. Loss from speculation business ;
2. Long-Term Capital Loss ;
3. Loss from the activity of owning and maintaining race houses ;
4. Loss can not be set off against winnings from lotteries, crossword puzzles, etc. ;
5. Loss from sale of Securities.

**2. SET OFF OF LOSS FROM ONE HEAD AGAINST INCOME FROM ANOTHER [Sec. 71]** If the Net Result of the computation under any head of income, *other than "Capital gains"*, is a loss , the same can be set off against the income from other heads subject to the following

exceptions...

1. Loss from speculation business can not be set off against any other income
2. Long-Term Capital Loss ; which can only set off against “Capital Gain”.
3. Loss from the activity of owning and maintaining race houses ; which can not be set off against any other income.
4. Loss can not be set off against winnings from lotteries, crossword puzzles, etc. ;
5. Loss from sale of Securities.
6. Business Loss can not be set off against Salary Income.

### 3. CARRY FORWARD AND SET OFF OF LOSS UNDER THE HEAD “INCOME FROM HOUSE PROPERTY”. [ Sec. 71 B ]

Any Loss under the head “Income from house property” cannot be wholly set off against income from any other head. If such Loss can not be set off, then the whole loss shall be carried forward to the following assessment year and—

- (i) be set off against the income from house property for that assessment year; and
- (ii) the loss, if any, which has not been set off wholly shall be carried forward to the following assessment year not more than (8) eight assessment years immediately succeeding the assessment year for which the loss was first computed.

### 4. CARRY FORWARD AND SET OFF OF BUSINESS LOSSES. [ Sec. 72]

The right of carry forward and set off of loss arising in a business or profession is subject to the following restrictions :

**1. Loss can be set off only against Business Income :** A loss to the assessee under the head “Profits and gains of business or profession”, and such loss cannot be or is not wholly set off against income under any head of income and he has no income under any other head, the whole loss shall be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him ;

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on :

**2. Loss can be carried forward for 8 Years :** No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

**3. Return of Loss should be submitted in Time :** A Loss cannot be carried forward unless it is determined in pursuance of a Return Filed within the time allowed.

### 5. LOSSES IN SPECULATION BUSINESS [ Sec. 73]

1. Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains of another speculation business.

2. Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off, the whole loss where the assessee had no income from any other speculation business, shall be carried forward to the following assessment year, and—

- (i) it shall be set off against the profits and gains of any speculation business and
- (ii) The loss which cannot be wholly so set off shall be carried forward to the following assessment year and so on.

3. No loss shall be carried forward under this section for more than 4 [four] assessment years immediately succeeding the assessment year for which the loss was first computed.

4. Return of Loss should be submitted in Time : A Loss cannot be carried forward unless it is determined in pursuance of a Return Filed within the time allowed.

### 6. LOSSES UNDER THE HEAD “CAPITAL GAINS” [ Sec. 74 ]

1. In case of any Loss under the head “Capital gains”, the whole loss shall be carried forward to the following assessment year, and—

(a) Any loss relates to a short-term capital asset shall be set off against income, from “Capital gains”.

(b) Any loss relates to a long-term capital asset shall be set off against income from “Capital gains” assessable for that assessment year in respect of any other capital asset other than a short-term capital asset;

(c) if the loss cannot be wholly so set off shall be carried forward to the following assessment year and so on.]

2. No loss shall be carried forward for more than (8) eight assessment years immediately succeeding the assessment year for which the loss was first computed.

### 7. LOSSES FROM CERTAIN SPECIFIED SOURCES FALLING UNDER THE HEAD “INCOME FROM OTHER SOURCES” [ Sec. 74A ]

The amount of loss incurred by the assessee in the activity of owning and maintaining race horses in any assessment year shall not be set off against income from any source other than the activity of owning and maintaining race horses in that year and shall be carried forward to the following assessment year and—

(a) it shall be set off against the income from the activity of owning and maintaining race horses assessable for that assessment year :

(b) if the loss cannot be wholly so set off shall be carried forward to the following assessment year and so on; so, however, that no portion of the loss shall be carried forward for more than 4 assessment years immediately succeeding the assessment year.

### 8. TABLE SHOWING SET OFF AND CARRY FORWARD OF LOSSES

Head of income under which Loss is incurred	Whether loss can be set off within the same year		Whether Losses can be carried forward and set off in subsequent years.		Time limit for carry forward and set off of losses
	Under the same head	Under any other Head	Under the same head	Under any other Head	
1. Income from Salaries	NA	NA	NA	NA	NA
2. Income from House Property	Yes	Yes	Yes	No	8 years

3. Profit and gain from Business or Professions :					
a. Non-speculation Business	Yes	Yes	Yes	No	8 years
b. Speculation Business	Yes	No	Yes	No	8 years
c. Unabsorbed Depreciation	Yes	Yes	Yes	No	N.A.
d. Unabsorbed Investment or Development allowance.	Yes	Yes	Yes	Yes	8 years
4. Capital Gain (Short-Term)	Yes	No	Yes	No	8 years
5. Capital Gain (Long -Term)	Yes	No	Yes	No	8 years
6. Income from Other Sources:					
a. Lotteries, Crossword, Puzzle, Card Games, Gambling, or betting of any form.	Yes	No	No	No	NIL
b. Loss from activity of owning and maintaining Race Horses	Yes	No	Yes	No	4 Years
c. Other Income	Yes	Yes	No	No	NIL

<http://incometaxmanagement.com/Pages/Gross-Total-Income/Set-Off-Carry-Forward-Losses/Set-Off-and-Carry-Forward-of-Losses.html>

## Deductions from Total Income

### Introductions

#### 1. Deductions in respect of certain Payments.

1. Deduction in respect of Life Insurance Premia, Deferred Annuity, Contribution to PF, etc. [ Sec. 80 C ]
2. Deduction in respect of Contribution to certain Pension Funds [Sec.80CCC]
3. Deduction in respect of Contribution to Pension Scheme of Central Government or any other Employers [ Sec. 80 CCD]
4. Deduction in respect of Health or Medical Insurance Premia [ Sec.80D]
5. Deduction in respect of Maintenance Including Medical Treatment of a Dependent who is a person with Disability [ Sec. 80 DD ]
6. Deduction in respect of Medical Treatment , etc. [ Sec. 80 DDB ]
7. Deduction in respect of Interest of Loan taken for Higher Education [Sec.80 E ]
8. Deduction in respect of Donations to certain Funds, Charitable Institutions , etc. [ Sec. 80 G ]
9. Deduction in respect of Rents Paid [ Sec. 80 GG ]

#### 2. Deductions in respect of certain Incomes

1. Deduction in respect of Profit and Gains from Industrial Undertaking or Enterprises engaged in infrastructure Development [ Sec. 80 IA ]
2. Deduction in respect of Profit and Gains from Industrial Undertakings or enterprises

- engaged in development of Special Economic Zone. [Sec. 80 IAB ]
3. Deduction in respect of Profit & Gain from certain Industrial Undertaking other than Infrastructure Development Undertaking [Sec.80-IB]
  4. Special Provisions in respect of Certain Undertaking or Enterprises in certain special category States. [ Sec. 80-IC]
  5. Deduction in the case of Hotels and Convention center in NCR [Sec.80ID]
  6. Deduction in respect of certain undertaking in North-Eastern States [Sec.80-IE].
  7. Deduction In Respect Of Profit And Gains From Business Of Collecting And Processing Of Bio-Degradable Waste. [ Sec. 80-JJA]
  8. Deduction In Respect Of Employment Of New Workmen [ Sec. 80-JJAA]
  9. Deduction In Respect Of Certain Income Of Offshore Banking Units And International Financial Services Center. [ Sec. 80-LA]
  10. Deduction In Respect Of Income Of Co-Operative Societies. [ Sec. 80P ]
  11. Deduction In Respect Of Royalty Income, Etc., Of Authors Of Certain Books Other Than Text-Books [ Sec. 80-QQB ]
  12. Deduction In Respect Of Royalty On Patents [ Sec. 80-RRB ]

### 3. Other Deductions

1. Deduction In Case Of A Person With Disability [ Sec. 80 U ]

<http://incometaxmanagement.com/Pages/Gross-Total-Income/Tax-Deductions/Deductions-from-Total-Income.html>

## Rebates and Reliefs

Rebate of Income Tax for Resident Individuals [Sec. 87A]

**1. Applicability:** Resident Individual.

**2. Income Limit:** Total Income does not exceed ` 5,00,000 (i.e Assessee who are in 10% tax slab).

**3. Amount of Rebate:** 100% of Tax Amount or ` 2,000, whichever is less.

Relief for Salaried Employees [Sec. 89]

1. Applicability for claiming Relief u/s 89:

(a) The Employee's Salary is paid in arrears or in advance, and he receives Salary for more than 12 months in one financial year, or,

(b) He is in receipt of Profit in lieu of Salary u/s 17(3).

Due to the above reasons, his Income is assessed at a **rate higher** than that at which it would otherwise have been assessed.

2. Eligible Receipts: The Assessee is entitled to claim Relief u/s 89 for the following receipts —

(a) Arrears of Salary.

(b) Advance Salary.

(c) Leave Encashment while in service. [Circular No.431/12-09-1985]

(d) Gratuity or Voluntary Retirement Compensation.

(e) Any other Profit in lieu of Salary.

(f) Family Pension specified in Sec.57, received in arrears.

3. Claim of Relief: The Relief should be claimed by the Employee by way of declaration in the prescribed

Form 10E. Such claim can be made to the Employer at the time of making TDS. The Employer is bound to consider the claim of relief u/s 192(2A).

4. VRS vs. Relief: When an Assessee claims exemption u/s 10(10C) for VRS Compensation, he is **not** eligible for Relief u/s 89(1)

[www.shrigurukripsa.com/...upload=12.%20Rebate%20and%20Relief.pdf...](http://www.shrigurukripsa.com/...upload=12.%20Rebate%20and%20Relief.pdf...)

## Tax Deduction at Source:

Tax deducted at source is one of the modes of collecting Income-tax from the assesses in India. Such collection of tax is effected at the source when income arises or accrues. Hence where any specified type of income arises or accrues to any one, the Income-tax Act enjoins on the payer of such income to deduct a stipulated percentage of such income by way of Income-tax and pay only the balance amount to the recipient of such income.

The tax so deducted at source by the payer has to be deposited in the Government treasury to the credit of Central Govt. within the specified time. The tax so deducted from the income of the recipient is deemed to be payment of Income-tax by the recipient at the time of his assessment.

Income from several sources is subjected to tax deduction at source. Presently this concept of T.D.S. is also used as an instrument in enlarging the tax base. Some of such income subjected to T.D.S. are salary, interest, dividend, interest on securities, winnings from lottery, horse races, commission and brokerage, rent, fees for professional and technical services, payments to non-residents etc. It is always considered as an Advance tax which is paid to the government when we are being paid for provision made by us in the form of products or services.

<http://www.saraltaxoffice.com/resources/tds.php>

## Computation of total income of individuals and firms: Tax liability of an individual and firm

Following is the statement of calculating the taxable income and tax.

Particulars	Amount
Income from Salary	
Add: Income from House Property	
Add: Profit and Gain from Business and Profession	
Add: Capital Gains	
Add: Income from Other Sources	
Gross Total Income	
Less: Deductions	
Taxable Income	
Tax on Taxable Income	
Add: Surcharge	
Tax and Surcharge	
Add: Education Cess	
Total Tax	
Less: Advance Tax	

Less: T.D.S

Tax Payable at the time of submission of Income

<http://www.studymode.com/essays/Computation-Of-Taxable-Income-Of-Individual-532663.html>

## Definition of Firm, Partner [Section 2(23)]

The Income-tax Act, 1961, does not define the term "Firm". Section 2(23) which deals with definition simply states that Firm, Partner and Partnership have the meanings respectively assigned to them in the Indian Partnership Act, 1932, as a person<sup>1[2]</sup> but the expression Partner shall also include any person who being a minor, has been admitted to the benefits of partnership.

Thus, under the scheme of income-tax, Firm has a distinct assessable personality. However, for a definition of firm we have to refer back to the provisions of *Indian Partnership Act, 1932*. As per Section 4 of *The Indian Partnership Act, 1932*, Partnership is the relationship between persons who have agreed to share the profits of a business carried on by all or any of them. Persons who have entered into partnership with one another are called partners individually and a firm collectively. Section 5 states that the relation of partnership arises from contract and not from status.<sup>2[3]</sup>

**2. Firm cannot be a partner:** The word person in section 4 of Partnership Act contemplates only natural or artificial *i.e.*, legal persons. Therefore only individuals or companies can be partners. A firm is not person and as such is not entitled to enter into partnership with another firm or Hindu undivided family or an individual.<sup>3[4]</sup>

But, however, if on true reading of the instrument of partnership, it is found that the constituent members of a firm and not the firm itself have entered into partnership and that fact is borne out both by the recital and the fact that the partnership deed has been signed by the constituent members of the two firms, the refusal to register the firm on the ground that there was no valid

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<sup>1[2]</sup> See Section 2(31) states: 'Person' includes: (i) an individual; (ii) HUF; (iii) a company; (iv) a firm, etc.

<sup>2[3]</sup> **From the analysis of the above definition of the partnership it will be seen that it contains three elements:**  
(i) There must be at least two or more persons who must have entered into in agreement. (ii) The agreement must be to carry on business and share profits. (iii) The business must be carried on by all or any of the persons concerned, acting for all.

<sup>3[4]</sup> *Dulichand Laxminarayan v CIT* (1956) 29 ITR 535 (SC)

partnership is erroneous.<sup>4[5]</sup>

**3. HUF as a partner:** Though Hindu undivided family is included in the definition of person in section 2(31) of the Income-tax Act, 1961, but it is not a juristic person for all purpose. HUF is not like a corporation or limited company, and it has, therefore, no legal entity different from, and separate from the members who comprise the Hindu undivided family.<sup>5[6]</sup>

However, it was held that there is no legal bar in members of the HUF entering into partnership.<sup>6[7]</sup> Mere mention of a partner as representing as Karta of a family will not make a HUF as a partner.<sup>7[8]</sup>

When a Karta or a Manager of HUF enters into a contract of partnership with a stranger, the other members of the family do not *ipso facto* become partners in the firm. In such a case, family as a unit does not become a partner. The other members of the family are not parties of the firm so constituted and as such the other members cannot demand an inspection of the account books of the firm nor bring about dissolution of the firm or winding up the business.<sup>8[9]</sup> The Karta can join others in partnership in dual capacity *i.e.* in his individual capacity as well as Karta of the HUF.<sup>9[10]</sup>

**4. Firm should carryon business and share profits:** The next point that will be noticed is that these persons must run a business. Then, the business must be run by them with the intention of realizing profits. Then, it is not sufficient if the profits are intended to be taken' exclusively by one of the partners. The agreement must be that everyone of the partners should share the profits. Then, there must be an agreement between the parties that the business would be run by all or by one of them acting for all. However in *Mandsaur Starch and Chemicals v CIT*<sup>10[11]</sup> it was held that if there is no intention to carryon business, then there is no partnership under section 4 of the Partnership Act.

***Other instances of carrying on of business:***

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<sup>4[5]</sup> *Chhotalal Devchand v CIT* (1958) 34 ITR 219 (SC)

<sup>5[6]</sup> *Ram Laxman Sugar Mills v CIT* (1967) 66 ITR 613 (SC)].

<sup>6[7]</sup> *CIT v Maskara Tea Estate* (1977) 108 ITR 70 (Gau)

<sup>7[8]</sup> *CIT v R. S. Singh & Co* (1979) 118 ITR 30 (Cal)

<sup>8[9]</sup> *CIT v Bagyalakshmi & Co* (1956) 55 ITR 660 (SC).

<sup>9[10]</sup> *CIT v Raghavji Anandji & Co.* (1975) 100 ITR 246 (Bom).

<sup>10[11]</sup> (1981) 127 ITR 727 (MP)

- (i) Financing others business was held as carrying on of business.<sup>11[12]</sup>
- (ii) Activity of catering and providing facilities for indoor and outdoor games.<sup>12[13]</sup>
- (iii) Sharing of profits by sub-partnership formed by divided members of the family through *Karta* as partner in the main firm.<sup>13[14]</sup>
- (iv) Taking coal mine on lease and then leasing it out to agent.<sup>14[15]</sup>

***Instances where it was held that business was not carried on:***

- (i) Where entire business of the colliery was leased out.<sup>15[16]</sup>

**5. Business Classification under the Income-tax Act not conclusive:** The important thing to be noted is that the activity must come within the purview of the term as used in the Partnership Act. The term business is of wide import and represents some organized activity. Therefore, so long there is some real, substantive, systematic and organized course of activity or conduct with a set purpose, it would constitute business.

**6. Co-ownership and partnership are different:** Co-ownership should not be confused with an agreement of partnership. There might be some common characteristics between both of them, but basically both are quite different *e.g.*, two co-owners may appoint a common manager for facility of cultivation and management of their farms without entering into a partnership and the fact that the profits or even the losses are distributed in accordance with the shares of the two owners does not necessarily establish a partnership within the meaning of the Partnership Act.

**7. Position of Firm under the Income-tax Act:** Legally, a partnership firm does not have a separate entity from that of the partners constituting the firm as the partners are the owners of the firm. However, a firm is treated as a separate tax-entity under the Income-tax Act. Salient features of the assessment of a firm are as under:

- (1) A firm is treated as a separate tax entity.
- (2) While computing the income of the firm under the head 'Profits and gains of business or

<sup>11[12]</sup> *CIT v Degaon Gangareddy G Ramkishan & Co.* (1978) 111 ITR 93 (AP)

<sup>12[13]</sup> *A.N. Rangappa & Sons v CIT*(1984) 145 ITR 250 (Kar)

<sup>13[14]</sup> *Shiv Narain Agarwal v CfT*, (1983) 139 ITR 999 (All)

<sup>14[15]</sup> *CIT v Pure Dhansar Coal Co.*, (1985) 154 ITR 857 (Pat)

<sup>15[16]</sup> *CIT v Koya & Khas Koya Colliery Co.*, (1985) 156 ITR 206 (Pat)

profession', besides the deductions which are allowed u/S 30 to 37, *special deduction* is allowed to the firm on account of *remuneration to working partners and interest paid to the partners*. However, it is subject to certain limits laid down u/S 40(b).

(3) Share of profit which a partner receives from the firm (after deduction of remuneration and interest allowable) shall be fully exempt in the hands of the partner. However, only that part of the interest and remuneration which was allowed as a deduction to the firm shall be taxable in the hands of the partners in their individual assessment under the head 'profits and gains of business or profession'.

(4) The firm will be taxed at a flat rate of 35%<sup>16[17]</sup> *plus* surcharge @ 2.5%<sup>17[18]</sup> *plus* education cess @ 2% after allowing deduction for interest on capital and loan of the partners and remuneration to working partners.

(5) The firm will be assessed as a firm provided conditions mentioned under section 184 are satisfied. In case these conditions are not satisfied in a *particular assessment year*, although the firm will be assessed as firm, but no deduction by way of payment of interest, salary, bonus, commission or remuneration, by whatever name called, made to the partner, shall be allowed in computing the income chargeable under the head "profits and gains of business or profession" and such interest, salary, bonus, commission or remuneration shall not be chargeable to income-tax in the hands of the partner.

**8. Assessment of firm:** From point (5) above, it may be concluded that if the firm satisfies the conditions laid down under Section 184, the firm shall be eligible for deduction on account of interest, salary, etc. while computing its income under the head business and profession. However, it will be subject to the maximum of the limit specified under Section 40(b). On the other hand, if such conditions are not satisfied, no deduction shall be allowed to the firm on account of such interest, salary, bonus, etc.

Besides the above, as per Section 184(5), if there is any such failure on the part of the firm as mentioned in Section 144, the firm shall not be eligible for any deduction on account of any interest to the partners or remuneration to the working partners.

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<sup>16[17]</sup> 30% for assessment year 2006-07.

<sup>17[18]</sup> 10% for assessment year 2006-07.

## 9. Essential conditions to be satisfied by a firm to be assessed as firm and to be eligible for deduction of interest, salary, etc. to the partners [Section 184]

(A) In the first assessment year the following conditions must be satisfied by the firm:

- (1) *Partnership is evidenced by an instrument i.e. there is a written document giving the terms of partnership.*
- (2) *The individual share of the partners are specified in that instrument*
- (3) *Certified copy<sup>18[19]</sup> of partnership deed must be filed*

(B) In the subsequent assessment years: Once the firm is assessed as a firm for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or the share of the partners.

Where any such change had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year.

### **Circumstance where the firm will be assessed as a firm but shall not be eligible for deduction on account of interest, salary, bonus, etc.:**

In the following two cases, the firm shall be assessed as a firm but shall not be eligible for any deduction on account of interest to a partner and remuneration to a working partner although the same are mentioned in the partnership deed:

- (a) Where there is, on the part of the firm, any such failure as is mentioned in section 144 (relating to the best judgment assessment). [Section 184(5)]
- (b) Where the firm does not comply with the conditions mentioned under section 184 discussed above. [Section 185]

## 10. Computation of Total Income of the firm

As discussed above, the total income of the partnership firm will be determined as a separate

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<sup>18[19]</sup> *What a certified copy means:* The Explanation to Section 184(2) lays down the implication of the term certified copy of the instrument which is to accompany the return. The certified copy means that the copy of the instrument of partnership is to be certified in writing by all the partners except minors. It means that the copy of the deed should carry the expression certified to be true copy and below that it should carry the signature with date of all the major partners.

entity and it will be computed under various heads of income. However, while computing taxable profits under the head '*profits and gains of business or profession*', a deduction is allowable to the firm on account of interest and remuneration payable to the partners. Deduction of interest to a partner is allowable u/S 36 and remuneration to a working partner will be allowed u/S 37.

Section 40(b) deals with the amounts which are not deductible in case of a firm assessable as such. Therefore, deductions on account of interest and remuneration to the partners can be claimed under Sections 36 or 37, as the case may be, but it will be subject to the conditions prescribed by Section 40(b), which are as under:

- (1) Payment of salary, bonus, commission or remuneration by whatever name called, to a non-working partner shall not be allowed as deduction.
- (2) Payment of *remuneration to working partners* and *interest to any partner* will be allowed as deduction only when it is authorised by and is in accordance with partnership deed.
- (3) Payment of remuneration/interest, although authorised by the partnership deed but which relates to a period prior to the date of such partnership deed, shall not be allowed.
- (4) Interest payable to a partner, although authorised by the partnership deed shall be allowable as a deduction subject to a maximum of 12% (18% up to 31-5-2002) simple interest per annum. If the partnership deed provides for interest at less than 12% p.a., the deduction of interest shall be allowed to the extent provided by the partnership deed.
- (5) The payment of remuneration to working partner, although relates to a period after the date of the partnership deed and authorised by the partnership deed, shall be allowed as a deduction only to the extent of the following limits:

**10A. Remuneration paid to individual who is a partner in representative capacity:** In the case of *Rashik Lal & Co v CIT*<sup>19[20]</sup> the Supreme Court held that if commission is paid to a member of HUF who is a partner in a firm representing his HUF, such commission paid cannot be regarded as payment to HUF and such commission shall be in his individual capacity and will thus be hit by the provisions of section 40(b). However, the Supreme Court in the case of *K.S.*

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<sup>19[20]</sup> (1998) 229 ITR 458 (SC)

*Subbaiah Pillai v CIT*<sup>20[21]</sup> (SC) held that where the remuneration is paid by a business, which is financed by the joint family, the issue as to whether such amount should be considered in the hands of the joint family or in the individual assessment has to be decided on the facts as to whether such amount is payable because of the personal qualification and exercise of individual exertion, or whether it is because of investment of family funds in the business of the company .

**10B.Clarification:** In some cases, the partnership deed does not specify the amount of remuneration payable to each individual working partner. It just mentions that the remuneration to working partners will be the amount of remuneration allowable under the provisions of Section 40(b). Similarly, some partnership deeds mention that the amount of remuneration to working partners will be as mutually agreed between the partners at the end of the year.

In respect of the above, the CBDT has given a clarification that from assessment year 1997-98 no deduction u/s 40(b) will be admissible unless the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration.

## **11. Computation of Book Profit [Explanation 3 to Section 40(b)]**

**Book-Profit, as stated above, will be computed as under:**

Step 1: Compute the income of the firm under the head 'profit and gains of business or profession' as per Sections 28 to 44D *i.e.* start with the net profit as per profit and loss account and make additions and deductions as per Sections 28 to 44D already explained under the chapter Business or Profession. Interest paid/payable to partners in excess of 12%/18% shall also be disallowed as per section 40(b).

Step 2: Add aggregate amount of remuneration paid/payable to all the partners (whether working or non-working) of the firm, if it has been debited to profit and loss account. The aggregate of Step-1 and Step-2 is Book Profit.

## **12. Provisions regarding set off and carry forward of losses of firms**

There are no special provisions for set off and carry forward of losses of firms. These are the same as applicable in case of other assesses.

### **12A. Carry forward and Set off of losses in case of change in constitution of firm [Section**

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<sup>20[21]</sup> (1999) 237 ITR 11

**78]:** (1) Where a change has occurred in the constitution of a firm, due to retirement of a partner or death of a partner, the firm shall not be entitled to carry forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year. [Section 78(1)]

(2) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, no person other than the person incurring the loss shall be entitled to have it carried forward and set off against his income. [Section 78(2)]

### **13. Treatment of share of profit, interest and remuneration received by a partner from a firm**

1. Share of profit in the hands of the partner shall be fully exempt under Section 10(2A).
2. Interest received/receivable by a partner shall be included in the Total Income of the partner under the head 'Profits and gains of business or profession' to the extent deduction of interest was allowed to the firm as per Section 40(b), which cannot exceed 12% per annum.
3. Remuneration to a working partner shall also be included in the Total Income of the partner under the head 'profits and gains of business or profession' to the extent deduction of remuneration was allowed to the firm as per Section 40(b)<sup>21[22]</sup>.

### **14. Change in constitution of a firm [Section 187]**

Where at the time of making an assessment under section 143 or section 144, it is found that a change has occurred in the constitution of a firm, the assessment shall be made *on the firm as constituted at the time of making the assessment*.

When is there a change in the constitution of the firm [Section 187(2)]: There is a change in the constitution of the firm-

(a) if one or more of the partner cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the

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<sup>21[22]</sup> For example, if the partner was paid a remuneration of Rs. 60,000 by the firm, but as per section 40(b) deduction was allowed to the firm on account of such remuneration to the extent of Rs. 50,000, Rs. 50,000 only will be included in the Total Income of the partner. Balance Rs. 10,000 may be treated as share of profit which is exempt.

change continue as partner or partners after the change; or

(b) where all the partners continue with a change in their respective shares or in the shares of some of them.

Where a partnership deed provides that death shall not result into the dissolution of the firm, such provision is lawful under section 42 of the Partnership Act; on the death of the partner, a partnership is not dissolved and the business is continued by the reconstituted partnership, then only one assessment is to made for the entire year.<sup>22[23]</sup>

**15. A firm will not be deemed to be dissolved on retirement of a partner even if the partnership deed says so:** A perusal of section 187(2)(a) of the Income-tax Act, 1961, shows that by legal fiction for the purposes of the Income-tax Act, if even one of the partners continues to remain in the firm then the firm will not be deemed to be dissolved. Hence, even if the partnership deed says that the firm will stand dissolved on the retirement of a partner, for the purposes of the Income-tax Act, it will not be deemed to be dissolved in view of section 187(2)(a).<sup>23[24]</sup>

**16. Dissolution of a firm due to death of any partner will not be considered as change in the constitution of the firm [Proviso to section 187]**

However, in the case of *CIT v Jai Mewar Wine Contractors*<sup>24[25]</sup> it was held that even if the partnership deed is silent on the contingency of death of a partner, it need not dissolve the firm as it was pointed out that a clause for continuation of the partnership without dissolution may not be express and it may be inferred from the conduct of the partners consequent on the death. The only exception in this case shall be where there are only two partners so that death of one cannot avoid dissolution.

**17. Succession of one firm by another firm [Section 188]**

Where a firm carrying on a business or profession is succeeded by another firm, *and the case is not one covered by section 187*, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the *provisions of section 170*.

As per section 170 the predecessor firm shall be assessed in respect of the income of the

<sup>22[23]</sup> *CIT v Empire Estate*, (1996) 218 ITR 355 (SC)

<sup>23[24]</sup> *CIT v Ratanlal Garib Das*, (2003) 261 ITR 200 (All)

<sup>24[25]</sup> (2001) 251 ITR 785 (Raj)

previous year in which succession took place up to the date of succession. The successor firm shall be assessed in respect of the income of the previous year after the date of succession.

## **18. Final dissolved or business discontinued [Section 189]**

Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to above from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

## **19. Tax treatment of LLP**

UK LLP Act, Section 10 lays down that a trade, profession or business carried on by an LLP, with the view to profit, will be treated as carried on in partnership by its members and not by the LLP itself. Thus, any asset held by an LLP, or any tax chargeable on gains made will be treated as held by the partners, or gains made by the partners, and not by the LLP itself. In other words, an LLP enjoys a pass through status and is not taxable as such; the taxation liability falls on the partners in their individual capacity. In the USA, too, LLPs enjoy a pass through status for the purposes of taxation. The profits or losses of the LLP pass through the business and are reported on each partner's personal returns.

The committee<sup>25[26]</sup> recommended the same pass through status for LLPs in India. However, the committee recognized that it has neither consulted, nor got the views of the Ministry of Finance (Department of Revenue) in this regard. While recommending a taxation regime similar to that

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<sup>25[26]</sup> Naresh Chandra Committee Report.

obtaining in the USA and UK, the committee urged the Department of Company Affairs to incorporate such a regime in consultation with the tax authorities concerned.

The partners of an LLP, which is carrying on a business in partnership with a view to profit, are treated for the purpose of income tax and capital gains tax as if they were partners carrying on business in partnership, despite the fact that an LLP is a body corporate. It also provides that property of LLP will be treated for those purposes as property of its partners. This ensures that the partners will be individually liable to tax on their share of the profits of the trade, profession or business carried on by the LLP. Further, the assets of LLP will be treated as assets held by partners for the purpose of taxing capital gains. This ensures that the partners of LLP, rather than the LLP itself, will be liable to tax for capital gains on the disposal of LLP assets. This approach brings LLPs in line with the approach adopted for partnerships, which similarly treats assets as held by the partners rather than by the partnership.<sup>26[27]</sup>

**20. Unlimited Liability Is Major Disadvantage** - The major disadvantage of partnership is the unlimited liability of partners for the debts and liabilities of the firm. Any partner can bind the firm and the firm is liable for all liabilities incurred by any firm on behalf of the firm. If property of partnership firm is insufficient to meet liabilities, personal property of any partner can be attached to pay the debts of the firm.

**20A. Partnership Firm is not a legal entity** - It may be surprising but true that a Partnership Firm is not a legal entity. It has limited identity for purpose of tax law. As per Section 4 of Indian Partnership Act, 1932, 'partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. Under partnership law, a partnership firm is not a legal entity, but only consists of individual partners for the time being. It is not a distinct legal entity apart from the partners constituting it.<sup>27[28]</sup>

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<sup>26[27]</sup> <http://news.indiamart.com/news-analysis/global-tax-norms-lik-15085.html>

<sup>27[28]</sup> *Malabar Fisheries Co. v. CIT* (1979) 120 ITR 49

**20B. Firm Legal Entity For Purpose Of Taxation** - For tax law, income-tax as well as sales tax, partnership firm is a legal entity.<sup>28[29]</sup> Though a partnership firm is not a juristic person, Civil Procedure Code enables the partners of a partnership firm to sue or to be sued in the name of the firm.<sup>29[30]</sup> A partnership firm can sue only if it is registered

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<sup>28[29]</sup> State SC 455, CIT v. G Parthasarthy Naidu (1999) 236 ITR 350

<sup>29[30]</sup> Ashok Transport Agency v. Awadhesh Kumar 1998(5) SCALE

## Unit IV

### Tax Authorities

#### Powers:

##### Income Tax Authorities and their Powers

The Government of India has constituted a number of authorities to execute the Income Tax Act and to control the Income Tax Department efficiently.

The **Central Board of Direct Taxes** is the supreme body in the direct tax set-up. It has to perform several statutory functions under the various acts and it is responsible for the formulation and implementation of different policies relating to direct taxes administration. The Board consists of a Chairman and six members.

##### Appointment of Income Tax Authorities in India

The Central Government can appoint those persons which it thinks are fit to become Income Tax Authorities. The Central Government can authorize the Board or a Director-General, a Chief Commissioner or a Commissioner or a Director to appoint income tax authorities below the ranks of an Deputy Commissioner or Assistant Commissioner, According to the rules and regulations of the Central Government controlling the conditions of such posts.

#### Powers of Income Tax Authorities

1) **Power relating to Discovery, Production of evidence, etc:** The Assessing Officer, The Joint Commissioner, the Chief Commissioner or the Commissioner has the powers as are provided in a court under the code of Civil Procedure, 1908, when trying to suit for the following matters:

- (a) discovery and inspection;
- (b) to enforce any person for attendance, and examining him on oath
- (c) issuing commissions; and
- (d) compelling the production of books of account and other document.

2) **Power of Search and Seizure:** Today it is not hidden from income tax authorities that people evade tax and keep unaccounted assets. When the prosecution fails to prevent tax evasion, the department has the to take actions like search and seizure.

3) **Requisition of Books of account, etc:** Where the Director or the Director-General or Commissioner or the Chief Commissioner in consequence of information in his possession, has reason to believe that (a), (b), or (c) as mentioned under section 132(1) and the book of accounts or other documents or the assets have been taken under custody by any authority or officer under any other law, then the Chief Commissioner or the Director General or Director or Commissioner can authorize any Joint Director, Deputy Director, Joint Commissioner, Assistant Commissioner, Assistant Director, or Income tax Officer to require the authority to provide sue books of account, assets or any documents to the requisitioning officer, when such officer is of the opinion that it is no longer necessary to retain the same in his custody.

4) **Power to Call for Information:** The Commission The Commissioner The Assessing Officer or the Joint Commissioner may for the purpose of this Act:

- (a) can call any firm to provide him with a return of the addresses and names of partners of the firm and their shares;
- (b) can ask any Hindu Undivided Family to provide him with return of the addresses and names of members of the family and the manager;
- (c) can ask any person who is a trustee, guardian or an agent to deliver him with return of the names of persons for or of whom he is an agent, trustee or guardian and their addresses;
- (d) can ask any person, dealer, agent or broker concerned in the management of stock or any commodity exchange to provide a statement of the addresses and names of all the persons to whom the Exchange or he has paid any sum related with the transfer of assets or the exchange has received any such sum with the particulars of all such payments and receipts;

5) Power of Survey: The term 'survey' is not defined by the Income Tax Act. According to the meaning of dictionary 'survey' means casting of eyes or mind over something, inspection of something, etc. An Income Tax authority can have a survey for the purpose of this Act.

The objectives of conducting Income Tax surveys are:

- To discover new assesseees;
- To collect useful information for the purpose of assessment;
- To verify that the assessee who claims not to maintain any books of accounts is in-fact maintaining the books;
- To check whether the books are maintained, reflect the correct state of affairs.

6) **Collection of Information:** For the purpose of collection of information which may be useful for any purpose, the Income tax authority can enter any building or place within the limits of the area assigned to such authority, or any place or building occupied by any person in respect of whom he exercises jurisdiction.

## Procedure for Adjudication and Settlement

### Introduction

The Settlement Commission was set up in 1976 on the recommendations of the Wanchoo Committee to provide a high level machinery for settlement of individual cases of tax evasion. The Commission was established as a forum for mediation and as a means to settle across the board tax liabilities in complicated cases thereby avoiding endless and prolonged litigation and consequential strain on the investigational resources of the Income Tax Department. It was therefore intended to play a crucial role in settlement of cases with a resultant gain to revenue.

The main objectives for setting up of the Settlement Commission were:

- To provide a machinery for errant tax payers to make a clean breast of their affairs through compromise and settlement.
- To ensure disclosure of modus operandi in tax evasion by errant tax payers wishing to avail of the settlement machinery.
- To reduce litigation.
- To ensure speedy collection of taxes at low cost.

### Organisational structure of the Commission

#### PRINCIPAL BENCH

Chairman	
Member	Member
Directors of investigation	Secretary
Addl./Dy. Director of Investigation	Administrative Officer
Enquiry Officers and other Complementary Staff	Superintendent and other Complementary staff

#### Additional bench

Chairman	
Member	Member
Directors of investigation	Secretary
Addl./Dy. Director of Investigation	Administrative Officer
Enquiry Officers and other Complementary Staff	Superintendent and other Complementary staff

Initially there was only one bench of Settlement Commission at Delhi. Three more benches, one each at Mumbai, Kolkata and Chennai, have been set up in 1987. The bench at Delhi is known as Principal bench. The other three benches are known as Additional benches.

#### Law and Procedure

Chapter XIX A of the Income Tax Act, 1961 (sections 245A to 245L) and Chapter VA of the Wealth Tax Act, 1957 (sections 22A to 22L), containing the entire gamut of provisions and procedures relating to the Settlement Commission, were introduced by the Taxation Laws (Amendment) Act 1975 and became effective from 1.4.1976.



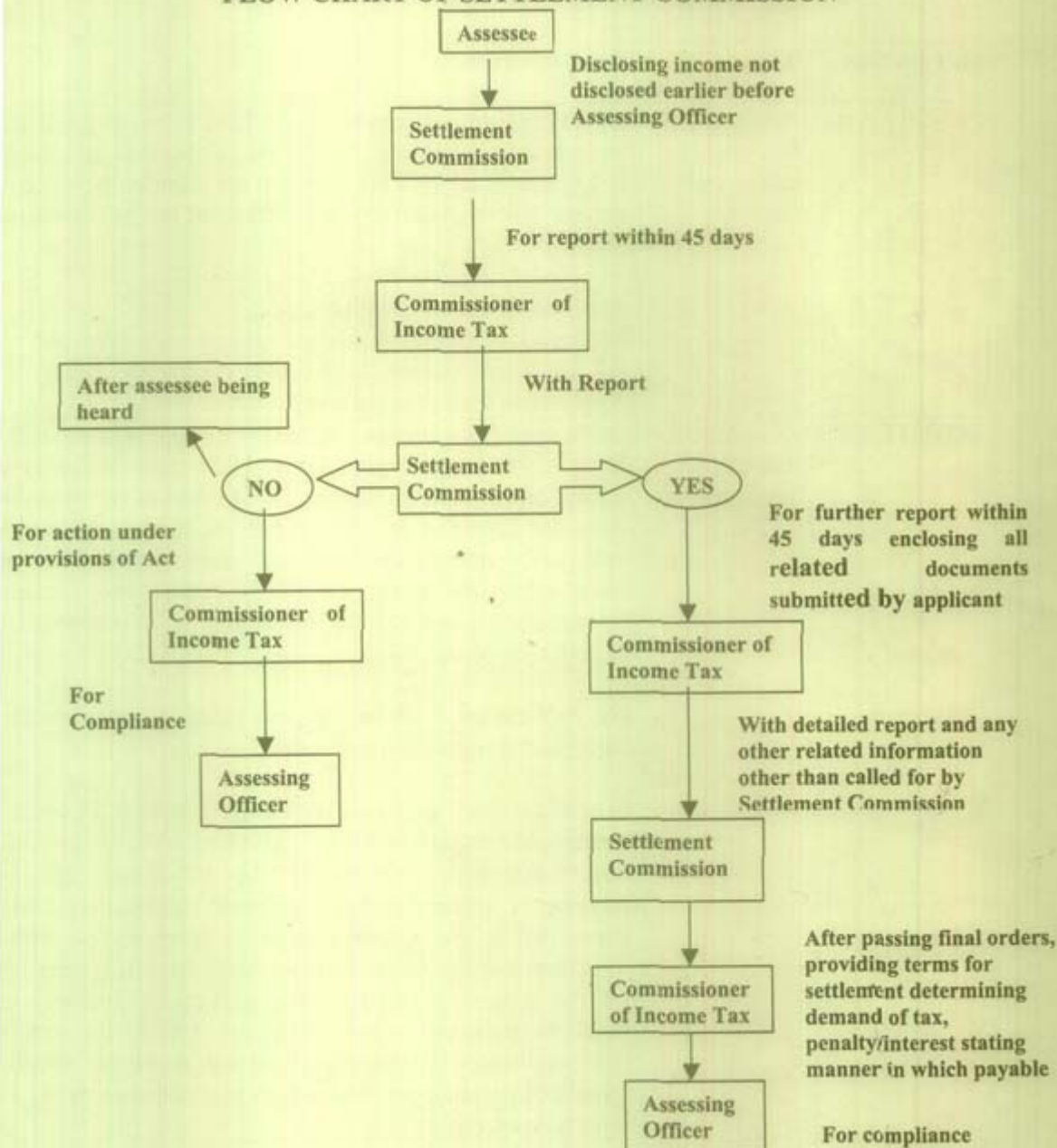
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### FLOW CHART OF SETTLEMENT COMMISSION



Brief description of the salient provisions of section 245 of Income Tax Act relating to the Commission is as under:

Sub-Section	Topic	Brief description
245C (IT Act)	Application for settlement of cases	Application for settlement can be filed at any stage of a case containing true and full disclosure of income, not disclosed before assessing officer, showing the manner in which such income has been derived and additional tax payable on such income Application can not be filed unless: Return of income for the period has been furnished Additional income tax payable exceeds Rs.1 lakh Application filed once cannot be withdrawn.
245D (IT Act)	Procedure for receipt of application	Settlement Commission, on receipt of application, shall call for a report from Commissioner of Income Tax who shall submit report within 45 days of the receipt of communication from the Commission. If CIT fails to furnish report within said period, the Commission can make order without such report. On the basis of CIT's report the Settlement Commission may allow the application to be proceeded with or refuse to do so. No application shall be rejected unless an opportunity of being heard is given to applicant. Where an order is passed by the Commission allowing the settlement application to be proceeded with, a copy of the order alongwith a copy of the statements and other documents accompanying settlement application shall be forwarded to the Commissioner of Income Tax with the direction that the Commissioner shall furnish further report on the matters covered by the application and any other matter relating to the case within 45 days of the receipt of communication. If the report is not received within the stipulated period Commission may pass the appropriate order without such report.
245DD (IT Act)	Provisional attachment to protect revenue	Applicant's property can be provisionally attached to protect the interest of revenue for six months which can be extended for a period not exceeding two years giving reasons in writing.
245 E (IT Act)	Reopening of completed proceeding	Any proceeding connected with the case, but completed by any income tax authority before the settlement application was made, can be reopened. However, no proceeding shall be reopened if period between end of assessment year to



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		which such proceeding relate and date of application for settlement exceeds nine years.
245F (IT Act)	Exclusive jurisdiction of the commission over the admitted application	After the application has been allowed to be proceeded with, the Commission have exclusive jurisdiction over the case till final orders are passed. During the period Commission have all the powers vested in an income tax authority.
245H (IT Act)	Immunity from prosecution and penalty	Commission can grant immunity from prosecution and penalty if it is satisfied that the applicant has cooperated in the proceedings and has made full and true disclosure of his income. From 1 June 1987 no such immunity can be granted where the proceedings for prosecution for any offence has been instituted before the application was filed. Immunity granted shall stand withdrawn if: Applicant fails to pay sum, specified in the order of the Commission, within specified period or fails to comply with any other condition subject to which immunity was granted. The Commission is satisfied that the applicant has concealed any particular material or had given false evidence.
245HA (IT Act)	Power to send back the case to assessing officer if the assessee does not cooperate	Commission can send back the case to assessing officer if the applicant/assessee does not cooperate in the proceedings. Assessing officer shall dispose of the case as if no application was made to Settlement Commission and shall be entitled to use all the materials provided to the Settlement Commission by the assessee/results of enquiry held and evidence recorded by Commission during proceedings. For the purpose of time limit, period during which case was pending before Commission will be excluded.
245 I (IT Act)	Orders of the Commission to be conclusive	Every order of settlement passed shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any proceeding under this Act. The order of Commission can only be challenged through a writ petition under Article 226 of the Constitution of India in High Court or through Special Leave Petition under Article 136 in the Supreme Court on the ground that while making such order, principles of natural justice has been violated or mandatory procedural requirements of law were not complied with or it is found that there is no nexus between the reasons given and decision taken.

245 D (2C), (2D) & 245 J (IT Act)	Payment of the sums due under order of settlement	The applicant shall pay additional amount of income tax within 35 days of receipt of order served by Commission allowing application to be proceeded with or within such further time as may be allowed by Commission. In case of failure interest @ 15% on the amount remaining unpaid shall be levied from the date of expiry of the period of 35 days. Similar provisions are applicable for recovery of amount due after making final orders by the Commission
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