

## **Direct Taxes Revision cum Amendment Notes For CA Final May / Nov 2020 Exam – Part 2**

### **Note**

- These Notes are not a substitute for Regular Notes / ICAI Study Material and are useful only for the purpose of revising the subject.
- RTP, Suggested Answers have to be studied thoroughly.
- We have taken all care while drafting these notes. If you find any error in these notes, please send us an email to [junnarkarkedar@gmail.com](mailto:junnarkarkedar@gmail.com)

**Download our App in Google Playstore by searching 'CA Kedar Junnarkar'**

## Contents

No	Chapter Name	Page No.
13	TDS and TCS	4-14
14	Returns and Assessment Procedure	15-31
15	Powers of Income Tax Authorities	32-34
16	Penalties and Prosecution	35-44
17	Appeals, Revision and Rectification	45-48
18	Settlement Commission	48-50
19	Advance Tax, Refund and Interest	51-53
20	Recovery of Tax and Liability in Special Cases	54-62
21	Residential Status and Accrual of Income	63-68
22	Special Tax Rates for Non Residents and Equalisation Levy	69-71
23	Double Taxation Relief and Limitation of Interest	72
24	Transfer Pricing	73-81
25	Advance Ruling, Advance Pricing Agreement and Safe Harbour	81-83
26	Tax Planning, Ethics, GAAR	84-88

### Video Lectures by CA Kedar Junnarkar for May / Nov 2020 Exam

#### 2 Views / 1 Year Validity

Videos	Pendrive Price in Rs.	Google Drive Price in Rs.
CA Final DT Regular - Paper 7	12,000	11,000
CA Final DT Regular - Paper 8	11,000	10,000
CA Final DT and IDT Regular Combo (Paper 7 and 8)	22,000	20,000
CA Final DT Fast Track - Paper 7	8,750	8,000
CA Final DT Fast Track - Paper 8	8,750	8,000
CA Final DT and IDT Fast Track Combo (Paper 7 and 8)	16,750	15,500

#### 1.5 Views / 6 months Validity

Videos	Pendrive Price in Rs.	Google Drive Price in Rs.
CA Final DT Fast Track - Paper 7	5,500	5,000
CA Final DT Fast Track - Paper 8	5,500	5,000
CA Final DT and IDT Fast Track Combo (Paper 7 and 8)	10,500	9,500

### Practice Book (covering Problems and Solutions from Past Exam Papers, RTP, Mock Papers)

Subject	Rs.
CA Final DT	650
CA Final DT	650

You can order the Videos / Books from [www.junnarkarkedar.com](http://www.junnarkarkedar.com); In case of any purchase related query, contact 9975612464

**Face to Face Class Details**

CA Final IDT Fast Track Batch	Tapasya Academy, Hyderabad from 19 <sup>th</sup> Feb 2020 for 15 days 6 hours daily (Phone no. 8885556611 / 8885556622)
CA Final IDT Revision Batch	Chennai in March 2020
CA Final DT (Paper 7 and Paper 6C) Regular Batch for <b>May / November 2021</b> Exam	Navi Peth, Pune from <b>2<sup>nd</sup> April 2020</b> for <b>2 months</b> Timing: 6.30 am to 9.30 am (Ph. no. 9975612464)
CA Final IDT Batch for Nov 2020 onwards exams	Hyderabad / Chennai in June / July 2020 (To be announced)

**Contact Details**

- Website – [www.junnarkarkedar.com](http://www.junnarkarkedar.com)
- Email – [junnarkarkedar@gmail.com](mailto:junnarkarkedar@gmail.com)
- Phone Number for Enquiry – **9975612464**
- Phone Number for Query Solving - **8149108826** (Direct Number of CA Kedar Junnarkar – Only SMS and Whatsapp - No Phone Calls)
- Youtube Channel – [www.youtube.com/junnarkarkedar](http://www.youtube.com/junnarkarkedar)
- Facebook Page – [www.facebook.com/junnarkarkedar](http://www.facebook.com/junnarkarkedar)
- Telegram Channel - [t.me/junnarkarkedar](https://t.me/junnarkarkedar)
- Telegram Group for CA Final Students - [t.me/junnarkarkedartax](https://t.me/junnarkarkedartax)

**About CA Kedar Junnarkar**

- An Associate Member of ICAI. Also passed Company Secretary Examination
- Based in Pune and have teaching experience of more than 9 years in Direct and Indirect Taxes
- Diploma Holder in IFR ( Diploma in International Financial Reporting – ACCA UK) and DISA (Diploma in Information Systems Audit – ICAI, New Delhi)
- A Rank Holder In All Five Examinations
  - AIR 5 in CA Professional Exam I
  - AIR 27 in CA Professional Exam II
  - AIR 47 in CA Final
  - AIR 13 in CS Executive
  - Rank 7 in HSC (Pune Division)
- All India Subject topper in:
  - Economics (91/100 in CA Professional Exam I)
  - Audit (83/100 in CA Professional Exam II)
- Second Highest in State in HSC in:
  - Accountancy (99/100)
  - French (98/100)

**Phenomenal Results for November 2019 Exams - Students who have done our DT / IDT Classes**

<b>ALL INDIA RANK 1</b>	<b>ALL INDIA RANK 46</b>
<b>Mr. Gurram Naga Sri Krishna Praneeth (Vijaywada)</b>	<b>Mr. Prasad Vangala (Vijaywada)</b>
DT – 69 Marks and IDT – 74 Marks	IDT – 66 Marks

**More than 100 Students have scored exemption in DT / IDT.**

**Change in Salary Chapter in Revision Notes 1 - Section 16(ia): Rs. 50,000** or the amount of the salary, whichever is less (**w.e.f. AY 2020-21**)

## **Chapter 13 : Tax Deduction or Collection at Source (TDS / TCS)**

### **Section 197: Certificate for deduction at lower rate**

Application shall be made by deductee / person who is going to receive payment in Form no. 13. If TDS is required to be made u/s **192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194LA, 194LB, 194LC and 195** and AO is satisfied that income of the recipient justifies the deduction of income-tax at any lower rates / no deduction, AO shall give certificate. Deductor shall deduct tax at such lower rate or nil rate as per the certificate. Similarly, buyer can apply for lower TCS Certificate.

### **Section 197A: No deduction to be made in certain cases (Form 15G / 15H)**

No deduction of tax shall be made if the recipient of income furnishes a declaration that the **tax on his estimated total income** will be **nil** (i.e. below basic exemption limit)

<b>Section</b>	<b>Person</b>
Section 194 (TDS on Dividends)	Resident Individual
Section 193 or 194A (TDS on Interest)	Person other than a company or a firm
Section 192A: TDS on withdrawal from RPF	Person other than a company or a firm
Section 194D: TDS on Insurance Commission	Person other than a company or a firm
Section 194DA: Maturity / Redemption of Life Insurance Policy	Person other than a company or a firm
Section 194-I: TDS on Rent	Person other than a company or a firm

### **HJAC**

Some deductors shall be liable to deduct tax only if gross receipts or turnover from the business / profession exceed the limits as per section 44AB during the preceding year.

<b>194H</b>	<b>194-I</b>	<b>194J</b>	<b>194A</b>	<b>194C</b>
Commission or Brokerage	Rent	Professional Fees, etc.	Interest other than on securities	Payments to Contractors
For Individuals / HUF				Individuals / HUF / AOP / BOI

**Note:** No TDS is required even if payments made exceed the threshold exemption limits if Tax Audit was not applicable last year. **However, applicability of newly added section 194M has to be checked.**

### **No TDS on Personal Payments**

No individual or HUF shall be liable to deduct tax on the sum credited or paid exclusively **for personal purposes** of such individual or any member of Hindu undivided family even if it exceeds the threshold exemption limit. **However, applicability of newly added section 194M has to be checked.**

<b><u>Section 194C : TDS on payment to Contractors</u></b>	<b><u>Section 194J: Professional Fees etc.</u></b>
Eg. Fees to Construction / Painting Contractor / electrician for residential house, caterer for function.	Eg. Payment to Interior decorator/ Architects for residential house, Doctors

**TDS Rates**

Sec	TDS on	Res Status of receiver	Rate	Exemption
192	Salary	Resident / Non Resident	Slab Rates on the estimated income	<p><b>Amounts to be reduced from Salary only if proof of payment received from employee</b></p> <p>a) House Property Loss reported by employee b) Chapter VI-A deductions c) Relief under section 89 (deduction from tax)</p> <p><b>Amounts to be added</b></p> <p>a) Any other Income reported by employee (TDS on such can be reduced from tax payable) b) Salary from previous employer if reported from employee</p>

Sec	TDS on	Res Status of receiver	Rate	Exemption
192 A	Payment of accumulated balance due from Recognised Provident Fund	Resident / Non Resident	10% (PAN not submitted TDS at MMR)	<p>a) Employee has rendered continuous service with current or former employer for period more than 5 years: Such amount shall be exempt; No TDS.</p> <p>b) If it was for a period of less than five years: Such amount would be taxable; TDS at 10% only if amount is <b>₹ 50,000</b> or more.</p> <p>c) Amount not taxable and no TDS even if is less than 5 years</p> <ul style="list-style-type: none"> <li>➤ Service terminated due to employee's ill-health, or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee</li> <li>➤ On the cessation of his employment, the employee obtains employment with any other employer and the accumulated balance is transferred to his individual account in any recognised provident fund maintained by such other employer.</li> </ul>

Sec	TDS on	Res Status of receiver	Rate	Exemption
193	Interest on securities	Resident only	10%	<ul style="list-style-type: none"> <li>• upto <b>₹ 10,000</b> p.a. on 8% Savings (Taxable) Bonds, 2003 or 7.75% Savings (Taxable) Bonds, 2018</li> <li>• Interest to LIC of India or General Insurance Corporation of India or other specified Insurance Companies</li> <li>• Interest on Security issued by a company in dematerialised form and is listed on a recognised stock exchange</li> <li>• Any interest on debentures on other than closely held company to Resident Individual or HUF on debentures (not held in demat form) if the interest is paid by an account payee cheque and</li> </ul>

				<p>total payment does not exceed <b>₹5,000/-</b></p> <p>a) Interest on following bonds will be exempt</p> <ul style="list-style-type: none"> <li>➤ Power Finance Corporation Limited 54EC Capital Gains Bond (PFCL) (Notification no. 27/2018 dated 18.6.2018)</li> <li>➤ Indian Railway Finance Corporation Limited 54EC Capital Gains Bond (IRFC) (Notification no. 28/2018 dated 18.6.2018)</li> </ul> <p>This TDS exemption shall be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs PFCL / IRFC by registered post within 60 days of such transfer</p>
--	--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Sec	TDS on	Res Status of receiver	Rate	Exemption
<b>194 A</b>	Interest other than Interest on securities	Resident only	10%	<ul style="list-style-type: none"> <li>• Interest <b>paid to</b> Banking Company / Co-operative Bank / Co-Operative Land Mortgage Bank, Financial Corporation, LIC, UTI, company or Co-operative Society carrying on the business of insurance, National Skill Development Fund</li> <li>• Interest by a co-operative society (other than a co-operative bank) to a member</li> <li>• Interest by a Co-Operative Society to any other Co-Operative Society</li> <li>• Interest paid for deposits with Primary Agricultural Credit Society / Primary Credit Society / Co-operative Land Mortgage Bank / Co-Operative Land Development Bank</li> <li>• Interest paid by Government on Income Tax or Wealth Tax</li> <li>• Interest paid on the compensation amount awarded by the Motor Accidents Claims Tribunal upto Rs. 50,000 (TDS on Interest exceeding Rs. 50,000 will be at the time of payment even if crediting is done earlier)</li> <li>• Interest paid by a Firm to a Partner of the Firm</li> <li>• Interest paid for Zero Coupon Bond</li> <li>• Interest on Savings Bank Account (TDS provisions will apply on Interest on FD / RD A/c)</li> <li>• Paid by Banking Company, Co-operative banks, Post Office: <b>₹ 10,000 (If the payee is a Resident Senior Citizen, then exemption of Rs. 50,000 shall apply)</b></li> <li>• Others: <b>₹ 5,000</b></li> </ul> <p>(Limit per Banking Company or co-operative society or Public Company providing Long Term Finance if Core Banking Solutions is adopted; If CBS is not adopted, then the limit shall apply per branch)</p>

Sec	TDS on	Res Status of receiver	Rate	Exemption
194B	Winnings from lottery or crossword puzzle, etc.	Resident or Non Resident	30%	<ul style="list-style-type: none"> <li>No TDS upto ₹ 10,000</li> <li>This section also applies to winnings from cross word puzzles TV programmes like KBC, Lucky draw schemes</li> </ul>
194BB	Winnings from Horse Races	Resident or Non Resident	30%	<ul style="list-style-type: none"> <li>No TDS upto ₹ 10,000</li> </ul>

Sec	TDS on	Res Status of receiver	Rate	Exemption
194C	Payments to contractors or Sub contractors (including supply of labour)	Resident only	Payee is Indl / HUF: 1% Others 2%	<p>a) sum paid to contractor during the course of business of <b>plying, hiring or leasing goods carriages</b>, on where such contractor <b>owns 10 or less goods carriages at any time during the previous year</b> and <b>furnishes a declaration to that effect along with his PAN</b></p> <p>b) Other Cases: if such sum does not exceed <b>₹30,000/-</b> and the aggregate amount during FY doesn't exceeds <b>₹1,00,000/-</b></p>

Sec	TDS on	Res Status of receiver	Rate	Exemption
194D	Insurance Commission	Resident only	<b>5%</b>	No TDS upto <b>₹ 15,000</b> No TDS on Reinsurance Commission
194G	Commission on sale of lottery tickets	Resident or Non Resident	<b>5%</b>	<ul style="list-style-type: none"> <li>No TDS upto <b>₹ 15,000</b></li> </ul>
194H	Commission or brokerage	Resident only	<b>5%</b>	<ul style="list-style-type: none"> <li>No TDS upto <b>₹ 15,000</b></li> <li>No TDS on Brokerage relating to Securities</li> <li>No TDS on Commission or brokerage payable by BSNL or MTNL to their public call office franchisees.</li> <li>No TDS by RBI on the amount of Turnover Commission paid to Agency Banks for receipt of tax payments and issue of refunds.</li> </ul>

Sec	TDS on	Res Status of receiver	Exemption
194-I	Rent	Resident only	No TDS if payment to a payee, does not exceed <b>₹1,80,000/- (in case of co-owned property, the limit is per co-owner)</b>

**Rate u/s 194-I:** Machinery or plant or equipment: **2%**; Land or building or furniture or fittings: **10%**. Arrangements like lease, sub-lease, etc. are covered u/s 194-I. Asset may or may not be owned by the payee

Sec	TDS on	Res Status of receiver	Rate	Exemption
<b>194-IB</b>	Rent paid by Individuals or Hindu undivided family who are not liable to Tax Audit in preceding year	Resident only	5%	No TDS if rent does not exceed Rs. 50,000 p.m.

**Note:**

- Tax shall be deducted at earliest of -
  - a) time of credit of rent for March of the previous year or
  - b) the last month of tenancy, if the property is vacated during the year or
  - c) at the time of payment
- The deductor need not obtain TAN.
- In a case PAN is not submitted and TDS is made at 20%, under section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy.

Rent means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the **use of any land or building or both**.

Sec	TDS on	Res Status of receiver	Rate	Exemption
<b>194LA</b>	Compulsory acquisition of immovable property	Resident only	10% of Sale Price	<ul style="list-style-type: none"> <li>• No TDS on compensation or the enhanced compensation on account of compulsory acquisition of <b>Rural or Urban agricultural land</b>.</li> <li>• No TDS where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the <b>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013</b>.</li> <li>• In other cases, no TDS is amount if upto <b>₹ 2,50,000/-</b>.</li> </ul>
<b>194-IA</b>	Sale of immovable property	Resident only	1% of Sale Price	<ul style="list-style-type: none"> <li>• No TDS if asset sold is <b>Rural Agricultural Land</b></li> <li>• In other cases, No TDS if sale price is less than <b>₹50 Lakhs</b>.</li> <li>• The deductor need not obtain TAN.</li> </ul> <p><b>Consideration for immovable property shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property (w.e.f. 1.9.2019)</b></p>
<b>194-IC</b>	Consideration for agreement as per section 45(5A)	Resident only	10%	<ul style="list-style-type: none"> <li>• No TDS if consideration is in kind i.e. allotment of flats in building or giving any other property</li> <li>• Section 45(5A) refers to transfer under joint development agreement</li> </ul>



Sec	TDS on	Res Status of receiver	Rate	Exemption
<b>194D A</b>	Maturity Proceeds of life insurance policy	Resident only	<b>5% on the amount of income comprised therein (w.e.f. 1.9.2019)</b>	<ul style="list-style-type: none"> <li>No TDS if proceeds exempt u/s 10(10D)</li> <li>In other cases, no TDS if Maturity Proceeds are <b>less than ₹1,00,000/-</b></li> </ul>

**Section 10(10D)**

Sum received under a life insurance policy, including bonus, shall be exempt if premium paid is upto following limit.

Policy issued prior to 1.4.2012	Policy issued on/after 1.4.2012	Policy issued on/after 1.4.2013
20% of capital sum assured	10% of capital sum assured	15% of capital sum assured (only for disability / disease)

Exemption u/s 10(10D) shall not apply to Maturity Proceeds of Keyman Insurance Policy.

Sec	TDS on	Res Status of receiver	Rate	Exemption
<b>194J</b>	Fees for Professional Service	Resident	10%	Amount is upto <b>₹30,000 p.a.</b>
<b>194J</b>	Fees for Technical Services	Resident	10%	Amount is upto <b>₹30,000 p.a.</b>
<b>194J</b>	Royalty *	Resident	10%	Amount is upto <b>₹30,000 p.a.</b>
<b>194J</b>	Non-compete Income	Resident	10%	Amount is upto <b>₹30,000 p.a.</b>
<b>194J</b>	Sitting fees or commission, paid to Independent or Non-Executive Director	Resident	10%	No Exemption

**Note:** If the payee is engaged only in the business of **operation of Call Centre**, TDS under section 194J will be **2%** instead of 10% (all other conditions shall remain the same)

Sec	TDS on	Res Status of receiver	Rate	Exemption
<b>194M (w.e.f. 1.9.19)</b>	Payments by Individual / HUF not required to deduct tax u/s 194H, 194C and 194J to contractors or Sub contractors to carry out work (including supply of labour for carrying out any work) in pursuance of a contract or by way of fees for professional services	Resident	5%	Amount upto Rs. 50,00,000 p.a. per recipient

**Note:**

- TDS under section 194M will be at the time of payment or credit whichever earlier.
- The deductor need not obtain TAN which is required under section 203A
- It will not apply to other payments covered under section 194J – Royalty, Non-Compete fee, FTS.

Sec	TDS on	Res Status of receiver	Rate	Exemption
195	Payments made to Non Resident or Foreign Company	Non Resident only	Rates in force	<ul style="list-style-type: none"> <li>Rates in force: rates of TDS given in Finance Act every year</li> <li>If the rates given in DTAA are lower, then such lower rates will apply.</li> <li>TDS provisions will apply only if the sum received by Non Resident or Foreign Company is taxable in India.</li> </ul>

Sec	TDS on	Res Status of receiver	Rate
194N (w.e.f. 1.9.19)	<ul style="list-style-type: none"> <li>Banking company to which the Banking Regulation Act, 1949 applies</li> <li>Co-operative society engaged in carrying on business of banking or</li> <li>Post office</li> </ul> pays sums, in cash, in excess of <b>Rs. 1 crore</b> during the previous year to any person from the account	Any (Resident / Non Resident)	<b>2%</b> of sum exceeding <b>Rs. 1 crore</b>

### **CBDT Press Release dated 30-8-2019**

Any cash withdrawal prior to 1st September, 2019 will not be subjected to the TDS under section 194N of the Act. However, since the threshold of Rs. 1 crore is with respect to the previous year, calculation of amount of cash withdrawal for triggering deduction under section 194N of the Act shall be counted from 1st April, 2019. Hence, if a person has already withdrawn Rs. 1 crore or more in cash upto 31st August, 2019 from one or more accounts maintained with a banking company or a cooperative bank or a post office, the two per cent TDS shall apply on all subsequent cash withdrawals.

Provisions of section 194N shall not apply to any payment made to

- the Government
- any banking company or co-operative society in the business of banking or a post office
- any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking as per RBI guidelines
- any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking as per the authorization issued by RBI under the Payment and Settlement Systems Act, 2007
- such other person or class of persons, which the Central Government may, by notification in the Official Gazette, specify in consultation with the Reserve Bank of India

### **Notified persons (w.e.f. 1.9.2019): Provisions of section 194N will not apply to payment made to**

- Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's) maintaining a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATM's) operated by such WLATMO's and the WLATMO have furnished a certificate every month to the bank certifying that the bank account of the CRA's and the franchise agents of the WLATMO's have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's (Notification no. 68/2019)
- Commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any Law relating to Agriculture Produce Market of the concerned State, who has intimated to the banking company or co-operative society or post office his account number through

which he wishes to withdraw cash in excess of Rs. 1 crore in the previous year along with his Permanent Account Number (PAN) and the details of the previous year and has certified to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of Rs. 1 crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce and the banking company or co-operative society or post office has ensured that the PAN quoted is correct and the commission agent or trader is registered with the APMC, and for this purpose necessary evidences have been collected and placed on record (Notification no. 70/2019)

**Rule 37BA(3A) (w.e.f. 1.9.2019)**

Credit for TDS under section 194N shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made

**Notification no. 80/2019 (w.e.f. 1<sup>st</sup> September 2019)**

**Provisions of section 194N will not apply to payment made to**

- a) the authorised dealer and its franchise agent and sub-agent and
- b) Full-Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent maintaining a separate bank account from which withdrawal is made only for the purposes of
  - a) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by Reserve Bank of India or
  - b) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the Reserve Bank of India

and a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the Reserve Bank of India have been adhered to.

**TDS Procedures**

**1. Get Tax deduction and Collection Account Number i.e. TAN (Section 203A/206CA)**

**Section 272BB:** Penalty if person fails to get TAN or quotes false TAN: upto ₹10,000/-

**2. Payment of Tax (Section 200)**

<b>Deduction in April to Feb</b>	<b>Deduction in March</b>
on or before <b>7 days</b> from end of month in which tax is deducted	On or before <b>30th April</b>

### Consequences of Non Payment

Interest (Section 201)	Penalty/Prosecution	Disallowance				
<p>Where any person who is required to deduct any sum</p> <p>a) does not deduct b) does not pay c) after so deducting fails to pay, the whole or any part of the tax,</p> <p><b>1%</b> for every month or part on the tax from date on which it was deductible to the date on which it is deducted</p> <p><b>1.5%</b> for every month or part on tax from date on which it was deducted to the date on which it is actually paid</p> <p>He shall be <b>deemed to be an assessee in default</b> in respect of such tax.</p> <p>Order deeming person to be an assessee in default shall be passed within 7 years from the end of the financial year in which payment is made or <b>2 years from the end of the financial year in which the correction statement is delivered under section 200(3), whichever is late (w.e.f. 1.9.2019)</b></p>	<p><b>Section 271C</b></p> <p>If any person fails to deduct the whole or any part of the tax, then such person shall be liable to pay penalty equal to the amount of tax failed to be deducted or paid.</p> <p><b>Sec 276B:</b> Failure to pay to credit of Central Government the tax deducted at source: 3 months to 7 years and fine</p> <p>Second and subsequent offence: <b>6 months to 7 years</b> and fine</p>	<p>1. Tax is deductible at source and</p> <p>2. Tax has not been deducted or after deduction, has not been paid on or before the due date as per section 139(1), then</p> <table border="1"> <thead> <tr> <th>Sec 40(a)(i)</th> <th>Sec 40(a)(ia)</th> </tr> </thead> <tbody> <tr> <td><b>100%</b> of sum payable to <b>Non Resident</b> shall be disallowed.</td> <td><b>30%</b> of sum payable to <b>Resident</b> shall be disallowed.</td> </tr> </tbody> </table> <p>If tax has been deducted in any subsequent year or has been deducted in the previous year but paid in any subsequent year after the due date as per section 139(1), then 100% or 30% shall be allowable in the year of payment of TDS.</p>	Sec 40(a)(i)	Sec 40(a)(ia)	<b>100%</b> of sum payable to <b>Non Resident</b> shall be disallowed.	<b>30%</b> of sum payable to <b>Resident</b> shall be disallowed.
Sec 40(a)(i)	Sec 40(a)(ia)					
<b>100%</b> of sum payable to <b>Non Resident</b> shall be disallowed.	<b>30%</b> of sum payable to <b>Resident</b> shall be disallowed.					

### 3. Returns

TDS u/s <b>192</b> (Residents / Non Residents)	TDS under other sections (Payments to <b>Non Resident</b> )	TDS under other sections (Payments to <b>Resident</b> )	TCS Return
<b>Form No. 24Q</b>	<b>Form No. 27Q</b>	<b>Form No. 26Q</b>	<b>Form No. 27EQ</b>

### Due date for filing the Returns

Quarter ended	TDS Returns	TCS Returns
30th June	31st July	15 <sup>th</sup> July
30th September	31 <sup>st</sup> October	15 <sup>th</sup> October
31st December	31st January	15 <sup>th</sup> January
31st March	31 <sup>st</sup> May	15th May

Non Filing / Late Filing of TDS/TCS Returns	
Fee u/s 234E	Penalty u/s 271H
<p>If he fails to deliver Return within time prescribed, he shall be liable to pay fee of lower of</p> <p>a) <b>₹ 200 for every day</b> during which failure continues</p> <p>b) amount of tax deductible or collectible</p> <p>As per section 119, Application can be made to CBDT for waiver or reduction of fee u/s 234E</p>	<ul style="list-style-type: none"> <li>• <b>₹10,000 to ₹ 1,00,000</b></li> <li>• No penalty if it is furnished <b>within 1 year of the prescribed due date</b> after payment of TDS / TCS, interest and fee.</li> <li>• Penalty can be waived by AO u/s 273B</li> </ul>

**4. TDS / TCS Certificate (Section 203)**

Form No	Periodicity	Due date
16	Annual	By <b>15<sup>th</sup> June</b> of the financial year immediately following the financial year in which the income was paid and tax deducted under <b>Section 192 (R/NR)</b>
16A	Quarterly	Within <b>15 days</b> from the due date for furnishing <b>TDS Return</b> under <b>other Sections (R/NR)</b>
27D	Quarterly	Within <b>15 days</b> from the due date for furnishing <b>TCS Return (R/NR)</b>

**Section 272A(2): Penalty**

If any person fails to furnish a certificate as required by section 203, he shall pay, by way of penalty, a sum **₹100 for every day** during which the failure continues.

**Tax Collection at Source**

Section	Type of Payment	Rate	Exemption
<b>206C(1)</b>	Alcoholic Liquor for human consumption	1%	TCS shall be <b>at earlier of debit or receipt</b> No TCS if the <b>Resident buyer</b> furnishes <b>Form 27C</b> that the goods are to be utilised for manufacturing or generation of power and <b>not for trading purposes</b> . It shall be delivered to CIT on or before the <b>7th day of next month</b> .
	Tendu leaves	5%	
	Timber or other forest produce	2.5%	
	Waste or Scrap from manufacture	1%	
	Minerals being Coal, lignite or iron ore (includes petroleum and natural gas)	1%	
<b>206C(1C)</b>	Granting a lease or a licence or enters into a contract or otherwise transferring any right or interest in whole or in part in to person other than Public Sector Company	2%	TCS shall be <b>at earlier of debit or receipt</b> No TCS on such <b>lease</b> or a <b>licence</b> or on transfer of any right or interest to <b>Public Sector Company</b> for its use for business
	a) Parking lot	2%	
	b) Toll plaza	2%	
	c) Mining and quarrying (excluding that of mineral oil, petroleum and natural gas)	2%	
<b>206C(1F)</b>	Consideration for sale of a motor vehicle	<b>1%</b>	TCS shall be at the time of receipt of such amount No TCS if sale consideration is upto ₹ 10 Lakhs

**Section 206AA: Requirement to furnish Permanent Account Number**

If any person entitled to receive any sum or income or amount, on which tax is deductible fails to furnish his PAN, then tax shall be deducted at the higher of at the rate specified in the Act or at rate/s in force or 20%

**Rule 37BC: Relaxation from deduction of tax at higher rate under section 206AA**

In the case of a non-resident or a foreign company and not having PAN the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and the documents to the deductor:

- a) name, e-mail id, contact number
- b) address in the country or specified territory outside India of which the deductee is a resident
- c) a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate
- d) Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident

**Section 206CC: Requirement to furnish Permanent Account number by collectee**

- Any person paying any sum or amount on which tax is collectible at source shall furnish his Permanent Account Number failing which tax shall be collected at the higher of the following rates:
  - a) at twice the rate specified in the relevant provision of this Act or
  - b) at the rate of 5%
- These provisions shall not apply to a non-resident who does not have permanent establishment in India.

## Chapter 14 : Assessment Procedure

### **Section 139(1): Filing of Return of Income**

Companies / Firms / LLPs	Other persons
Compulsory to file a return	Whose total income or that of any other person in respect of which he is assessable without giving effect to Chapter VI-A or <b>54 or 54B or 54D or 54EC or 54F or 54G or 54GA or 54GB</b> exceeds the basic exemption limit ( <b>w.e.f. AY 2020-21</b> )

### **Compulsory filing for Resident and ordinarily resident**

- Who is not required to furnish a return and who at any time during the previous year
  - a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India or
  - b) is a beneficiary of any asset (including any financial interest in any entity) located outside India.
- The above provision shall not apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in (a).
- **Beneficial owner** means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.
- **Beneficiary** means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

### **For person other than Company or Firm or LLP (w.e.f. AY 2020-21)**

Such person, who is not required to furnish a return and who during the previous year–

- a. has deposited an amount or aggregate of the amounts exceeding **Rs. 1 crore** in one or more current accounts maintained with a banking company or a co-operative bank or
- b. has incurred expenditure of an amount or aggregate of the amounts exceeding **Rs. 2 Lakhs** for himself or any other person for travel to a foreign country or
- c. has incurred expenditure of an amount or aggregate of the amounts exceeding **Rs. 1 Lakh** towards consumption of electricity or
- d. fulfils such other conditions as may be prescribed

shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.

### **Due dates**

30 <sup>th</sup> November 20	30 <sup>th</sup> September 2020	31 <sup>st</sup> July 20
<b>Assessee</b> who is required to submit Transfer Pricing Report (Form 3CEB)	<ul style="list-style-type: none"> <li>• a company</li> <li>• a person (other than company) whose accounts are required to be audited under Income-tax Act, 1961 or any other law</li> <li>• a working partner of a firm whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force.</li> </ul>	in the case of any other assessee

Section	Filing of ROI compulsory if the total income computed before allowing any exemption u/s 10 or 11 or 12 exceeds ₹2,50,000 (Due date is 30 <sup>th</sup> September 2020)	
139(4A)	Charitable Trusts and Institutions	
139(4B)	Political Parties (to be filed by Chief Executive Officer)	
139(4C)	<ul style="list-style-type: none"> <li>• Research association [Section 10(21)]</li> <li>• News agency [Section 10(22B)]: Press Trust of India</li> <li>• Association or institution [Section 10(23A)]</li> <li>• Institution [Section 10(23B)]</li> <li>• Fund or Educational / Medical Institution / Hospital [Section 10(23C)]</li> <li>• Trade union [Section 10(24)(b)]</li> <li>• Body or authority or Board or Trust or Commission [Section 10(46)]</li> </ul>	<ul style="list-style-type: none"> <li>• Infrastructure Debt Fund [Section 10(47)]</li> <li>• Mutual Fund [Section 10(23D)]</li> <li>• Securitisation trust [Section 10(23DA)]</li> <li>• Venture Capital Company or Venture Capital Fund [Section 10(23FB)]</li> <li>• A fund specified (Section 10(23AAA))</li> <li>• Investor Protector Fund (section 10(23EC) / (23ED))</li> <li>• Core Settlement Guarantee Fund (section 10(23EE))</li> <li>• Any Board or Authority (section 10(29A))</li> </ul>

### Section 272A(2)

If any person fails to furnish the return of income which he is required to furnish under section 139(4A) or section 139(4C) or to furnish it within the time allowed and in the manner required, he shall pay, by way of penalty, a sum **₹100 for every day** during which the failure continues.

Section	Filing of ROI compulsory irrespective of Income
139(4D)	Universities, Colleges etc. u/s 35(1)(ii)/(iii)
139(4E)	Business Trust
139(4F)	Investment Fund as per section 115UB

### Section 234F: Fees for default in furnishing Return of Income

Where a person required to furnish a return of income under section 139, fails to do so within the time prescribed in 139 (1), he shall pay, by way of fee, a sum of

- Rs. 5,000, if the return is furnished on or before the 31st day of December of the assessment year;
- Rs. 10,000 in any other case:

If total income of the person does not exceed five lakh rupees, the fee payable shall not exceed Rs. 1,000.

### Types of Returns

#### 1. Section 139(3): Loss Return

- If any person who has sustained a loss in any previous year under the head "Profits and gains of business or profession" or "Capital gains" and claims that the loss or any part thereof should be **carried forward**, he may furnish return of loss within the time allowed under 139(1).
- Losses which can be carried forward only if Return is filed within due date are Business Loss, Speculative Loss, Specified Business Loss, Capital Loss and Loss from the activity of owning and maintaining Race Horses

#### 2. Section 139(4): Belated Return

- Any person who has not furnished a return within time allowed under section 139(1) may furnish the return at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.
- A belated return can be revised.



- If return is submitted belated, deduction under the head "Deductions in respect of certain incomes" will not be available.

### 3. **Section 139(5): Revised Return**

- If any person having furnished a return u/s 139(1) or 139(4) discovers **any omission or any wrong statement therein**, he may furnish a revised return at any time **before the end of the relevant assessment year** or before completion of assessment, whichever is earlier.
- Revised return substitutes the original return from the date original return was filed. (Dhampur Sugar Mills Ltd). Return can be revised any number of times within the time limit.

### 4. **Notice u/s 142(1): Notice if ROI not furnished**

- For making an assessment, AO **may serve** Notice to furnish ROI on any person who has not made a return u/s 139 or in case the time allowed u/s 139(1) for furnishing the return has expired
- ROI shall be furnished even if income is below taxable limit.
- With the previous approval of the Joint Commissioner, AO can ask for statement of all assets and liabilities relating to a period not more than 3 years prior to the previous year.
- Such Return cannot be revised even if filed within due date as per notice.
- If Return is not filed within due date as per notice, a belated return cannot be filed.

<b>Penalty for not complying with Section 142(1)</b>	<b>Prosecution</b>
₹ 10,000 for each failure (272A)	Up to 1 year and fine (Section 276D)

### **Section 139(9): Defective Return if**

It is not accompanied by the Tax Audit / Cost Audit Report	Annexures in ROI have not been duly filled in	Return is not accompanied by a Statement of Income / Tax	It is not accompanied by proof of TDS / TCS Certificates, Advance Tax/Self-Assessment Tax Receipts, Trading / Profit and Loss Account, Balance Sheet etc.
------------------------------------------------------------	-----------------------------------------------	----------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------

AO may intimate defect and give an opportunity to rectify the defect within 15 days or extended period.

**If defect not rectified within 15 days, Return shall be treated as an invalid return** and the provisions shall apply as if the assessee had failed to furnish the return.

Where the assessee rectifies the defect after 15 days or the further period allowed, but before the assessment is made, AO may condone the delay and treat the return as a valid return.

### **Section 140A: Self-Assessment**

- Where any tax is payable on the basis of any return 153A after taking into account tax already paid / TDS / TCS / Relief u/s 90/90A/91 / MAT / AMT Credit/ **any relief of tax claimed under section 89**, the assessee shall be liable to pay such tax together with interest and fee payable for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return.
- Where the amount paid falls short of the aggregate of the tax and interest, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance towards the tax payable.
- If any assessee fails to pay the whole or any part of such tax or interest or both, he shall be deemed to be an **assessee in default** in respect of the tax or interest or both remaining unpaid.

**Section 143(1): Scheme of Processing of Returns**

- When ROI filed u/s 139 or in response to notice u/s 142(1), total income or Loss shall be computed after making following adjustments
  - a) Arithmetical Error in Return (only in case of Manual Returns)
  - b) Incorrect Claim apparent from any information in the return
  - c) Disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under section 139(1)
  - d) Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return
  - e) Disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or
- No such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:
- The response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made;

**Incorrect Claims apparent from any Information in Return**

Claim on basis of <b>entry inconsistent with another entry</b> of same / some other item in ROI.	Information required to be furnished, <b>not furnished</b>	Deduction <b>exceeds specified statutory limit</b> expressed as monetary amount / % / ratio
--------------------------------------------------------------------------------------------------	------------------------------------------------------------	---------------------------------------------------------------------------------------------

Tax/interest is found payable	Tax/interest is found refundable	Adjustment relating to increase/decrease in loss (even if no tax payable/refundable)	Other Cases
Intimation u/s 143(1) shall be sent.			Acknowledgement of ROI shall be deemed to be the intimation (Deemed Intimation)

**Time Limit**

- Intimation shall be sent within **1 year from the end of the financial year in which the return is made.**
- This time limit of 1 year shall not apply to issue of cheque of refund to the assessee.

**Scrutiny Assessment**

<b>Section 143(2): Notice to make scrutiny assessment u/s 143(3)</b>	<b>Section 143(3) : Regular / Scrutiny Assessment</b>	<b>Section 153(1): Time limit for completion of assessments</b>
Where a return has been furnished under section 139, or 142(1), the Assessing Officer or the prescribed income-tax authority considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-	On the day specified in the notice issued under section 143(2), or as soon afterwards, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking	<b>12 months</b> from the end of the assessment year in which the income was first assessable. In case if reference is made u/s 92CA to

<p>paid the tax in any manner, shall serve on the assessee a notice requiring him to attend the office or to produce any evidence on which the assessee may rely in support of the return Time limit to <b>serve</b> the notice within <b>6 months</b> from the end of the financial year in which return is filed.</p>	<p>into account all relevant material which he has gathered, the Assessing Officer shall by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.</p>	<p>Transfer Pricing Officer, the time limit shall be <b>increased by 12 months</b>.</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------

### **Section 143(1D)**

The processing of a return shall be necessary, where a notice has been issued to the assessee under section 143(2).

### **E-Assessment Scheme, 2019 (w.e.f. 12.9.2019)**

#### **Assessment to be carried out through e-assessment**

'Assessment' for the purpose of this scheme shall mean assessment of total income or loss of the assessee under section 143(2) of the Income-tax Act, 1961.

#### **E-assessment Centres**

- A 'National e-assessment Centre' and 'Regional e-assessment Centres' shall be set-up by the board to facilitate the conduct of e-assessment proceedings.
- **National e-assessment Centre** shall be responsible to conduct proceedings in a centralized manner.
- **Regional e-assessment Centres** shall be responsible to conduct proceedings in the cadre controlling region of a Principal Chief CIT.
- The Board shall also set-up four separate units which shall be responsible to facilitate conduct of e-assessment. The names and functions of such units shall be as follows:
  - a) **Assessment Units** - It shall perform the function of making assessment which includes identification of points or issues which may be material for determination of any liability (including refund), seeking information or clarification on any point, analysis of material furnished by assessee, etc.
  - b) **Verification Units** - It shall perform the function of verification which include enquiry, cross verification, examination of books/witness and recording of statements, etc.
  - c) **Technical Units** - It shall perform function of providing technical assistance which include any assistance or advice on legal, accounting, forensic, valuation, TP, etc.
  - d) **Review Units** - It shall perform function of review of the draft assessment order which includes arithmetical checking, review of relevant material brought on record, law and fact duly incorporated in draft order, etc.

All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee/any other person for the purposes of making an e-assessment shall be through the 'National e-assessment Centre'.

#### **Procedure for e-assessment**

- National e-assessment Centre shall serve a notice on the assessee under section 143(2) specifying the issues for selection of his case for e-assessment.
- The assessee is required to file his response to the 'National e-assessment Centre' within 15 days from the date of receipt of such notice.

- The case shall be assigned to a specific assessment unit in any one Regional e-assessment Centre through an automated allocation system (an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources)
- National e-assessment Centre may issue appropriate notice to assessee for obtaining information, documents or evidence as required by the assigned assessment unit for the purpose of conducting e-assessment.
- Where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request shall be assigned by the National e-assessment Centre to a verification unit through an automated allocation system.
- Where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National e-assessment Centre to a technical unit in any one Regional e-assessment Centres through an automated allocation system
- After taking into account all the relevant material available on the record, the assessment unit shall make a draft assessment order and a copy of such order shall be sent to National e-assessment Centre.
- National e-assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board and it may decide to:
  - a) Finalise the assessment as per the draft assessment order and serve a copy of such order to the assessee along with the demand notice or refund of any amount due to him
  - b) Provide an opportunity to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order; or
  - c) Assign the draft assessment order to a review unit in any one Regional e-Assessment Centre, through an automated allocation system, for conducting review of such order.
- The review unit shall conduct review of the draft assessment order. The assessment unit shall, after considering the modifications suggested by the Review unit, send the final draft assessment order to the National e-assessment Centre
- The assessee may, in a case where show-cause notice has been served upon him, furnish his response to the National e-assessment Centre on or before the date and time specified in the notice
- In a case where no response to the show-cause notice is received, the National e-Assessment Centre shall finalize the assessment as per the draft assessment order. If a response is received by the National e-Assessment centre, the same shall be forwarded to assessment unit.
- The Assessment Unit shall make a revised draft assessment order after taking into account the response furnished by the assessee.
- The National e-assessment Centre shall transfer all the electronic records of the case to the jurisdictional Assessing Officer after the completion of assessment for the purpose of:
  - a. Imposition of penalty
  - b. Collection and recover of demand
  - c. Rectification of mistake
  - d. Giving effect to appellate orders
  - e. Submission of remand report, or any other report to be furnished, or any representation to be made, or any record to be produced before the Commissioner (Appeals), Appellate Tribunal or Courts
  - f. Proposal seeking sanction for launch of prosecution and filing of complaint before the Court

### **Penalty proceedings for non-compliance of e-assessment**

Any unit may send recommendation to the National e-assessment Centre for initiation of any penalty proceedings against assessee for non-compliance of any notice, direction or order issued to assessee or any other person.

A penalty shall be levied after considering the response furnished by assessee against the show-cause notice issued by National e-assessment Centre on receipt of such recommendation.

### **Personal appearance through video conferencing only**

As per the e-assessment scheme, a person shall not be required to appear either personally or through authorised representative in connection with e-assessment. However, an assessee shall be entitled to seek personal hearing so as to make his oral submissions or present his case against the draft assessment order.

In such cases, hearing shall be conducted exclusively through video conferencing, including use of any telecommunication application software which supports video telephony.

The CBDT shall establish suitable facilities for video conferencing including telecommunication application software which supports video telephony at such locations as may be necessary.

### **Authentication and Delivery of Electronic Records**

- An electronic record shall be authenticated by the originator by affixing his digital signature
- All notices, orders or any other communication shall be delivered to the assessee as a real time alert, by way of:
  - Placing an authenticated copy in assessee's registered account
  - Sending an authenticated copy to registered email address of assessee or authorised representative; or
  - Uploading an authenticated copy on assessee's mobile app.

In order to maintain a proper audit trail of all communication, the Board vide Circular no. 19/2019 has decided that no communication shall be issued, on or after 01-10-2019, which is relating to assessment, appeals, orders, penalty etc., unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication. Any communication which is not having a computer generated DIN shall be treated as invalid and it shall be deemed that such communication have never been issued by the Dept.

### **Appellate proceedings**

An appeal against e-assessment shall lie before the jurisdictional Commissioner (appeals) having jurisdiction over the jurisdictional Assessing Officer.

### **Exchange of information**

All communication with taxpayer and all internal communication between Centres and various units shall be exchanged exclusively by electronic mode.

<b>Tax Audit under Section 44AB</b>	<b>Special Audit under Section 142(2A)</b>
If it is compulsory to get accounts audited if the business turnover exceeds ₹ 1 crore / 2 crores or professional receipts exceed ₹ 50 Lakhs.	It shall be ordered by AO if he thinks that is necessary at any stage of assessment having regard to Interest of Revenue considering: <ol style="list-style-type: none"> <li>a) the nature and complexity of accounts of assessee</li> <li>b) volume of the accounts</li> <li>c) doubts about the correctness of the accounts</li> <li>d) multiplicity of transactions in the accounts</li> <li>e) specialized nature of business activity of the assessee</li> </ol> Previous approval of Principal Chief CIT / Chief CIT / Principal CIT / CIT Opportunity of being heard should be given to the assessee by issuing a Show Cause Notice

It is carried out before the Return is filed.	It is carried out if ordered by AO when the assessment is pending. Direction for Special Audit cannot be given if assessment is complete.
CA shall be appointed by assessee.	CA shall be nominated by Chief CIT/ CIT
Fees shall be paid by the assessee.	Expenses shall be paid by the Central Government
Time limit to file Audit Report is 30 <sup>th</sup> September of AY (30 <sup>th</sup> November if Transfer Pricing provisions apply)	Audit Report shall be furnished to AO within specified period as may be specified. AO may extend the period as he thinks fit. However, the aggregate period (including extension) shall not exceed 180 days from the date on which direction for Special Audit is received by the assessee.
Implications of Non Compliance: Penalty = 0.5% of Turnover/ Gross Receipts or ₹ 1,50,000 whichever lower.	<ul style="list-style-type: none"> <li>➤ Best Judgment assessment u/s 144</li> <li>➤ Penalty u/s 272A – 10,000/-</li> <li>➤ Prosecution: Up to 1 year and fine</li> </ul>

### **Section 144: Best Judgment assessment**

- If any person
  - a) fails to furnish ROI u/s 139(1) or 139(4) or 139(5)
  - b) fails to comply with terms of notice u/s 142(1), 143(2) or direction u/s 142(2A)
  - c) having made a return, fails to produce evidence or documents required u/s 142(2A)
  - d) AO is not satisfied with correctness and completeness of accounts / no method of accounting has been regularly been employed
  - e) Income under the head Profits and Gains of Business and Profession or Income from Other Sources has not been computed as per notified "Income Computation and Disclosure Standards"
- A show cause notice shall be served (No time limit prescribed). Such notice shall not be necessary where a notice under section 142(1) has been issued prior to the making of such assessment.
- **AO cannot assess income below returned income & loss higher than returned loss.** This assessment is for the benefit of Department and not assessee.

### **Section 153(1): Time limit for completion of assessments u/s 144**

**12 months** from the end of the assessment year in which the income was first assessable. In case if reference is made u/s 92CA to Transfer Pricing Officer, the time limit shall be **increased by 12 months**.

### **Section 144A: Power of Joint Commissioner to issue directions**

- A Joint Commissioner may call for and examine record of any proceeding in which **assessment is pending**
  - on own motion
  - on reference being made to him by AO
  - on application by assessee
- He may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions **shall be binding on the AO**.

### **Section 147: Assessment / Reassessment of Income Escaping Assessment**

If AO has **reason to believe** that any taxable income has escaped assessment, he may assess or reassess such income **and also** any other income which has escaped assessment and which comes to his notice subsequently in the course of the proceedings for the assessment year concerned (even if not mentioned in the Notice)

**Doctrine of Partial Merger:** AO may assess or reassess such income, **other than** the income involving matters which are the **subject matters of any appeal, reference or revision**, which is chargeable to tax and has escaped assessment. AO cannot invoke section 147 if the matter is pending or is complete in Appeal or Revision. Remedy against it would be further appeal if possible.

**Cases where income has escaped assessment**

- a) If no ROI has been furnished though his total income exceeded maximum amount not chargeable to tax
- b) If ROI has been furnished but no assessment has been made and it is noticed by AO that the assessee has understated the income / has claimed excessive loss, deduction, allowance or relief
- c) Where an assessment has been made, but
  - income chargeable to tax has been under assessed or
  - such income has been assessed at too low a rate or
  - such income has been made the subject of excessive relief or
  - excessive loss or depreciation allowance or any other allowance under this Act has been computed.
- d) If assessee has failed to furnish a report for any international transaction under section 92E
- e) If person is found to have any asset (including financial interest in any entity) located outside India.
- f) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return

**Section 148: Issue of Notice**

Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish return of his income within such period, as may be specified in the notice.

**Section 149: Time limit for serving notice**

If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment to be made on him as the agent of such non-resident	<b>6 years</b> from the end of the relevant assessment year
Income in relation to any asset (including financial interest in any entity) located outside India, has escaped assessment.	<b>16 years</b> from the end of the relevant assessment year
Income which has escaped assessment amounts to / is likely to amount to ₹ 1 Lakhs or more for that year (In case of notice for multiple years, the limit of ₹ 1 Lakh is per year)	<b>6 years</b> from the end of the relevant assessment year
Other cases i.e. less than ₹ 1 Lakhs	<b>4 years</b> from the end of AY
For assessment to give effect to any finding contained in appeal or revision order passed by Court under Income Tax or any other law	No time limit (Section 150)

**Section 153(2): Time Limit to complete assessment/reassessment**

Case	Time Limit
Notice is served by the AO for assessment or reassessment	<b>12 months</b> from the end of the financial year in which the notice under section 148 was served.

In case if reference is made u/s 92CA, the time limit shall be increased by **12 months**.

**Section 153(3): Time Limit to complete assessment if sent back to AO**

Case	Time Limit
If the Appellate Authorities (ITAT/ High Court or Supreme Court) or CIT u/s 263 or 264 (Revision by CIT) sends back the case for reconsideration / <b>fresh assessment</b> to the AO	<b>12 months</b> from the end of the financial year in which appeal order u/s 250/254 is received by seniors or the order u/s 263/264 is passed by CIT.

In case if reference is made u/s 92CA, the time limit shall be increased by **12 months**.

**Section 153(5): Appeal / Revision Effect Order**

Case	Time Limit
Assessment to give effect to any finding contained in appeal (CIT(A), ITAT, High Court, Supreme Court) or revision order passed u/s 263 or 264 <b>otherwise than by making a fresh assessment</b> or reassessment i.e. <b>Appeal effect order</b> .	<b>3 months</b> from the end of the month in which appeal order is received by CIT / PCIT or the order u/s 263/264 is passed by CIT. Principal Commissioner or Commissioner may allow an additional period of <b>6 months</b> to give effect to the order.

**Section 153(6): Time Limit to complete assessment pursuant to directions of Appellate Authorities / Court**

Case	Time Limit
Where assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250 / 254 / 260A / 262 / 263 / 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference. (Such assessment can be made only in 2 cases - Refer note)	<b>12 months</b> from the end of the month in which the order is received or passed by the P CIT or CIT.
Where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147	<b>12 months</b> from end of the month in which the assessment order in the case of the firm is passed.

Assessment can be made only in 2 cases in pursuant to directions of CIT(A), ITAT, CIT (Revision)	Assessment can be made in pursuant to directions of High Court or Supreme Court
<ul style="list-style-type: none"> <li>• Authorities direct the AO to exclude income from that of one person and include in that of the other. (Different Assesseees)</li> <li>• Authorities direct the AO to exclude income from the total income of the assessee for a year and include in that of another year. (Same Assessee)</li> </ul>	If due to High Court / Supreme Court Judgement, Income which was not taxed earlier is taxable or expense which was allowed earlier is to be disallowed.

**Period of Limitation: Exclusions while computing period of limitation**

1. **Withdrawal of approval or rescinding of notification:** The period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of section 10(21) / 10(22B) / 10(23A) / 10(23B) or 10(23C) and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification is received by the Assessing Officer.



2. **Stay or injunction** - The period during which the assessment proceeding is stayed by an order or injunction of any court
3. **Audit under section 142(2A)** : from the date on which AO directs the assessee to get his accounts audited u/s 142(2A) to the last date on which the assessee is required to furnish a report of such audit
4. **Audit under section 142(2A)**: from the date on which AO directs the assessee to get his accounts audited u/s 142(2A) to date on which the order setting aside such direction is received by CIT, if where such direction is challenged before a court
5. **Information Exchange with Foreign Tax Authorities** : from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement u/s 90/90A to the date on which the information requested is last received by Principal CIT / CIT or one year, whichever is less
6. **Re-hearing under section 129** - The time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee of being re-heard
7. **Settlement Commission** - In a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period from the date on which such application is made and ending with the date on which the order under section 245D(1) is received by the Principal Commissioner or Commissioner under section 245D(2).
8. **GAAR**: period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under section 144BA(1) and ending on the date on which a direction under section 144BA(3)/(6) or an order under section 144BA(5) is received by the Assessing Officer
9. **Advance Ruling** - The period commencing from the date on which an application is made before the Authority for Advance Ruling and ending with the date on which the order rejecting the application is received by the Commissioner
10. **Advance Ruling** - The period from the date on which an application is made before the Authority for Advance Ruling and ending with the date on which the advance ruling pronounced by it is received by the Commissioner
11. **Setting aside of order of annulment** - The period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in section 153A(2) till the date of the receipt of the order setting aside the order of such annulments by the Principal Commissioner or Commissioner.
12. **Repetitive Appeals** : the period commencing from the date on which the Assessing Officer received the declaration under section 158A and ending with the date on which the order is made by him
13. **Valuation Officer**: The period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer (Discussed in "**Income Tax Authorities**" Chapter)

If, after the exclusion of the aforesaid period, the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, is less than 60 days, such remaining period shall be **extended to 60 days**.

**Special Provisions in case when Domestic or International Transfer Pricing is applicable**

<b>Section 92C(3): ALP by AO</b>	<b>Section 92CA: ALP by Transfer Pricing Officer</b>
<p>Where during the assessment, AO is of the opinion that</p> <p>a) the price charged or paid in a transaction has not been determined correctly</p> <p>b) information and document relating to an transaction have not been kept and maintained</p> <p>c) information or data used in computation of the ALP is not reliable or correct or</p> <p>d) the assessee has failed to furnish to AO any information or document which he was required to furnish by a notice issued then AO may proceed to determine the arm's length price on the basis of such material or information or document available with him</p>	<ul style="list-style-type: none"> <li>• If AO considers it necessary or expedient so to do, <b>he may</b>, with the previous approval of CIT / P CIT, refer the computation of ALP to the TPO.</li> <li>• TPO shall serve a notice to assessee asking for the documents. TPO shall calculate ALP, pass order and send it to AO.</li> <li>• TPO's ALP is binding on AO. AO shall pass the order computing total income in conformity with ALP determined by TPO.</li> <li>• TPO has all powers of AO including that of rectification of mistake.</li> </ul> <p><b><u>TPO's Power to find out ALP</u></b></p> <ul style="list-style-type: none"> <li>• Where any other international transaction comes to his notice during the course of the proceedings</li> <li>• For an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding</li> </ul> <p><b><u>Time limit for TPO to pass the order</u></b></p> <p>TPO shall pass the order before 60 days prior to the date on which the period for making the order of assessment expires</p> <p>Where assessment proceedings are stayed by any court or where a reference for exchange of information has been made by the competent authority under an agreement referred to in section 90 or 90A, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty days, such remaining period shall be extended to sixty days.</p>

**Section 144C: Reference to Dispute Resolution Panel (collegium comprising of three Principal CITs / CITs)**

**Eligible assessee** means

- a) Any person in whose case variation arises due to the Transfer Pricing Officer's Order passed u/s 92CA(3)
- b) any foreign company (variations in TPO's order is not required)

**Procedure**

AO shall forward a draft assessment order if he proposes to make, any variation in the income or loss returned which is prejudicial to the interest of such assessee. Assessee shall file response within 30 days of the receipt.

Variations accepted or no objection received	Objections filed with DRP if variations made by AO not accepted by the assessee		
AO shall pass the assessment order within 1 month from the end of the month in which the acceptance is received or the	DRP shall, issue such directions for the guidance of AO to enable him to complete the assessment considering the following:		
	Draft order	Records relating to draft order	Objections filed
	Evidence by DRP or assessee	Report, of AO, Valuation Officer or TPO etc.	Result of any enquiry made

period of filing of objections expires	Direction issued by DRP shall be <b>binding on the Assessing Officer</b> . Direction has to be issued within <b>nine months</b> from the end of the month in which the draft order is forwarded to the eligible assessee. AO has to complete the assessment within one month from the end of the month in which the direction is received.
----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### Note

- If AO wants to make any additions to the Income of eligible assessee, it is compulsory for AO to follow procedure laid down in section 144C.
- However, it is not mandatory for the assessee to file objections with DRP against the draft order. The assessee can file appeal to CIT(A) against the final assessment order.

### Appeals to the Appellate Tribunal

- Any assessee aggrieved by order passed by AO in pursuance of the directions of DRP or an order passed u/s 154 in respect of such order may appeal to the Appellate Tribunal.
- Department cannot file appeal against AO's order passed in pursuance of directions of DRP.

### Section 139A: Who should get Permanent Account Number

- If total income exceeds basic exemption limit or business turnover or professional receipts are or is likely to exceed ₹ 5,00,000 in any previous year
- Charitable trust
- Exporters and importers who are required to obtain an importer : exporter port code
- A resident, other than an individual, who enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more in a financial year
- A person who is the Managing Director, Director, Partner, Trustee, Author, Founder, Karta, Chief Executive Officer, Principal Officer Or Office Bearer of the person referred to in clause (d) or any person competent to act on behalf of the person referred to in clause (d)
- A resident, other than an individual, which enters into a financial transaction of an amount aggregating to Rs. 2.5 Lakhs or more in a financial year and which has not been allotted any PAN - apply on or before 31st May immediately following such financial year (w.e.f. 5.12.2018)**
- Managing Director, Director, Partner, Trustee, Author, Founder, Karta, Chief Executive Officer, Principal Officer Or Office Bearer of the person referred to in clause (f) or any person competent to act on behalf of the person and who has not been allotted any PAN - apply on or before 31st May immediately following such financial year in which the person referred to above enters into financial transaction specified therein (w.e.f. 5.12.2018)**

### Rule 114B: Transactions prescribed by the Board where PAN is compulsory

1. Sale or purchase of a <b>motor vehicle or vehicle</b> , as defined in Motor Vehicles Act, 1988 which requires registration by a registering authority, <b>other than two wheeled vehicles</b>
2. <b>Opening an account</b> (other than a time-deposit and a Basic Savings Bank Deposit Account) with a banking company or a co-operative bank to which the Banking Regulation Act, 1949
3. Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for <b>issue of a credit or debit card</b> .
4. Opening of a <b>demat account</b> with a depository, participant, custodian of securities or any other person

**Quoting PAN compulsory if payment in cash exceeds ₹ 50,000**

5. Payment to a hotel or restaurant against a bill or bills at any one time
6. Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time. (Payment towards fare, or to travel agent or to an authorized person)
7. Cash Deposit with a banking company or a co-operative bank or post office (limit of Rs. 50,000 shall apply for each day)
8. Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank (limit of Rs. 50,000 shall apply for each day)
9. Payment for one or more pre-paid payment instruments (as per policy guidelines issued by RBI) to a banking company or a co-operative bank or to any other company or institution (payment in cash or by way of bank draft or pay order or banker's cheque of more than Rs. 50,000 in a financial year)

**Quoting PAN compulsory if amount exceeds ₹ 50,000 (any mode)**

10. Payment to a Mutual Fund for purchase of its units
11. Payment to a company or an institution for acquiring debentures or bonds issued by it
12. Payment to the Reserve Bank of India for acquiring bonds issued by it
13. Payment as life insurance premium to an insurer
14. A time deposit (a) with banking company or a co-operative bank (b) a Post Office (c) Nidhi : sec 406 of the Companies Act, 2013 (d) non-banking financial company which holds a certificate of registration to hold or accept deposit from public. (Amount exceeding ₹50,000 or aggregating to more than ₹5 lakh during a year)

**Quoting PAN compulsory if amount exceeds ₹ 1,00,000**

15. A contract for sale or purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956
16. Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange

**Quoting PAN compulsory in other cases**

17. Sale or purchase of any immovable property	Amount exceeding ₹ 10 Lakhs or valued by stamp valuation authority as per section 50C at an amount exceeding ₹ 10 Lakhs
18. Sale or purchase, by any person, of goods or services of any nature other than those above	Amount exceeding two lakh rupees per transaction

**Section 272B: Penalty for failure to comply with section 139A (PAN) or quotes or intimates a number which is false = ₹ 10,000**

**Section 139AA: Quoting of Aadhaar number**

- Every person who is eligible to obtain Aadhaar number shall quote Aadhaar number in the application form for allotment of PAN and in the return of income:
- Where the person does not possess the Aadhaar Number, the Enrolment ID of Aadhaar application form shall be quoted Enrolment ID is 28 digit Enrolment Identification Number issued to a resident.
- Every person shall intimate his Aadhaar number to such authority on or before a date to be notified.
- In case of failure to intimate the Aadhaar, PAN allotted to the person shall be deemed to be invalid,

### **PAN and Aadhar (w.e.f. 1.9.2019)**

Notwithstanding anything contained in this Act, every person who is required to furnish or intimate or quote his permanent account number under this Act, and who

- a. has not been allotted a permanent account number but possesses the Aadhaar number, may furnish or intimate or quote his Aadhaar number in lieu of the permanent account number, and such person shall be allotted a permanent account number in such manner as may be prescribed.
- b. has been allotted a permanent account number, and who has intimated his Aadhaar number in accordance with provisions of section 139AA(2), may furnish or intimate or quote his Aadhaar number in lieu of the permanent account number.

Every person entering into such transaction, as may be prescribed, shall quote his permanent account number or Aadhaar number, as the case may be, in the documents pertaining to such transactions and also authenticate such permanent account number or Aadhaar number, in such manner as may be prescribed. (w.e.f. 1.9.2019)

Every person receiving any document relating to the transactions referred above, shall ensure that permanent account number or Aadhaar number, as the case may be, has been duly quoted in such document and also ensure that such permanent account number or Aadhaar number is so authenticated. (w.e.f. 1.9.2019)

### **W.e.f. 1.9.2019**

- Any person, who has not been allotted a permanent account number but possesses the Aadhaar number and has furnished or intimated or quoted his Aadhaar number in lieu of the permanent account number shall be deemed to have applied for allotment of permanent account number and he shall not be required to apply or submit any documents under this rule.
- Any person, who has not been allotted a permanent account number but possesses the Aadhaar number may apply for allotment of the permanent account number to the authorities by intimating his Aadhaar number and he shall not be required to apply or submit any documents under this rule.
- The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall on receipt of information authenticate the Aadhaar number for that purpose.

**Section 272B: Penalty for failure to comply with section 139A (PAN) or quotes or intimates a number which is false = ₹10,000 (Highlighted points changed w.e.f. 1.9.2019)**

- If a person fails to comply with the provisions of section 139A, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ₹10,000.
- If a person who is required to quote his permanent account number or **Aadhaar number** in any document or to intimate such number, quotes or intimates a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of **₹10,000 for each such default.**
- **If a person, who is required to quote his permanent account number or Aadhaar number, as the case may be, in documents referred to in section 139A(6A) or authenticate such number in accordance with the provisions of the said sub-section, fails to do so, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ₹10,000 for each such default.**
- **If a person, who is required to ensure that the permanent account number or the Aadhaar number, as the case may be, has been**
  - i. **duly quoted in the documents relating to transactions referred to in clause (c) of sub-section (5) or in sub-section (6A) of section 139A or**

- ii. **duly authenticated in respect of transactions referred to under sub-section (6A) of that section,**  
**fails to do so, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ₹10,000 for each such default.**

**Notification No. No.37/2017**

The provisions of section 139AA shall not apply to an individual who does not possess the Aadhaar number or the Enrolment ID and is

- residing in the States of Assam, Jammu and Kashmir and Meghalaya
- a non-resident as per the Income-tax Act, 1961
- of the age of eighty years or more at any time during the previous year
- not a citizen of India

**Section 285BA: Statement of Financial Transaction or Reportable Account**

<b>Nature and value of transaction</b>	<b>Class of person (reporting person)</b>
<ul style="list-style-type: none"> <li>Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to <b>ten lakh rupees</b> or more in a financial year.</li> <li>Payments made in cash aggregating to <b>ten lakh rupees</b> or more during the financial year for purchase of pre-paid instruments</li> <li>Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to <b>fifty lakh rupees</b> or more in a financial year, in or from one or more current account of a person.</li> </ul>	A banking company or a co-operative bank
Cash deposits aggregating to <b>ten lakh rupees</b> or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	(i) A banking company or a co-operative bank (ii) Post Master General
One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to <b>ten lakh rupees</b> or more in a financial year of a person.	(i) A banking company or a co-operative bank (ii) Post Master General (iii) Nidhi :sec 406 of the Companies Act, 2013 (iv) Non-banking financial company which holds a certificate of registration to hold or accept deposit from public.
Payments made by any person of an amount aggregating to (i) <b>one lakh rupees</b> or more in cash or (ii) <b>ten lakh rupees</b> or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.	A banking company or a co-operative bank or any other company or institution issuing credit card.
Receipt from any person of an amount aggregating to <b>ten lakh rupees</b> or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than	A company or institution issuing bonds or debentures.

the amount received on account of renewal of the bond or debenture issued by that company).	
Receipt from any person of an amount aggregating to <b>ten lakh rupees</b> or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares.
Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to <b>ten lakh rupees</b> or more in a financial year.	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013
Receipt from any person of an amount aggregating to <b>ten lakh rupees</b> or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers' cheque or draft or any other instrument of an amount aggregating to <b>ten lakh rupees</b> or more during a financial year.	Authorised person as per section 2(c) of the Foreign Exchange Management Act, 1999
Purchase or sale by any person of immovable property for an amount of thirty lakh rupees or more or valued by the stamp valuation authority referred to in section 50C of the Act at <b>thirty lakh rupees</b> or more.	Inspector-General appointed under section 3 of the Registration Act, 1908 or Registrar or Sub-Registrar appointed under section 6 of that Act.
Receipt of cash payment exceeding <b>two lakh rupees</b> for sale, by any person, of goods or services of any nature (other than those specified above.)	Any person who is liable for audit under section 44AB

The statement in Form 61A shall be furnished **on or before 31st May** immediately following the financial year in which transaction is registered or recorded.

**Section 271FA: Penalty for failure to furnish Statement of Financial Transaction or Reportable Account**

- **₹ 1,000 per day** from the day immediately following the day on which the time specified in such notice for furnishing the statement expires to the day of furnishing the Statement
- **₹ 500 per day** of failure (i.e. from 1<sup>st</sup> June till due date of filing statement as per notice)

**Section 271FAA: Penalty for Financial Reporting Institution providing inaccurate information = ₹50,000**

- a) inaccuracy is due to a failure to comply with the due diligence requirement or is deliberate on the part of that person
- b) the person knows of the inaccuracy at the time of furnishing the statement, but does not inform the income tax authority or such other authority or agency
- c) the person discovers inaccuracy after statement is furnished and fails to inform and furnish correct information within time specified

## Chapter 15 : Powers of Income Tax Authorities

<b>Section 131: Summons by AO</b>	<b>Sec 133A(1)/(2): Power of Survey</b>	<b>133A(2A): Survey to verify TDS / TCS</b>	<b>Sec 133B: Power to collect information</b>	<b>Section 132: Search and Seizure</b>
This power is exercised if AO has reason to suspect that income is or may be concealed.	No requirement of reason to believe; however, AO will exercise this power only if there is some suspicion of tax evasion or non-compliance of the procedures.			AO must have <b>reason to believe</b> due to information in his possession that any person a) to whom summons u/s 131(1) or a notice u/s 142(1) has been issued, failed to produce such books or other documents b) may not produce any books of account or other document c) is in possession of money which represents income or property which has not been disclosed
AO can enter any place	AO can enter only Business Premises or place where books, assets etc. are kept or <b>place where charitable activity is carried out</b>		<b>Only Business Premises</b>	AO can enter and search any building (Residential or Business), place, vessel, vehicle or aircraft
AO can enter at any time (time not specified)	<b>Place of business or profession (Principal or other) :</b> AO can enter only during hours at which such place is open for the conduct of business or profession <b>Other place where books, assets / place where charitable activity is carried out kept:</b> AO can enter only after sunrise and before sunset <b>In case of function:</b> at any time after such function, ceremony or event	<b>Place of business or place where books are kept:</b> AO may enter, after sunrise and before sunset	AO can enter only during the hours at which such place is open for the conduct of business or profession	No time specified. <ul style="list-style-type: none"> <li>• Break open the lock of any door, locker etc. if keys are not available.</li> <li>• Search any person who has got out of or is about to get into, or is in the building.</li> <li>• Require any person to allow inspection of books of accounts etc. kept in electronic form.</li> <li>• If it is not possible to seize goods, then AO shall pass an order that goods should not be seized without his permission (Deemed Seizure)</li> </ul>
Books of accounts can be impounded or retained for 15 days (further extension with permission of seniors)		<b>Books cannot be impounded</b>	<b>Books cannot be impounded</b>	Books of account shall not be retained for more than 30 days from the date of order of assessment u/s 153A (Extension by senior upto 30 days)



<b>Assets cannot be seized</b>		Assets can be seized except stock-in-trade of the business. AO shall make a note of inventory of such stock.
AO can make a list of assets.	<b>AO cannot make a list of assets.</b>	AO can make a list of assets.
There is no special assessment prescribed; On the basis of information obtained, AO can assess or reassess the income under section 147		Assessment under section 153A shall be done.

**Note:** Reason to believe, as recorded by the income-tax authority shall not be disclosed to any person or any authority or the Appellate Tribunal.

### **Provisional Attachment of Property**

- Where, during the course of the search or seizure or within 60 days from the date on which the last of the authorisations for search was executed, the authorised officer, for the reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, **attach provisionally any property** belonging to the assessee, and for the said purpose the provisions of the Second Schedule shall, mutatis mutandis, apply.
- Provisional attachment made shall cease to have effect **after six months** from the date of the order.

### **Reference to Valuation Officer**

The authorised officer may, during the course of the search or seizure or within 60 days from the date on which the last of the authorisations for search was executed, make a **reference to a Valuation Officer** referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within 60 days from the date of receipt of such reference.

### **Section 153A: Assessment in case of Search or Requisition**

- In case of a person if search is initiated u/s 132 or books or assets are requisitioned under section 132A
  - AO shall issue notice to furnish within such period specified in the notice, Return of Income for each assessment year falling within six assessment years and for the **relevant assessment year / years**
  - AO shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years. Tax rates and all provisions as applicable for those years.
- Notice for assessment or reassessment shall be issued by AO **for relevant assessment year or years** only if
  - a) AO has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to **Rs. 50 Lakhs or more** in the relevant assessment year or in aggregate in the relevant assessment years
  - b) the income or part thereof has escaped assessment for such year or years and
  - c) the search u/s 132 is initiated or requisition u/s 132A is made on or after the 1st day of April, 2017.
- Relevant assessment year shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls **beyond 6 assessment**

**years but not later than 10 assessment years** from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

- Asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

**Section 153B: Time-limit for completion of assessment (New time limits)**

Particulars	Search / Requisition made from 1.4.2019
Assessment u/s 153A (previous year of search/requisition, for 6 preceding years and for relevant AY/s)	<b>12 months</b> from the end of the financial year in which the last of the authorisations for search or for requisition was executed
Assessment u/s 153C (on other person)	<ul style="list-style-type: none"> <li>• <b>12 months</b> from the end of the year in which the last of the authorisations for search or requisition was executed</li> <li>• <b>12 months</b> from the end of the year in which books, documents or assets are handed over to AO having jurisdiction over him, whichever later</li> </ul>
In case reference is made to TPO u/s 92CA, the above period shall be increased by <b>12 months</b> (each limit)	

**Section 271AAB: Penalty where search has been initiated**

Circumstances	Penalty
<ul style="list-style-type: none"> <li>➤ If undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and</li> <li>➤ the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, and</li> <li>➤ furnishes the return of income for the specified previous year declaring such undisclosed income, on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 153A expires)</li> </ul>	30% of Undisclosed Income
<ul style="list-style-type: none"> <li>➤ If undisclosed income relating to the specified previous year is not admitted during the course of search in the statement furnished under section 132(4) but</li> <li>➤ the same is disclosed in the return of income filed after the date of search and the tax along with the interest, if any, is paid on or before the specified date</li> </ul>	60% of Undisclosed Income
➤ In all other cases	

The above penal provisions will apply to the previous year

- a) which has ended before the date of search, but due date of furnishing the return of income has not expired before the date of search and the return is not yet furnished before the date of search or
- b) in which search was conducted

**Section 142A: Estimate by Valuation Officer in certain cases**

- AO may, for assessment, make a reference to a Valuation Officer to estimate the value, including fair market value of any asset, property or investment, **whether or not** AO is satisfied about the correctness or completeness of the accounts of the assessee.
- The Valuation Officer shall send a copy of the report of the estimate made, to the Assessing Officer and the assessee, within a period of **six months** from the end of the month in which a reference is made.
- AO **may**, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

## Chapter 16 : Penalties and Prosecution

### **Section 270A: Penalty for under reporting and misreporting of income**

The penalty for under reporting = <b>50%</b> of the amount of tax payable on under-reported income.	Under-reported income is in consequence of any misreporting, the penalty = <b>200%</b> of the amount of tax payable on under-reported income.
-----------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------

#### **If MAT / AMT does not apply**

	<b>Return / Assessment</b>	<b>Case</b>	<b>Under reported Income</b>	<b>Tax on Under reported Income</b>
1	Return not filed / <b>filed for the first time u/s 148</b>	Assessed income is greater than maximum amount not liable to tax	a) Company, firm or local authority: Assessed Income b) Other persons: Assessed Income (-) Basic Exemption Limit	Tax on (under-reported income as increased by the basic exemption limit if any)
2	Return filed and Income assessed	Assessed income is greater than Income as per Intimation (section 143(1)(a))	Assessed income (-) Income determined under section 143(1)(a) (in case of all persons)	Tax on (under-reported income + total income as per intimation / assessment) <b>Minus</b>
3	Reassessment	Reassessed income is greater than assessed income (as per previous assessment)	Income reassessed (-) Income assessed in the order immediately preceding order	Tax calculated on the total income as per intimation / assessment in preceding order.

**Note:** No Penalty for additions made in Intimation.

#### **If MAT / AMT applies**

	<b>Return / Assessment</b>	<b>Case</b>	<b>Under reported Income</b>	<b>Tax on Under reported Income</b>
5	MAT / AMT applies, Return filed and Assessment made	Assessed Deemed total income (under section 115JB/115JC) is greater than Deemed total income as per Intimation (under section 115JB/115JC)	(A - B) + (C - D) where, A = Total income assessed / reassessed as per general provisions B = Total income assessed / reassessed (-) under reported income	Tax on (under-reported income + total income as per intimation / assessment)
6	MAT / AMT applies, Return not filed / <b>filed for the first time u/s 148</b>	Assessed deemed total income (under section 115JB/115JC) is greater than maximum amount not liable to tax	C = Total Income assessed / reassessed as per provisions in sec 115JB or 115JC D = Total Income assessed / reassessed as per provisions in sec 115JB or 115JC (-) under reported income	<b>Minus</b> Tax calculated on the total income as per intimation / assessment in preceding order.
7	MAT / AMT applies - Reassessment	Reassessed deemed total income (under section 115JB/115JC) is greater than Assessed deemed total income under section	If under reported income on any issue is considered both under B and D, such amount shall not be	

	115JB/115JC	reduced from D.	
--	-------------	-----------------	--

**Note:** For MAT, Deemed Total Income means Book Profit whereas for AMT it shall be Adjusted Total Income.

#### Loss Case

	<b>Return / Assessment</b>	<b>Case</b>	<b>Under reported Income</b>	<b>Tax on Under reported Income</b>
8	Loss declared in Return and on assessment, it is reduced or is converted into Income	Returned loss is Greater than Assessed Loss or Income	The loss claimed (-) The income or loss assessed or reassessed.	Tax calculated on the under-reported income as if it were the total income.
9	Loss in assessment and on reassessment, it is reduced or is converted into Income	Assessed loss is greater than Reassessed Loss or Income		

#### Intangible Additions

Where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

It shall be deemed to be amount of income under-reported for the preceding year in the following order

- a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
- b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

#### Cases not included within the scope of under-reported income under section 270A

- a) Income in respect of which the **assessee offers an explanation** and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner is satisfied that the explanation is **bona fide** and the assessee has **disclosed all the material facts** to substantiate the explanation offered
- b) Under-reported income determined on the basis of an estimate, if the **accounts are correct and complete** to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner but the method employed is such that the income cannot properly be deduced therefrom
- c) Under-reported income determined on the basis of an estimate, if the **assessee has, on his own, estimated a lower amount** of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance
- d) Under-reported income represented by any addition made in conformity with the arm's length price determined by the **Transfer Pricing Officer**, where the assessee had **maintained information** and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction
- e) Undisclosed income referred to in **section 271AAB**.

**Note:** No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

### **Cases of misreporting of income (200% Penalty)**

- misrepresentation or suppression of facts
- failure to record investments in the books of account
- claim of expenditure not substantiated by any evidence
- recording of any false entry in the books of account
- failure to record any receipt in books of account having a bearing on total income and
- failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

### **Section 270AA: Immunity from imposition of penalty, etc**

- An assessee may make an application to AO to grant immunity from imposition of penalty under section 270A and initiation of proceedings u/s 276C/276CC if he fulfils following conditions:
  - tax and interest payable as per the order of assessment or reassessment u/s 143(3) or section 147, as the case may be, has been paid within the period specified in such notice of demand and
  - no appeal against the order has been filed.
- An application shall be made within one month from the end of the month in which the order has been received and shall be made in such form and verified in such manner as may be prescribed.
- The Assessing Officer shall, subject to fulfilment of the conditions specified above and after the expiry of the period of filing the appeal as specified in section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 286CC, where the proceedings for penalty under section 270A has not been initiated for misreporting of income.
- AO shall, within a period of one month from the end of the month in which the application is received, pass an order accepting or rejecting such application. The order made shall be final.
- No appeal u/s 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment in a case where an order has been made accepting the application.

### **Other Penalties /**

<b>Section</b>	<b>Nature of default</b>	<b>Penalty leviable</b>
140A(3)	Failure to pay wholly or partly a) self-assessment tax/fringe benefit tax, or b) interest, or both under section 140A(1)	Such amount as AO may impose but not exceeding tax in arrears
221(1)	Default in making payment of tax	Amount as AO may impose not exceeding tax in arrears
271A	Failure to keep, maintain, or retain books of account, documents, etc., as required under section 44AA	₹ 25,000
271AA	a) Failure to keep and maintain information and documents required by section 92D(1) or 92D(2) b) Failure to report such transaction c) Maintaining / furnishing incorrect information	2% of value of each international transaction/or specified domestic transaction entered into
	Failure to furnish the information and the document / report in respect of international group (Section 92D(4))	Rs.5,00,000
271B	Failure to get accounts audited or furnish a report of audit as required under section 44AB	0.5% of total sales, turnover or gross receipts or ₹ 1,50,000, whichever is less
271BA	Failure to furnish a report from an accountant u/s 92E	₹ 1,00,000
271AAC	Penalty on Income under section 68 / 69 / 69A / 69B / 69C / 69D (no such penalty on such income if it has been	10% of tax payable under

	included in return of income and tax has been paid on or before the end of the relevant previous year)	section 115BBE
271C	Failure to deduct tax at source, wholly or partly, under sections 192 to 196D (Chapter XVII-B) or failure to pay wholly or partly tax u/s 115-O(2) or second proviso to section 194B	Amount equal to tax not deducted or paid
271CA	Failure to collect tax at source as required	Amount of tax not collected
271D	Taking or accepting certain loans, deposits or specified sum in contravention of provisions of section 269SS	Amount of loan or deposit or specified sum taken or accepted
271E	Repaying any loan or deposit or specified advance as per section 269T in contravention of its provisions	Amount equal to loan or deposit repaid
271FA	Failure to furnish a statement of financial transaction or reportable account as required under section 285BA <b>(Penalty amount changed w.e.f. AY 2019-20)</b>	<b>₹ 500</b> per day from day next to due date till last date to furnish statement as per AO's Notice <b>₹ 1000</b> per day from last day to furnish statement as per AO's Notice till the date of furnishing the Return
271FAA	If a prescribed financial reporting institution provides inaccurate information in the statement, and where a) the inaccuracy is due to a failure to comply with the due diligence requirement prescribed or is deliberate on the part of that person or b) the person knows of the inaccuracy at the time of furnishing the statement of financial transaction or reportable account, but does not inform the prescribed income-tax authority or such other authority or agency or c) the person discovers the inaccuracy after the statement of financial transaction or reportable account is furnished and fails to inform and furnish correct information within the time specified	₹ 50,000
271FAB	Failure to furnish a statement or any information or document within the time prescribed by eligible investment fund	₹ 5,00,000
271G	Failure to furnish any information or document as required by section 92D (International / Domestic Transfer Pricing)	2% of the value of transaction
271GA	Failure to furnish information / document under section 285A (Information about any share of, or interest in, a company or an entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India)	2% of the value of the transaction if it had the effect of transferring the right of management or control in relation to the Indian concern or ₹ 500,000 in any other case
	Failure to furnish report in respect of international group	Rs. 10,000
	a) Not more than a month	₹ 5,000 per day
	b) beyond one month	₹ 15,000 per day beyond 1 month
	c) Continuing default even after service of order levying	₹ 50,000 per day of continuing

271GB	penalty either under (a) or under (b)	failure beginning from the date of service of order
	Failure to produce information before prescribed authority within the period allowed u/s 286(6)	₹ 5,000 per day of continuing failure, from the day immediately following the day on which the period expires.
	Continuing default even after service of penalty order	₹ 50,000 per day for default beyond service of penalty order
	If reporting entity u/s 286 provides inaccurate information in the report and a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority or b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a 15 days of such discovery or c) the entity furnishes inaccurate information or document in response to the notice issued under section 286(6)	₹ 5,00,000
271H	Failure to deliver/cause to be delivered TDS / TCS Returns or furnishes incorrect information in the statement	Not less than ₹ 10,000 but may extend to ₹ 1,00,000
271-I	Failure to furnish information under section 195 or furnishes inaccurate information	₹ 1,00,000
271J	Furnishing incorrect information in reports or certificates by Accountant or Merchant Banker or Registered Valuer	
272A(1)	Refusal or failure to : a) answer questions b) sign statement c) attend to give evidence or produce books of account, etc., in compliance with summons under section 131(1) d) fails to comply with a notice under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A)	₹ 10,000 for each failure/default
272A(2)	Failure to : a) furnish requisite information in respect of securities as required under section 94(6) b) give notice of discontinuance of business or profession as required under section 176(3) c) furnish in due time returns, statements or certificates, deliver declaration, allow inspection, etc., under sections 133, 134, 139(4A), 139(4C), 192(2C), 197A, 203, 206, 206C, 206C(1A) and 285B d) deduct and pay tax under section 226(2) e) file the prescribed statement within the time specified in section 206A(1)	₹ 10,000 for each failure/default. (In respect of penalty for failure, in relation to a declaration mentioned in section 197A, a certificate as required by section 203 and returns u/ss 206 and 206C and statements under section 200(3) or proviso to section 206C(3), penalty shall not exceed amount of tax deductible or collectible)
272AA(1)	Failure to comply with section 133B	Not exceeding ₹ 1,000

272B	Failure to comply with provisions of section 139A/139A(5)(c)/(5A)/(5C)	₹ 10,000
272BB(1)	Failure to comply with section 203A (TAN)	₹ 10,000 for each failure/default
272BB(1A)	Quoting false TAN in challans / certificates / statements / documents referred	₹ 10,000

<b>Section 269SS: Mode of Taking or Accepting Certain Loans, Deposits and specified sum</b>	<b>Section 269T: Mode of Repayment of Certain Deposits</b>
<p>No person shall, take or accept from any other person, any loan or deposit or any specified sum otherwise than by an account payee cheque/ account payee bank draft or use of electronic clearing system through a bank account <b>or through such other electronic mode as may be prescribed</b> if</p> <p>a) aggregate of such loan / deposit / specified sum</p> <p>b) on the date of accepting it, any loan / deposit / specified sum accepted earlier from the depositor is remaining unpaid (whether repayment has fallen due or not), aggregate amount remaining unpaid or</p> <p>c) the amount referred to in clause (a) together with amount referred to in clause (b), is <b>₹20,000/-</b> or more.</p>	<p>No branch of a bank/co-operative bank, company/co-operative society/firm/other person shall repay any loan or deposit or any specified advance received by it otherwise than by account payee cheque or account payee bank draft drawn in name of person who has made loan/deposit/specified advance or use of ECS through a bank account <b>or through such other electronic mode as may be prescribed</b> if</p> <p>a) loan or deposit or specified advance together with interest</p> <p>b) loans or deposits or specified advance held by such person either in his own name or jointly with any other person on date of such repayment together with the interest payable</p> <p>c) specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest is <b>₹20,000/-</b> or more</p>
<p>These provisions shall not apply to any loan / deposit / specified sum taken or accepted <b>from/by</b></p> <p>a) Government / Government company</p> <p>b) banking company / post office savings bank / co-operative bank</p> <p>c) Corporation established by a Central, State or Provincial Act</p> <p>d) Government company as per of section 2(45) of the Companies Act, 2013</p> <p>e) Notified institution, association or body</p> <p>These provisions shall not apply to any loan or deposit or specified sum where the person from whom it is taken and the person by whom it is taken are both having agricultural income and neither of them has any taxable income .</p>	<p>These provisions shall not apply to repayment of any loan or deposit taken or accepted <b>from</b></p> <p>a) Government / Government company</p> <p>b) banking company/post office bank/co-operative bank</p> <p>c) Corporation established by a Central, State or Provincial Act</p> <p>d) Notified institution, association or body</p> <p>If repayment is by a branch of banking company or co-operative bank, such repayment may also be made by crediting loan or deposit to the savings bank account or the current account.</p>
<p><b>Specified sum</b> means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.</p>	<p><b>Specified advance</b> means any sum of money in nature of advance relating to transfer of immovable property, whether or not the transfer takes place.</p>



**Section 271D: Penalty for failure to comply with the provisions of section 269SS**

Penalty = Loan or deposit or specified sum so taken or accepted. It shall be imposed by the Joint Commissioner.

**Section 271E: Penalty for failure to comply with the provisions of section 269T**

Penalty= the loan or deposit or specified advance so repaid. It shall be imposed by the Joint Commissioner.

**Section 269ST: Mode of undertaking transactions**

- No person shall receive an amount of **two lakh rupees** or more
  - a) in aggregate from a person in a day or
  - b) in respect of a single transaction or
  - c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account **or through such other electronic mode as may be prescribed.**
- The provisions of this section shall not apply to
  - i. any receipt by
    - a) Government
    - b) any banking company, post office savings bank or co-operative bank
  - ii. transactions of the nature referred to in section 269SS
  - iii. such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify

**Notification No.57/2017**

The provision of section 269ST shall not apply to the following:

- a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India
- b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007
- c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007
- d) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards
- e) receipt which is not includible in the total income under section 10(17) of the Income-tax Act, 1961

**Notification No. 28/2017**

The provision of section 269ST shall not apply to receipt by any person from any banking company, post office savings bank or co-operative bank.

**Section 271DA: Penalty for failure to comply with provisions of section 269ST**

If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt

**Circular No. 22/2017**

In respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

**Section 269SU: Acceptance of payment through prescribed electronic modes (w.e.f. 1.11.2019)**

Every person, carrying on business, shall provide facility for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes, of payment, if any, being provided by such person, if his total sales, turnover or gross receipts, as the case may be, in business exceeds **Rs.50 crores** during the immediately preceding previous year

**Section 271DB: Penalty for failure to comply with provisions of section 269SU**

- If a person who is required to provide facility for accepting payment through the prescribed electronic modes of payment referred to in section 269SU, fails to provide such facility, he shall be liable to pay, by way of penalty, a sum of **Rs. 5,000**, for every day during which such failure continues.
- No such penalty shall be imposable if such person proves that there were good and sufficient reasons for such failure.
- Such penalty shall be imposed by the Joint Commissioner of Income-tax.

**Section 273A: Power to reduce or waive penalty, etc., in certain cases**

<b>Section 273A(1)</b>	<b>Section 273A(4)</b>
Principal CIT/CIT may <b>reduce or waive</b> penalty under section <b>270A</b>	Principal CIT/CIT may <b>reduce or waive any penalty</b> or stay or <b>compound any proceeding</b> for the recovery
<b>Conditions</b> a) assessee has, prior to the detection by AO,, voluntarily and in good faith, made full and true disclosure of such particulars, b) has co-operated in any enquiry and c) has either paid or made arrangements for the payment of any tax or interest payable in consequence of an order	<b>Conditions</b> a) Penalty would cause genuine hardship to assessee as per circumstances of case b) assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.
AO shall take permission of <b>Seniors</b> if aggregate <b>income</b> for which the penalty is imposed for those years <b>exceeds ₹5,00,000/-</b> ,	AO shall take permission of <b>Seniors</b> if the aggregate amount of such penalties exceeds <b>₹ 1,00,000/-</b>
No time limit specified to make application. <b>Once in a lifetime opportunity</b> If such reduction or waiver is granted to a person, he shall not be entitled to any relief in relation to any other year at any time after the making of such order	Multiple applications can be made by an assessee. The order accepting or rejecting the application shall be passed within 12 months from the end of the month in which the application is received by the Principal CIT / CIT.
Penalty once paid shall be refunded.	No Refund possible.
Every order made under this section shall be final and shall not be called into question by any court or any other authority i.e. no appeal is possible against such order.	

**Offences and Prosecutions****Non Cognizable Offences (Arrest possible only with warrant)**

Section	Nature of default	Punishment (rigorous imprisonment)
276B	Failure to pay to credit of Central Government a) tax deducted at source under Chapter XVII-B b) tax payable u/s 115-O(2) c) tax payable under section 194B when winnings from lottery etc. are wholly or partly in kind	3 months to 7 years and fine <b>(No Punishment if he proves that there was - reasonable cause)</b>
276C(1)	Wilful attempt to <b>evade tax</b> , penalty or interest a) where tax on under reported income exceeds ₹ 25 lakh b) in other cases	6 months to 7 years and fine 3 months to 2 years and fine
276C(2)	Wilful attempt to <b>evade payment of tax</b> , penalty or interest	3 months to 2 years and fine
276CC (Note)	Wilful failure to furnish return of income under section 139(1) or section 142(1)(i) or section 148 / 153A a) where tax under reported income exceeds ₹ 25 lakh b) in other cases	6 months to 7 years and fine 3 months to 2 years and fine
277	False statement in verification or delivery of false account, which he knows or believes to be false, or does not believe to be true a) where tax sought to be evaded exceeds ₹ 25 lakh b) in other cases	6 months to 7 years and fine 3 months to 2 years and fine
278	If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false or is a wilful attempt to <b>evade tax</b> , penalty or interest a) If tax, penalty, interest sought to be evaded exceeds ₹ 25 lakh b) in other cases	6 months to 7 years and fine 3 months to 2 years and fine

**Section 278A**

In case of Second and subsequent offences under section 276B, 276C(1), 276CC, 277 or 278, prosecution shall be 6 months to 7 years and fine.

**Note for Section 276CC:** No prosecution under Section 276CC for failure to furnish Return in time if

a) the Return is furnished by him before the expiry of the assessment year

**b) the tax payable by such person, not being a company, on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any tax deducted or collected at source, does not exceed Rs. 10,000 (w.e.f. AY 2020-21)**

**Cognizable Offences (Arrest possible without warrant)**

Section	Nature of default	Punishment (rigorous imprisonment)
275A	Contravention of order made for deemed seizure i.e. selling such goods without permission	Up to 2 years and fine

275B	Failure to afford necessary facility to authorised officer to inspect books of account or other documents maintained in the form of electronic record	Up to 2 years and fine
276	Removal, concealment, transfer or delivery of property to thwart tax recovery	Up to 2 years and fine
276A	Failure to comply with following by Liquidator or Receiver of Assets <ul style="list-style-type: none"> <li>• he does not give notice of his appointment within 30 days to AO</li> <li>• part with any of the assets without the permission of the Principal CC / CC / Principal CIT / CIT</li> <li>• fails to set aside amount to pay off the Income Tax dues</li> </ul>	6 months to 2 years and fine <b>(No Punishment if he proves that there was reasonable cause)</b>
276BB	Failure to pay the tax collected at source to the credit of the Central Government	3 months to 7 years and fine
276D	Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice u/s 142(2A)	Up to 1 year and fine
277A	Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act	3 months to 2 years and fine
280(1)	Disclosure of particulars by public servants in contravention of section 138(2) [Prosecution to be instituted with previous sanction of Central Government under section 280(2)]	Up to 6 months (simple/rigorous) and fine

### **Section 278B: Offences by Companies**

- Where an offence has been committed by a company, **every person** who, at the time the offence, was **in charge** of/ was responsible to the company for the conduct of the business of the company as well as the **company** shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- However, no punishment if he proves that the offence was committed without his knowledge or he had exercised all due diligence to prevent the commission of such offence.
- Where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or if attributable to any neglect on the part of, any director, manager, secretary or other officer, such person, shall also be deemed to be guilty of that offence and shall be liable to be punished.
- "Company" includes firm and AOP / BOI whether incorporated or not.
- "Director", in relation a firm, means a partner in the firm and in relation to any AOP/BOI means any member controlling the affairs thereof.

### **Section 278C: Offences by Hindu Undivided Family**

If offence is committed by a HUF, Karta shall be deemed to be guilty of the offence and he shall be punished. Karta can prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence in which case he will not be liable for punishment. If it is established that any member of the HUF is guilty of the offence, such member is liable to be proceeded against and punished accordingly.

*CA Final Direct Taxes Revision cum Amendment Notes for May / Nov 2020 Exam by CA Kedar Junnarkar*  
**Chapter 17 : Appeals, Revision and Rectification**

<b>Commissioner (Appeals) (Sec 246A)</b>	<b>Appellate Tribunal (ITAT) (Sec 253)</b>	<b>High Court (Sec 260A)</b>	<b>Supreme Court (Sec 261)</b>
Assessee can file appeal against order of AO below the rank of CIT	Assessee can file appeal against order of a) CIT / Chief CIT b) CIT (Appeals)	Assessee can file appeal against the order of ITAT	Assessee can file appeal against order of High Court.
No appeal can be filed by Department against AO's order. (Revision u/s 263 possible)	Department can file appeal to ITAT against order of CIT(A); it cannot file appeal against AO's order	Department can file appeal against the order of ITAT	Department can file appeal against the order of High Court.
There is no tax effect prescribed.	Tax effect limit for departmental appeal is <b>₹ 50,00,000 (changed)</b>	<b>₹ 1,00,00,000 (changed)</b>	<b>₹ 200,00,000 (changed)</b>
Time limit to file appeal is <b>30 days</b> from receipt of order of AO.	Time limit to file appeal is <b>60 days</b> from receipt of order of CIT or CIT(A)	<b>120 days</b> from receipt of order of ITAT.	No time limit prescribed in Income Tax
Not applicable	Other party may <b>within 30 days</b> of receipt of notice, file a <b>memorandum of cross-objections</b> , against the order of CIT (Appeals) or order of AO in pursuance of DRPs' directions.	Not applicable	Not applicable
Delay to file application for appeal / memorandum of cross objections can be condoned by all Authorities.			
Appeal is possible against Question of Law	Appeal is possible against Question of Law	Possible against Question of Law	Possible against Question of Law
Appeal is possible against Question of Fact	Appeal is possible against Question of Fact (As no further appeal is possible to High Court, ITAT is called final fact finding authority)	No Appeal against Question of fact; Writ petition to High Court can be filed. If it is dismissed, then Special Leave petition to Supreme Court.	
CIT(A) may grant stay of demand for the entire period of appeal.	ITAT may grant stay for upto <b>180 days</b> . It may extend stay for 185 days if the delay is not attributable to the assessee (total period 365 days) If such appeal is not so disposed of within 365 days, the no stay shall be granted even if the delay is not attributable to the assessee.	No stay of demand i.e. assessee has to pay the tax demand and then file the appeal; if the case is ruled in favour of the assessee, then Refund would be granted.	
Assessee has to take stay of demand from AO as well. If it is not taken, then AO can treat him as assessee in default.	No requirement of taking stay of demand from Assessing Officer		

CIT (A), where it is possible, decides such appeal within <b>1 year</b> from the end of the financial year in which such appeal is filed.	ITAT, where it is possible, may hear and decide such appeal within <b>4 years</b> from the end of the financial year in which such appeal is filed.	No time limit specified in Income Tax Act	No time limit specified in Income Tax Act
CIT(A) can rectify mistake in order within 4 years from end of year in which order sought to be amended was passed	ITAT may, at any time within six months from the end of the month in which the order was passed, with a view to rectifying any mistake apparent from the record, amend any order passed by it	No specific provision for rectification of mistakes.	

<b>Section 158A: Procedure when assessee claims identical question of law is pending before High Court or Supreme Court</b>	<b>Section 158AA: Procedure when in an appeal by revenue an identical question of law is pending before Supreme Court</b>
Application is to be made by assessee.	Application is to be made by CIT / Principal CIT.
Any question of law is pending before AO or any appellate authority for year concerned.	Appeal relating to question of law is disposed of by CIT(A) not in favour of department for the year concerned.
It <b>is identical</b> with that <b>in his case</b> for another assessment year which is pending before the <b>High Court or Supreme Court. (Assessee should be the same)</b>	It is identical with a question of law arising in his case for another assessment year which is pending before the <b>Supreme Court</b> , in an <b>appeal</b> or in a <b>special leave petition</b> against the order of the High Court in favour of the assessee <b>(Assessee should be the same)</b>
Assessee may furnish to AO or the appellate authority, a declaration that if AO or appellate authority agrees to apply in the relevant case the final decision on the question of law in the other case. He <b>shall not raise such question of law</b> in the relevant case in appeal. AO or the appellate authority may admit the claim or can reject it. Where a claim is admitted, then AO or appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case.	He may direct the <b>AO</b> to make an application to ITAT within 60 days from the date of receipt of the order of CIT (Appeals) stating that an appeal of concerned year may be filed when the decision becomes final in the other case. Such application shall be made only if an acceptance is received from the assessee that the question of law in the other case is identical to that arising in the relevant case. If no such acceptance is received, appeal shall be filed to ITAT.
When the decision in the other case becomes final, it shall be applied to the relevant case and AO or the appellate authority, shall amend order conformably to such decision. Such an order shall be final and shall not be called in question in any proceeding by way of appeal, reference or revision.	Where the order of CIT(A) is not in conformity with the final decision on the question of law in the other case, CIT may direct AO to appeal to ITAT against such order within 60 days from the date on which the order of the Supreme Court in the other case is communicated to the Commissioner or Principal Commissioner.

**Section 268A: Filing of appeal or application for reference by income-tax authority**

- CBDT may issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits for regulating filing of appeal or application for reference by any income-tax authority.
- If due to orders, instructions or directions, an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in case of
  - a) the same assessee for any other assessment year; or
  - b) any other assessee for the same or any other assessment year.
- It shall not be lawful for an assessee to contend that the income-tax authority has **acquiesced** in the decision on the disputed issue by not filing an appeal or application for reference in any case.

<b>Revision u/s 263 by CIT or P CIT of order prejudicial to the interest of revenue</b>	<b>Revision u/s 264 by CIT/P CIT of order prejudicial to the interest of assessee</b>	<b>Rectification of mistake apparent from records u/s 154</b>
Department cannot file appeal against the AO's order (except if it is passed in pursuance of directions of DRP) It is possible that AO has passed a wrong judgement which may result loss of revenue. (Assessee will not file appeal as the AO's order is in his favour). Revision u/s 263 can be done.	Assessee can file appeal to CIT(A) against the order of AO within 30 days of receipt of AO's order. CIT(A) can condone the delay in filing the appeal. However, if the delay is not condoned, then appeal cannot be filed. In such case, the only alternative is Revision application u/s 264.	If there is mistake in the order passed by AO/ CIT(A), then it can be rectified by the said authority u/s 154. The power of rectification is available to the same authority who has passed the order.
Principal CIT or CIT may call for and examine the record and revise the order if he considers that <ol style="list-style-type: none"> <li>a) any order passed by AO is erroneous and</li> <li>b) it is prejudicial to the interests of the revenue,</li> </ol>	Application cannot be made if: <ol style="list-style-type: none"> <li>a) Time limit to file appeal to CIT(A) or ITAT has not expired</li> <li>b) the assessee has not waived his right of appeal</li> <li>c) Appeal is filed to Commissioner (Appeals) or to ITAT</li> </ol>	AO may amend any order passed by it or Income Tax Intimation u/s 143(1) or TDS Intimation u/s 200A(1) or TCS Intimation u/s 206CB(1)
Revision under section 263 shall be done by CIT/Principal CIT suo moto.	Revision u/s 264 shall be done on his own motion or on an application by the assessee for revision.	It shall be made suo moto or on application by the assessee or deductor or collector
Time limit to pass Revision order is 2 years from the end of the year in which the order sought to be revised was passed. Such Order may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of ITAT, the High Court or the Supreme Court.	<b>Suo Moto Revision:</b> Revision order shall be made within 1 year from passing of order sought to be revised.  <b>Revision on Application by assessee:</b> Application must be made <b>within 1 year</b> from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.	Earlier of <ol style="list-style-type: none"> <li>a) <b>4 years</b> from the end of the financial year in which the order sought to be amended was passed.</li> <li>b) <b>6 months</b> from the end of the month in which the application is received</li> </ol>

	(CIT can condone the delay) CIT shall pass the order <b>within 1 year from the end of the year</b> in which such application is made by the assessee for revision.	Time limit under (b) won't apply in case of suo moto rectification by AO.
CIT u/s 263 has the power to cancel assessment and direct fresh one i.e. power to send back the case to AO.	CIT u/s 264 has the power send back the case to AO.	Since AO does rectification, he cannot send back the case to himself.
Doctrine of Partial Merger shall apply.	Doctrine of Total Merger shall apply	Doctrine of Partial Merger.
Assessee can file appeal to ITAT against such revision order.	No further appeal can be filed. Writ petition can be filed to High Court.	Assessee can file appeal to CIT (Appeals) or Revision application to CIT.
Revision order u/s 263 can be rectified.	Revision order u/s 264 can be rectified.	Rectification of Rectification Order u/s 154 is allowed.

Order passed by AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner

- the order is passed without making inquiries or verification which should have been made
- the order is passed allowing any relief without inquiring into the claim
- order has not been made as per any order, direction or instruction issued by the Board under section 119
- order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

## Chapter 18 : Settlement Commission

### **Section 245A(b): Case**

"Case" means any proceeding under this Act for the assessment of any person in respect of any assessment year or assessment years which may be **pending before AO** on the date on which an application is made.

#### a) **Assessment under section 147:**

<b>Case 1</b>	<b>Case 2</b>
Notice u/s 148 is issued for that year	Notice is issued for a year. For any other year/s for which a notice u/s 148 has not been issued, but such notice could have been issued on such date
from the date on which a notice u/s 148 is issued for any assessment year	From the date of issuance of the notice referred above, if the return of income for the other assessment year/s has been furnished u/s 139 or in response to a notice u/s 142

- Assessment for any of the years referred in section 153A / 153C:** Date of initiation of the search under section 132 or requisition under section 132A and concluded on the date on which the assessment is made.
- Proceeding for making fresh assessment in pursuance of an order under section 254/263/264 setting aside or cancelling an assessment:** Date on which such order, setting aside or cancelling an assessment was passed



- d) **Any other proceeding (143(3) or 144)**: from the date on which the return of income for that AY is furnished u/s 139 or in response to a notice served u/s 142(1) and concluded on the date on which the assessment is made or on the expiry of the **time specified for making assessment under sub-section (1) of section 153**, in case where no assessment is made.

### **Section 245C(1): Application for settlement of cases**

An assessee may, **at any stage of a case relating to him**, make an application containing

- a full and true disclosure of his income **which has not been disclosed** before the Assessing Officer
- the manner in which such income has been derived
- the additional amount of income-tax payable on such income to the Settlement Commission to have the case settled and any such application shall be disposed of.

Once an application is made before the Settlement Commission, it **shall not be allowed to be withdrawn** by the applicant.

**Monetary Limits** (In case of application for multiple years, the limit will apply for all the years together)

<b>Application by an assessee who is the subject matter of Search</b>	<b>Application by person who is related* to assessee who is the subject matter of Search</b>	<b>Application in any other case</b>
Additional amount of income-tax payable on the income disclosed in the application should exceed <b>₹50 Lakhs for all the years</b>	Additional amount of income-tax payable on the income disclosed in the application should exceed <b>₹10 Lakhs</b>	Additional amount of income-tax payable on the income disclosed in the application should exceed <b>₹10 Lakhs</b>

### **Rectification of Mistake apparent from the record by Settlement Commission**

<b>Suo Moto Rectification</b>	<b>On application by Applicant or CIT / Prin CIT</b>
Within 6 months from the end of the month in which the order was passed.	<p><b>Time limit for Application:</b> within 6 months from the end of the month in which an order is passed by the Settlement Commission</p> <p><b>Time limit to pass order:</b> within 6 months from the end of the month in which an application for rectification has been made</p>

### **Powers of Settlement Commission**

- Power to order provisional attachment to protect revenue (Sec 245DD)**: Settlement Commission may attach provisionally any property belonging to the applicant to protect interest of revenue for upto **six months** from the date of the order made which can be further extended. If provisional attachment u/s 281B is pending before application is made to Settlement Commission, such order shall continue till its expiry. After expiry, Settlement Commission can pass order u/s 245DD.
- It shall have all the powers which are vested in an income-tax authority i.e. it can initiate and levy interest and penalty.
- Power to grant immunity from prosecution and penalty**
  - If applicant has co-operated in the proceedings and has made a full and true disclosure of his income and the manner in which such income has been derived subject to such conditions, grant to such person immunity from Penalty and Prosecution under Income Tax Act.

- No such immunity shall be granted if proceedings for the prosecution for offence have been instituted **before the date of receipt of the application.**
- An immunity granted shall **stand withdrawn** if
  - a) such person fails to pay any sum as per order within the time specified in such order or extended period
  - b) fails to comply with any other condition subject to which the immunity was granted
  - c) such person had concealed any particulars material to the settlement or
  - d) had given false evidence

**Note:** Settlement Commission does not have the power to reopen completed proceedings.

### **Power to Waive Interest**

- Settlement Commission has no power to reduce/waive tax or interest statutorily payable. (Supreme Court ruling in the case of **Anjum M H Ghaswala**)
- The Commission has power to waive or reduce interest under section 220(2A) if prescribed conditions are satisfied.

### **Settlement becomes void if that it has been obtained by fraud or misrepresentation of facts**

Where an application has been made under section 245C, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made till the Settlement Commission

- a) Passes the order
- b) Rejects the application or declares it to be invalid

### **Section 245K: Bar on subsequent application for settlement**

The applicant or any person related to such person shall not be entitled to apply for settlement under section 245C in relation to any other matter if

- a) If settlement order provides for imposition of a penalty due to concealment of particulars of his income
- b) After passing of order in, such person is convicted of any offence in relation to that case
- c) if a person has made an application and such application has been allowed to be proceeded

<b>Applicant</b>	<b>Related Person</b>
Individual	<ul style="list-style-type: none"> <li>➤ Company in which such person holds more than 50% of the shares or voting rights at any time</li> <li>➤ any firm or AOP or BOI in which he is entitled to more than 50% of the profits at any time</li> <li>➤ any Hindu undivided family in which such person is a Karta</li> </ul>
Company	Any Individual who held more than 50% of the shares or voting rights in such company at any time before the date of application before the Settlement Commission by such person
Firm / AOP / BOI	Any Individual who was entitled to more than 50% of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission
HUF	Karta of that Hindu undivided family.

## Chapter 19 : Advance Tax, Refund and Interest

### Section 207: Liability for payment of advance tax

- Tax shall be payable in advance during any financial year in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that year.
- Provisions of advance tax do not apply to
  - a) an individual resident in India
  - b) who does not have any income chargeable under the head "Profits and gains of business or profession"
  - c) is of the age of sixty years or more at any time during the previous year

### Section 208: Conditions of liability to pay advance tax

Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year is ₹10,000/- or more.

Advance Tax Liability = Tax on Total Income +/- Surcharge / Rebate u/s 87A + Education Cess / SHEC (-) Relief u/s 90/90A/91 (-) MAT/AMT Credit (-) TDS/TCS Credit

### Section 211: Instalments of advance tax and due dates

Due date	Corporate as well as Non Corporate Assesseees
Till June 15	15% of Advance tax payable
Till September 15	45% of Advance tax payable
Till December 15	75% of Advance tax payable
Till March 15	100% of Advance tax payable

### Note

An eligible assessee in respect of an eligible business referred to in section 44AD / 44ADA to the extent of the whole amount of such advance tax during each financial year on or before the 15th March

Interest under Section 234A : for defaults in furnishing return of income	Interest under Section 234B: for defaults in payment of 90% advance tax								
Simple Interest @ 1% p.m. or part thereof	Simple interest at <b>1% p.m. or part</b> from								
<table border="1"> <thead> <tr> <th>ROI furnished</th> <th>ROI not furnished</th> </tr> </thead> <tbody> <tr> <td>Date next to due date to date of furnishing ROI</td> <td>Date next to due date to date of completion of the assessment u/s 144</td> </tr> </tbody> </table>	ROI furnished	ROI not furnished	Date next to due date to date of furnishing ROI	Date next to due date to date of completion of the assessment u/s 144	<table border="1"> <thead> <tr> <th>No assessment made</th> <th>Assessment Made</th> </tr> </thead> <tbody> <tr> <td>1st April next following such year to the date of intimation u/s 143(1)</td> <td>1st April next following such regular assessment</td> </tr> </tbody> </table>	No assessment made	Assessment Made	1st April next following such year to the date of intimation u/s 143(1)	1st April next following such regular assessment
ROI furnished	ROI not furnished								
Date next to due date to date of furnishing ROI	Date next to due date to date of completion of the assessment u/s 144								
No assessment made	Assessment Made								
1st April next following such year to the date of intimation u/s 143(1)	1st April next following such regular assessment								
<p><b>Amount on which Interest is to be calculated</b></p> <p>Tax on the total income as per section 143(1), or as determined under regular assessment <b>as reduced by</b></p> <ol style="list-style-type: none"> <li>a) advance tax paid</li> <li>b) TDS / TCS</li> <li>c) Relief of tax allowed under section 90/90A/91</li> <li>d) MAT /AMT credit</li> <li>e) <b>any relief of tax claimed under section 89</b></li> </ol>	<p><b>Assessed tax</b></p> <p>Tax on income determined under section 143(1) or under such regular assessment as reduced by</p> <ol style="list-style-type: none"> <li>a) TDS/TCS</li> <li>a) Relief of tax allowed under section</li> </ol>								

<p><b>Circular No. 2/2015</b></p> <p>No interest under section 234A shall be payable on the self-assessment tax paid before the due date of filing of return of income even if belated Return is filed</p>	<p>90/90A/91</p> <p>b) MAT / AMT Credit</p> <p>c) <b>any relief of tax claimed u/s 89</b></p> <p><b>Amount on which Interest is to be calculated</b></p> <p>= Assessed tax (-) Advance Tax paid</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### **Section 234C: Interest for deferment of advance tax**

Step I: To determine applicability of Interest u/s 234C

Due date	Advance tax paid
15 <sup>th</sup> June	less than <b>12%</b> of the tax due on the returned income
15 <sup>th</sup> September	less than <b>36%</b> of the tax due on the returned income
15 <sup>th</sup> December	less than <b>75%</b> of the tax due on the returned income
15 <sup>th</sup> March	less than <b>100%</b> of the tax due on the returned income

Step II: Calculation of Interest

Due date	Interest payable if Advance tax paid	Interest for
15 <sup>th</sup> June	less than <b>15%</b> of the tax due on the returned income	3 months
15 <sup>th</sup> September	less than <b>45%</b> of the tax due on the returned income	3 months
15 <sup>th</sup> December	less than <b>75%</b> of the tax due on the returned income	3 months
15 <sup>th</sup> March	less than <b>100%</b> of the tax due on the returned income	1 month

In case an eligible assessee in respect of the eligible business referred to in section 44AD, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before 15th March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of 1% on the amount of the shortfall from the tax due on the returned income.

<p><b>Tax due on the returned income</b></p> <p>= Tax on Income declared in ROI as reduced by</p> <p>a) TDS/TCS</p> <p>b) Relief under section 90/90A/91</p> <p>c) MAT AMT Credit</p> <p>d) <b>any relief of tax claimed under section 89</b></p>	<p><b>Note</b></p> <ul style="list-style-type: none"> <li>While calculating Interest, Total Tax paid till the due date (cumulative) shall be reduced.</li> <li>If during assessment, appeals etc., amount of tax changes, <b>this Interest will not change.</b></li> </ul>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### **Section 44AD / 44ADA**

If an assessee who declares profits and gains in accordance with the provisions of section 44AD or section 44ADA, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of 1% on the amount of the shortfall from the tax due on the returned income.

### **Proviso to Section 234C**

These provisions shall not apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate

a) the amount of capital gains or

- b) 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.
- c) income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time
- d) income of the nature referred to in section 115BBDA

**Section 244A: Interest on refunds**

- Interest = 0.5% per month or part thereof

a) Refund is out of TCS / Advance Tax and return is filed on or before due date u/s 139(1)	1st April of Assessment Year to date of grant of refund
b) Refund is out of TCS / Advance Tax and return is filed after the due date	the date of filing of return to date of grant of refund
c) Where the refund is out of self-assessment tax paid u/s 140A	Date of furnishing return of income or payment of tax whichever is later to Date of grant of refund
d) Other cases	Date of payment of tax / penalty to date of grant of Refund

- No interest shall be payable if refund is less than 10% of the tax as determined u/s 143(1) (only for (a), (b), (c))

**Section 234D: Interest on excess refund**

- Where any refund is granted under section 143(1) and
  - a) no refund is due on regular assessment or
  - b) amount refunded under section 143(1) exceeds the amount refundable on regular assessment, assessee shall be liable to pay simple interest at 0.5% p.m. or part thereof on excess amount so refunded from the date of grant of refund to date of regular assessment.

**Section 241A: Withholding of refund in certain cases**

For every assessment year commencing on or after 1st April, 2017, where refund of any amount becomes due to the assessee under the provisions of section 143(1) and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under section 143(2) in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up to the date on which the assessment is made.

**Section 220: When tax payable and when assessee deemed in default**

- Any amount specified as payable in a notice of demand under section 156 shall be paid within **30 days** of the service of the notice. (The period of 30 days can be reduced or extended as AO thinks correct)
- If the amount is not paid within the time specified, the assessee shall be deemed to be in default.
- If, in a case where payment by instalments is allowed, the assessee commits defaults in paying any one of the instalments within the time fixed, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment/s shall be deemed to have been due on the same date as the instalment actually in default.
- Where any notice of demand has been served upon an assessee and any appeal or other proceeding is filed, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority.

**Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964**

Where any notice of demand is served upon an assessee and any appeal or other proceeding is filed,

<b>Demand is enhanced in such appeal or proceeding</b>	<b>Demand is reduced in such appeal or proceeding</b>
Taxing Authority shall serve another notice of demand only for the amount by which such dues are enhanced	It shall not be necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand. It shall give intimation of the fact of such reduction to the assessee.

**Interest**

If the amount as per notice is not paid within the period specified, the assessee shall be liable to pay simple interest at 1% p.m. for every month or part of a month comprised in the period commencing from the day immediately following 30<sup>th</sup> day or last day of extended period and ending with the day on which the amount is paid.

Where as a result of an order of Rectification, Appeals, Revision or Settlement Commission,

Amount on which interest was payable had been reduced	Amount on which interest was payable had been reduced and subsequently as a result of an order of Rectification, Appeals, Revision or Settlement Commission or Revision under section 263, such amount is increased
Interest shall be reduced and the excess interest shall be refunded.	The assessee shall be liable to pay interest from the day immediately following the end of the period mentioned in the first notice of demand and ending with the day on which the amount is paid.

**Waiver of Interest**

**Seniors** may reduce or waive the amount of interest paid or payable by an assessee if he is satisfied that

- a) payment of such amount has caused or would cause genuine hardship to the assessee ;
- b) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee ; and
- c) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within **12 months** from the end of the month in which the application is received.

### **Section 221: Penalty payable when tax in default**

- When an assessee is in default, he shall be liable to penalty upto tax **in arrears**.
- Before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.
- Where the assessee proves to the satisfaction of AO that the default was for good and sufficient reasons, no penalty shall be levied under this section.
- An assessee shall not cease to be liable to any penalty under this section merely by reason of the fact that before the levy of such penalty he has paid the tax.
- If in final order, tax has been wholly reduced, penalty levied shall be cancelled and if already paid shall be refunded.

### **Section 222: Tax Recovery Certificate**

- If assessee is in default in payment of tax, the Tax Recovery Officer may draw up statement specifying the amount of arrears due and shall proceed to recover the amount by one or more of the modes
  - a) attachment and sale of movable property
  - b) attachment and sale of immovable property
  - c) arrest of assessee and his detention in prison
  - d) appointing a receiver for the management of the assessee's movable and immovable properties.
- Assessee's property shall include property which has been transferred to his **spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration**, held by, any of the persons aforesaid.
- The property transferred to his minor child or his son's minor child shall, even after the date of attainment of majority by such minor child continue to be included in the assessee's property for recovering any old arrears.

### **Section 225: Stay of proceedings in pursuance of certificate and amendment or cancellation thereof.**

- It shall be lawful for the Tax Recovery Officer to grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.
- Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.
- Where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Tax Recovery Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it.

### **Section 226: Other modes of recovery (can be followed even if TRC is issued)**

- Where no certificate has been drawn up under section 222, the Assessing Officer may recover the tax by any one or more of the modes provided in this section.
- Where a certificate has been drawn up under section 222, the Tax Recovery Officer may, without prejudice to the modes of recovery specified in that section, recover the tax by any of the modes provided in this section.

### **Assessee receives Salary**

AO/TRO may require employer to deduct from any payment subsequent to the date of such requisition any arrears of tax due and the employer shall pay the sum so deducted to the credit of the Central Government.

Any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 shall be exempt from any requisition made under this sub-section.

### **Garnishee Proceedings**

- AO/TRO may require any person from whom money is or may become due or who holds or may subsequently hold money for or on account of the assessee to pay the money to AO/TRO
- Pay either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.
- Such notice may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.
- A copy of the notice shall be forwarded to the assessee at his last address known to the AO / TRO, and in the case of a joint account to all the joint holders at their last addresses known to the AO / TRO.
- Every person to whom a notice is issued shall be bound to comply with such notice
- If notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced before payment is made notwithstanding any rule, practice or requirement to the contrary.
- Any claim respecting any property in relation to which a notice has been issued arising after the date of the notice shall be void as against any demand contained in the notice.
- Where a person to whom a notice is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then nothing contained above shall be deemed to require such person to pay any such sum or part thereof.
- Where such person objects to it that the sum demanded is not due to the assessee, then he shall not be required to pay any sum.
- However, if it is discovered that such statement was false in any material particular, such person shall be personally liable to AO/TRO to the extent of
  - a) his own liability to the assessee on the date of the notice, or
  - b) assessee's liability for any sum due under this Act, whichever is less.
- If such person fails to make payment to AO/TRO, he shall be deemed to be an assessee in and it shall be recovered from him in the manner provided in sections 222 to 225.
- AO / TRO may apply to the court in whose custody there is money belonging to the assessee for payment of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.
- AO/TRO may recover any arrears of tax due from an assessee by distraint and sale of his movable property.

### **Section 227: Recovery through State Government**

If the recovery of tax in any area has been entrusted to a State Government, the State Government may direct that tax shall be recovered as an addition to any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.



**Section 228A: Recovery of tax in pursuance of agreements with foreign countries (Highlighted points changed w.e.f. 1.9.2019)**

- Where DTAA is entered into and the Government of other country sends to the Board, a certificate for the recovery of any tax due under such **corresponding law from a resident** or a person having any property in India, the Board may forward such certificate to any TRO **having jurisdiction over the resident**, or within whose jurisdiction such property is situated and such TRO shall
  - a) proceed to recover the amount specified in the certificate as specified in section 222
  - b) Remit any sum recovered by him to the Board after deducting his recovery proceedings expenses.
- Where an assessee is in default or is deemed to be in default in making a payment of tax, TRO may, if the assessee **is a resident of a country** (being a country with which India has an agreement), **or has any property in that country**, forward to the Board a certificate drawn up by him under section 222 and the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

**Section 230: Tax Clearance Certificate**

Person not domiciled in India	Person domiciled in India at the time of departure
<p>A Notified Person who</p> <ul style="list-style-type: none"> <li>• is not domiciled in India</li> <li>• has come to India in connection with business, profession or employment 'and'</li> <li>• who has income derived from any source in India</li> </ul> <p>shall not leave India unless he furnishes an undertaking from employer or through whom such person is in receipt of the income, to the effect that tax payable shall be paid by the employer etc. and authority shall issue <b>Tax Clearance Certificate</b></p> <p>These provisions <b>shall not apply</b> to a person who is not domiciled in India but <b>visits India as a foreign tourist</b> or for any other purpose not connected with business, profession or employment.</p>	<p>Subject to exceptions, every person, who is domiciled in India at the time of his departure from India, shall furnish, in the prescribed form to AO following details</p> <ul style="list-style-type: none"> <li>• PAN</li> <li>• purpose of his visit outside India</li> <li>• estimated period of his stay outside India</li> </ul> <p><b>If AO considers it necessary</b>, person shall not leave India unless he obtains a certificate from the income-tax authority stating that he has no liabilities under this Act, or the Wealth-tax Act, 1957 or that satisfactory arrangements have been made for the payment of tax.</p> <p>Prior approval of the Chief Commissioner of Income-tax is necessary for issue of Certificate.</p>

**Ship/Aircraft**

- If the owner or charterer of any ship or aircraft carrying persons from any place in India to any place outside India, allows any person to travel without first satisfying himself that such person is in possession of Tax Clearance certificate, he shall be personally liable to pay tax, if any, payable by such person.
- The owner or charterer shall be deemed to be an assessee in default for such sum, and such sum shall be recoverable from him as if it were an arrear of tax.
- Owner / Charterer shall include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

**Section 281: Certain transfers to be void**

- Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour

of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise

- Such charge or transfer shall not be void if it is made
  - a) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee or
  - b) with the previous permission of the Assessing Officer.
- This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred **exceeds ₹ 10,000**.
- Assets means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee.

### **Section 281B: Provisional attachment to protect revenue in certain cases**

- During the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, if the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue, he may, with the previous approval of seniors, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.
- Provisional attachment shall cease to have effect after the expiry of six months from the date of the order made.
- Seniors can extend the aforesaid period so, however, that the total period of extension shall not in any case exceed **two years or sixty days after the date of order of assessment or reassessment, whichever is later**.
- Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached, the Assessing Officer shall revoke such attachment
- If AO is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.
- AO may, for the purposes of determining the value of the property provisionally attached, make a reference to the Valuation Officer, who shall estimate the fair market value of the property and submit a report of the estimate to the Assessing Officer within 30 days from the date of receipt of such reference.
- An order revoking the provisional attachment shall be made
  - a) within **45 days** from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made
  - b) within **15 days** from the date of receipt of guarantee in any other case.
- Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may invoke the guarantee furnished, wholly or in part, to recover the amount.
- AO shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee or fails to furnish a new guarantee from a scheduled bank for an equal amount, **15 days** before the expiry of the guarantee.
- The amount realised by invoking the guarantee shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is situate.

- Where the Assessing Officer is satisfied that the guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

### Liability in Special Cases

#### **Section 160: Representative Assessee (deemed to be assessee)**

<b>Non-resident</b>	<b>Minor, Lunatic or Idiot</b>	<b>Any person for whom official trustee /court of wards, Administrator General or receiver or manager is appointed by the Court</b>	<b>Oral trust</b>
Agent of NR/ person treated as agent u/s 163	Guardian or manager who is entitled to receive income	Such official trustee court of wards Administrator General or receiver or manager	Trustee
Every representative assessee shall be deemed to be an assessee for the purposes of this Act.			

<b><u>Section 161: Liability of RA</u></b>	<b><u>Section 162: Rights of Representative Assessee to recover Tax paid</u></b>
<ul style="list-style-type: none"> <li>• He has the same duties, responsibilities and liabilities as of the assessee.</li> <li>• RA shall be liable to assessment in his own name in respect of that income.</li> <li>• The assessment shall be deemed to be made upon him in his representative capacity only.</li> <li>• Tax shall be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.</li> <li>• Where any person is, in respect of any income, assessable in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act</li> </ul>	<ul style="list-style-type: none"> <li>• RA who pays any amount is entitled to recover from the person on whose behalf it is paid or he can retain the money belonging to such person which is/may come in his possession.</li> <li>• If he is liable to be assessed in respect of any other person, may out of the money or assets of such other person in his possession retain to the extent of the estimated liability.</li> <li>• If there is any disagreement between RA and principal, RA may secure from AO a certificate estimating the liability and authorizing him to retain the money pending final settlement. Such certificate issued shall be treated as warrant authorizing retention of money or assets.</li> <li>• At the time of final settlement, the amount recoverable from RA cannot exceed the amount specified in the certificate. If RA holds any additional assets of the principal in his possession at the extent of balance tax liability of the principal.</li> </ul>

#### **Section 166: Direct assessment or recovery not barred**

Nothing shall prevent either the direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income.

#### **Section 167: Remedies against property in cases of representative assessee**

AO shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to

pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee or against the beneficiary direct.

### **Section 159: Legal Representative (LR)**

- Where a person dies his LR shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.
- Any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased.
- Any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative.
- The legal representative of the deceased shall be deemed to be an assessee.
- **Every legal representative is personally liable** if he disposes of or creates charge on the property of the deceased in his possession while his liability for tax etc. remains undischarged.
- In any case the liability of LR shall be limited to the extent to which the **estate of the deceased** is capable of meeting the liability.
- The provisions of section 161(2), 162 and 167, shall apply in relation to a legal representative.

### **Section 168/169: Executors**

- Section 168 applies only in the case where executors are appointed by will. In case where there is no will this section will not apply.
- Executor includes an administrator or other person administering the estate of a deceased person.
- The income of the estate of a deceased person shall be chargeable to tax in the hands of the executor
  - If there is only one executor, as if such executor is an individual or
  - If there are more than one executors as if the executors are an association of persons
- Executor shall be deemed to be resident or non-resident according to the residential status of the deceased during the previous year in which the death took place.

The assessment of an executor shall be made separately from any assessment that may be made on him in respect of his own income.	Separate assessment shall be made for each completed previous year as is included in the period from the date of death to the date of complete distribution to the beneficiaries of the estate as per their several interests.	Any income of the estate distributed to or applied to the benefit of any specific legatee of the estate during any previous year shall be excluded from the total income of the estate but shall be included in the total income of specific legatee.
----------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

- The executor can recover any tax paid or payable by him from the estate or from the beneficiaries.
- Every Executor who pays any amount under the Act is **entitled to recover** from the person in whose behalf it is paid or he can retain the money belonging to such person which is in his possession.

### **Section 163: Statutory agent of non-residents**

An agent is considered a representative assessee but only if he is the agent of non- resident person.

- An agent, in relation to a non-resident person, includes any person in India
  - a) who is **employed** by or on behalf of the non-resident
  - b) who is having any **business connection** with the non-resident
  - c) from or through whom the non-resident is **in receipt of any income**, whether directly or indirectly
  - d) who is **trustee** of the non-resident
  - e) any other person who (whether resident or non-resident) has **acquired a capital asset in India** by means of a transfer from the non-resident

• **Who cannot be Statutory agent**

Broker in India who does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent if:

- a) Transactions are carried on in the ordinary course of business
- b) Non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal

<b>Section 187: Change in Constitution of Firm</b>	<b>Section 189: Firm Dissolved or Business Discontinued</b>
<p>Where at the time of making an assessment under section 143/144/147, it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the <b>firm as constituted</b> at the time of making the assessment.</p> <p>When there is a change in the constitution of the firm:</p> <ul style="list-style-type: none"> <li>a) If one or more partners cease/<b>retire</b> to be partners (except on dissolution / death of partners)</li> <li>b) one or more new partners are <b>admitted</b></li> <li>c) Where all the partners continue with a <b>change in the respective shares</b> or in the shares of some of them.</li> </ul> <p><b>Section 188A: Joint and Several Liability of Partners for Tax Payable by Firm</b></p> <p>Every person who was during the previous year, a partner of a firm and the legal representative of any such person who is deceased shall be <b>jointly and severally liable</b> along with the firm for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant.</p>	<ul style="list-style-type: none"> <li>• Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, AO shall make an assessment of the firm as if no such discontinuance or dissolution had taken place.</li> <li>• All the provisions of the Income Tax Act including provisions relating to the levy of penalty shall apply to such assessment.</li> <li>• 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 any other sum payable under the Act.</li> <li>• Where such discontinuance or dissolution takes place after any proceedings have commenced the proceedings may be continued against the person referred above from the stage at which the proceeding stood at the time of such discontinuance or dissolution and all the provisions of Income Tax Act shall apply.</li> </ul>

<b>Section 188: Succession of One Firm by another Firm</b>
<ul style="list-style-type: none"> <li>• Separate assessment shall be made on the predecessor firm and the successor firm.</li> <li>• The predecessor firm shall be assessed in respect of the income of the previous year in which succession took place upto the date of succession.</li> <li>• The successor firm shall be assessed in respect of the income of the previous year in which succession took place upto the date of succession.</li> <li>• The successor firm shall be assessed in respect of the income of the previous year after the date of succession.</li> </ul>

**Section 167C: Liability of partners of limited liability partnership in liquidation**

- Where any tax due from a LLP in respect of any income of any previous year or from any other person in respect of any income of any previous year during which such other person was a limited liability

partnership cannot be recovered, in such case, every person who was a partner of the limited liability partnership at any time during the relevant previous year, shall be **jointly and severally liable** for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the limited liability partnership.

- The expression "tax due" includes penalty, interest or any other sum payable under the Act.

### **Section 178: In the case of all companies**

- Every liquidator or the receiver of any assets of a company is bound to give notice of his appointment within thirty days of his appointment to AO having jurisdiction to assess the income of the company.
- AO shall notify to the liquidator, within 3 months from the date of receipt of the notice of appointment, of the amount which would be sufficient to provide for any tax payable by the company.
- The liquidator is debarred from parting with the assets of company and its properties in his hands until he is notified by AO of the amount sufficient to provide for any tax without the prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
- With the prior approval, he can utilize the assets for
  - a) payment of the tax
  - b) payment to secured creditors whose debts are entitled under law to priority of payments over the debts due to the Government
  - c) meeting Winding up costs
- If he fails to notify the AO of his appointment within the time specified or fails to set aside the amount intimated by AO or parts with any of the assets or property of the company in his hands in contravention of the above provisions, he shall be **personally liable for payment of the tax**.
- Where there are more liquidators than one, their obligations and liabilities are joint and several.
- Leave of the winding up Court is not necessary for an Assessing Officer to commence or continue the assessment proceedings against the company in liquidation.
- An assessment cannot, however, be made on a company after it has ceased to exist and its name has been struck off the Register of Companies by the Registrar.

### **Section 179: Private Companies**

- Where any tax due from a private company in respect of any income of any previous year cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for payment of such tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- Tax due includes penalty, interest or any other sum payable under the Act.
- If a private company is converted into a public company, then, any tax due in respect of the income of the private company could be recovered from any of the persons who were directors of the private company before a public company.

### **Accelerated Assessment: Cases when income will be assessed in the previous year itself instead of AY**

**Sec 172:** Shipping business of Non Resident

**Section 174:** Assessment of persons leaving India

**Section 174A:** AOP / BOI / Artificial Juridical Person formed for particular event or purpose

**Section 175:** Persons likely to transfer property to avoid tax

**Section 176:** Discontinued business

**Section 272A(2):** Penalty for failure to give the notice of discontinuance of his business or profession under section 176 shall be Rs.100 for every day during which the failure continues.

## Chapter 21 : Residential Status and Accrual of Income

### Individuals

<p><b>Rule 1:</b> To determine whether an assessee is a Resident or not</p> <p>a) He/She is in India for a period of 182 days or more <u>OR</u></p> <p>b) He/She is in India for a period of</p> <ul style="list-style-type: none"> <li>➤ 60 days or more in the previous year</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>➤ 365 days or more during 4 years immediately preceding the previous year</li> </ul>	<p>Part b of Rule 1 won't apply in following situations i.e. the following persons have to be in India for 182 days or more to be Resident (60/365 days criteria won't apply):</p> <p>a) An Indian citizen who <b>leaves India</b> during the previous year</p> <ul style="list-style-type: none"> <li>➤ for the purpose of employment outside India</li> <li>➤ as a member of the crew of an Indian ship</li> </ul> <p>b) Indian citizen or a person of Indian origin who <u>comes on a visit to India</u> during the previous year</p> <p>If Rule 1 is not satisfied then the Individual shall be Non Resident.</p> <p><b>Person of Indian Origin</b></p> <p>A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in <b>undivided India</b>.</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

- To determine number of days, include both the date of arrival as well as departure.
- However in case of foreign bound ships, the period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off shall be excluded.

**Rule 2:** In case the Individual is a resident as per Rule 1, then determine if he/she is ordinarily resident  
An Individual shall be Resident and ordinarily resident if both the following conditions are satisfied:

- a) He/She has been resident in India for atleast 2 out of 10 previous years immediately preceding the previous year **AND**
- b) He/She has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

If both the conditions of Rule 2 are not satisfied, then the individual shall be resident but not ordinarily resident.

### Hindu Undivided Family

Rule 1	Rule 2
<p>HUF shall be Resident if control &amp; management of affairs are:</p> <ul style="list-style-type: none"> <li>➤ Wholly in India</li> <li>➤ Partly in India and Partly outside India</li> </ul> <p>HUF shall be Non Resident if control and management of affairs is wholly outside India.</p>	<p>If HUF is a resident, then determine if it is ordinarily resident in India. HUF shall be Resident and ordinarily resident if both conditions are satisfied:</p> <p>a) <b>Karta</b> has been resident in India for atleast <u>2 out of 10</u> previous years immediately preceding the previous year <b>AND</b></p> <p>b) <b>Karta</b> has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.</p> <p>If both the conditions of Rule 2 are not satisfied, then the HUF shall be resident but not ordinarily resident.</p>

<u>Firm / AOP</u>	<u>Companies</u>	<u>Other persons</u>
The Firm / AOP shall be Resident if control and management of affairs are: <ul style="list-style-type: none"> <li>➤ Wholly in India</li> <li>➤ Partly in India and Partly outside India</li> </ul> The Firm/AOP shall be Non Resident if control and management of affairs is wholly outside India.	a) Indian Companies are always Resident in India b) A Foreign Company is Resident if its place of effective management, in that year, is in India Place of effective management means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.	Every other person is Resident in India if control and management of its affairs is wholly or partly situated in India during the previous year. Every other person is Non Resident if control and management of its affairs is wholly out of India during the previous year.

### **Circular No. 8/2017**

POEM guidelines shall not apply to a company having turnover or gross receipts of Rs. 50 crores or less in a financial year. They shall not apply to a company having turnover or gross receipts of Rs. 50 crores or less in a financial year.

### **Circular No. 6/2017: Clarification about Place of Effective Management**

#### **A. Company engaged in Active Business outside India**

the passive income is not more than 50% of its total income and	less than 50% of its total assets are situated in India and	less than 50% of total number of employees are situated in India or are resident in India and	the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure
-----------------------------------------------------------------	-------------------------------------------------------------	-----------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------

**Passive Income** of a company shall be aggregate of

- a) income from the transactions where both the purchase and sale of goods is from / to its associated enterprises and
- b) income by way of royalty, dividend, capital gains, interest or rental income

However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.

#### **Place of Effective Management if Company engaged in Active Business outside India**

- It shall be presumed to be outside India if the **majority meetings** of the board of directors of the company are **held outside India**.
- However, if on the basis of facts and circumstances it is established that the Board of directors of the company are **standing aside** and not exercising their powers of management and such powers are being exercised by either the holding company or any other person (s) resident in India, then the place of effective management shall be considered to be in India.
- Merely because the Board of Directors (BOD) follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Pay roll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se would not constitute a case of BoD of companies standing aside.



**B. Companies other than those that are engaged in active business outside India:** Determination of POEM would be a two stage process

<b>First Stage</b>	<b>Second Stage</b>
Identification or ascertaining the person or persons who actually make the key management and commercial decision for conduct of the company's business as a whole.	Determination of place where these decisions are in fact being made. The place where these management <b>decisions are taken</b> would be more important than the place where such decisions are implemented

**Guiding principles for determining the POEM**

1. Location where BOD meets regularly is POEM
2. Location of Executive Committee in case powers are delegated by the Board
3. Location of Company's Head Office

**Following would not be considered as an evidence for determination of POEM in India**

- a) Foreign company is completely owned by an Indian company
- b) There exists a Permanent Establishment of a foreign entity in India
- c) One or some of the Directors of a foreign company reside in India
- d) Fact of local management being situated in India in respect of activities carried out by a foreign company in India
- e) Existence in India of support functions that are preparatory and auxiliary in character

**Rules for determination of taxability of Income**

<b><u>Place of Accrual</u></b>	<b><u>Place of Receipt</u></b>	<b><u>Type of Income</u></b>
Accrued/deemed to be accrued in India	Received/deemed to be received in India	<b>Indian</b>
Accrued/deemed to be accrued in India	Received/deemed to be received out of India	<b>Indian</b>
Accrued/deemed to be accrued out of India	Received/deemed to be received in India	<b>Indian</b>
Accrued/deemed to be accrued out of India	Received/deemed to be received out of India	<b>Foreign</b>

**Individuals/HUFs**

<b><u>Type of Income</u></b>	<b><u>Resident and ordinarily resident</u></b>	<b><u>Resident but not ordinarily resident</u></b>	<b><u>Non Resident</u></b>
Indian Income	<b>Taxable</b>	<b>Taxable</b>	<b>Taxable</b>
Business income from business wholly or partly controlled from India received out of India	<b>Taxable</b>	<b>Taxable</b>	<b>Not Taxable</b>
Income from profession set up in India received out of India	<b>Taxable</b>	<b>Taxable</b>	<b>Not Taxable</b>
Other Foreign Income	<b>Taxable</b>	<b>Not Taxable</b>	<b>Not Taxable</b>

**Companies/Firms/AOPs/Other Persons**

<b>Type of Income</b>	<b>Resident</b>	<b>Non Resident</b>
Indian Income	<b>Taxable</b>	<b>Taxable</b>
Foreign Income	<b>Taxable</b>	<b>Not Taxable</b>

**Section 9: Income deemed to accrue or arise in India**

All income accruing or arising, whether 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 shall be deemed to accrue or arise in India.

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

**Income from Salary**

<b>Particulars</b>	<b>Employer is Government of India</b>	<b>Employer is any other person</b>
Service provided in India	It accrues in India	It accrues in India
Service provided outside India	It accrues in India; hence Salary would be taxable. Any allowances or perquisites exempt u/s 10(7)	It does not accrue in India

**Interest / Royalty / Fees for Technical Services** earned by a non-resident shall be deemed to accrue or arise in India, whether or not

- the non-resident has a residence or place of business or business connection in India; or
- the non-resident has rendered services in India.

**Interest**

Interest payable by following persons shall be deemed to accrue or arise in India

<b>Money borrowed by / Interest paid by</b>	<b>Use of Funds</b>
Government	For any purpose in India or outside India
Resident	For any purpose except loan is used for a business or profession carried on outside India or for making or earning any income from any source outside India
Non Resident	Loan or money is used for business or profession carried on in India

**Explanation**

- In the case of a non-resident engaged in the business of banking, any interest payable by PE in India of such non-resident to the head office or PE or any other part of such non-resident outside India shall be deemed to accrue or arise in India and shall be taxable in addition to any income attributable to PE in India.
- PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a permanent establishment.

**Royalty**

Royalty payable by following persons shall be deemed to accrue or arise in India

<b>Paid by</b>	<b>Use of Intangible asset</b>
Government	For any purpose (in India or outside India)
Resident	For any purpose except for any right, property or information used or services utilised for a business or profession outside India or for earning any income from any source outside India
Non-resident	For any right, property or information used or services utilised for business or profession in India or for the purposes of making or earning any income from any source in India

**Fees for Technical Services**

Fees for Technical Services payable by following persons shall be deemed to accrue or arise in India

<b>Paid by</b>	<b>Use of Technical Services</b>
Government	For any purpose (in India or outside India)
Resident	For any purpose except if services utilised in a business or profession outside India or for the purposes of making or earning any income from any source outside India
Non-resident	For services utilised in business/profession in India or for the purposes of making or earning any income from any source in India

**Income from Business Connection (Business Profits other than Interest/ Royalty / FTS)**

- If all the operations of business are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India.
- Business connection shall include any business activity carried out through a person who, acting on behalf of the non-resident
  - a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are
    - i. in the name of the non-resident; or
    - ii. for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use or
    - iii. for provision of services by the non-resident
  - b) has no such authority, but habitually **maintains in India a stock of goods** or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
  - c) habitually **secures orders in India**, mainly or wholly for the non-resident or for that non-resident and other non-residents
- Such business connection **shall not include** any business activity carried out through a broker, general commission agent or any other **agent having an independent status**.

**Explanation 2A to Section 9(1)**

- The significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean–
  - a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed or

- b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means
- The transactions or activities shall constitute significant economic presence in India, whether or not,—
- the agreement for such transactions or activities is entered in India;
  - the non-resident has a residence or place of business in India; or
  - the non-resident renders services in India:
- Only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) above shall be deemed to accrue or arise in India.

### **Income from Capital Gains**

#### **Proviso to Explanation 5: Following shall not be deemed to be in India**

- An asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in a Foreign Institutional Investor as referred to in section 115AD for AY 2012-13 to AY 2014-15
- An asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in **Category-I or Category-II Foreign Portfolio Investor** under SEBI (Foreign Portfolio Investors) Regulations, 2014

#### **Example on Explanation 5, 6 and 7 to Section 9(1)**

Hutch, Hongkong holds shares in CGP, Cayman Islands. CGP holds shares in Hutch India. Hutch Hongkong sells shares in CGP. Capital Gains on such transfer shall be taxable in India if the share of CGP directly or indirectly, derives its value substantially from the assets located in India i.e.

- the value of investment of CGP in Hutch India exceeds the amount of ₹ 10 crores and
- such investment represents at least 50% of the value of all the assets owned by CGP and
- Hutch Hongkong holds, directly or indirectly (individually or alongwith associated enterprises) right of management or control or voting power or share capital exceeding 5% in CGP

If the assets of CGP are not located in India, the income of Hutch Hongkong from transfer a share of CGP shall be only such part of the income as is reasonably attributable to assets located in India.

#### **Gift Provisions (w.e.f. AY 2020-21)**

**Income of the nature referred to in section 2(24)(xvii) i.e. Gift as per section 56(2)(x) arising from any sum of money paid, or any property situate in India transferred, on or after the 5th day of July, 2019 by a person resident in India to a person outside India shall accrue in India.**

#### **Proviso 1 to Section 48 read with Rule 115A (for Short Term as well as Long Term Capital Gains)**

- It shall apply in the case of a non-resident assessee.
- It shall apply only for Capital gains arising from the transfer of a capital asset being **shares** in or **debentures** of an Indian company **purchased in foreign currency** or if it is a case of **Reinvestment**.
- It shall be computed by converting the cost of acquisition, transfer expenses and the Sale Consideration into the same foreign currency as was initially utilised in the purchase of the shares or debentures, the rate shall be the **Average rate of Telegraphic Transfer Buying Rate and Telegraphic Transfer Selling Rate**.
- Capital gains in such foreign currency shall be reconverted into Indian currency. The rate shall be **TTBR**.

#### **Proviso 4 to Section 48**

In case of an assessee being a non-resident, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company **held** by him, shall be ignored for computation of full value of consideration. (**changed w.e.f. AY 2018-19**)

**Chapter 22 : Tax Rates for Non Residents and Equalisation Levy**

Sec	Income	Tax Rate	Purchase in foreign currency	Deduction of Expenses	Chapter VI-A deductions	ROI exemption if TDS made	TDS by payer
<b>115A</b>	Interest on loan given, debentures, bonds etc.	20%	<b>Required</b>	No	No	<b>Yes</b>	Sec 195
	Interest on Infrastructure Debt Fund	5%	Not Required	No	No	<b>Yes</b>	5% u/s 194LB
	Interest on Loan / Long Term Infrastructure Bonds	5%		No	No	<b>Yes</b>	5% u/s 194LC
	Interest on Rupee Denominated Bond / Govt security by FII/Qualified Foreign Investor	5%		No	No	<b>Yes</b>	5% u/s 194LD
	Interest from Business Trust (REIT / InVIT)	5%		No	No	<b>Yes</b>	5% u/s 194LBA
<b>44DA</b>	Royalty/FTS if there is PE in India	Normal rates	N.A.	<b>Yes</b>	<b>Yes</b>	No	Section 195
<b>115A</b>	Royalty/FTS if there is no PE in India	<b>10%</b>	N.A.	No	<b>Yes</b>	No	Section 195
<b>115AC</b>	Interest on Foreign Currency Convertible bonds (FCCB)	10%	<b>Required</b>	No	No	<b>Yes</b>	10% u/s 196C
	LTCG on FCCB or GDRs	10%	<b>Required</b>	<b>allowed without indexation</b>	No	<b>Yes</b>	
<b>115AB</b>	LTCG on units by Overseas Financial Institution	10%	<b>Required</b>		No	No	10% u/s 196B
<b>115AD</b>	LTCG on sale of securities by FII	10%	Not required		<b>n</b>	No	No
	STCG u/s 111A by FII	15%		<b>Yes</b>	No	No	
	STCG on sale of other securities by FII	30%		No	No		
<b>115BB A</b>	Non Resident Sportsman who is not a citizen of India	20%	N.A.	No	No	<b>Yes</b>	20% u/s 194E
	a) Income from participation in sports b) Advertisements c) Contribution of articles in magazines etc.						
	Amount paid to Non						

	Resident Sports association for any game or sports played in India	20%	N.A.	No	No	<b>Yes</b>	
	Non Resident Entertainer who is not a citizen of India from performance in India	20%	N.A.	No	No	<b>Yes</b>	
<b>115E (Income of NRI)</b>	Income from investment in Foreign Exchange asset	20%	<b>Yes</b>	No	No	<b>Yes</b>	Section 195
	LTCG on sale of above asset	10%	<b>Yes</b>	<b>allowed without indexation</b>	No	<b>Yes</b>	
	LTCG on other assets	20%	<b>Yes</b>	<b>allowed without indexation</b>	No	<b>Yes</b>	

**Non-resident Indian** means an individual - citizen of India/person of Indian origin who is not "resident". Person shall be deemed to be of Indian origin if he / either of his parents / any of his grand-parents, was born in undivided India

**Foreign Exchange asset**

- a) Shares in Indian Company (Public / Private)
- b) Debentures / Deposits of Public Company
- c) Central Government Security

**Section 115F (Calculation similar to section 54F)**

- LTCG from transfer of any foreign exchange asset will be exempt if the net proceeds are re-invested or re-deposited in **6 months** of transfer date in "**Foreign exchange assets**" or **savings certificates** u/s 10(4B).
- LTCG from transfer of any foreign exchange asset will be exempt as follows  

$$= \frac{\text{Amount invested}}{\text{Net Consideration}} * \text{Long Term Capital Gain}$$

If new asset is transferred or converted into money within 3 years from its acquisition, LTCG exempted earlier shall be deemed to be the LTCG of the previous year of such transfer or conversion into money

**Special points for Section 44DA**

- Income shall be **computed under the head "Profits and gains of business or profession"**.
- All expenses allowable under the head shall be allowable.
- No deduction shall be allowed for
  - a) expenditure not wholly and exclusively incurred for business of such PE or fixed place of profession in India
  - b) amounts paid by PE to its head office/ other offices(except reimbursement of actual expenses)
- It shall keep and maintain books of account as per section 44AA and get his accounts audited by an accountant and furnish Audit Report along with the return of income. Losses / Unabsorbed depreciation can be set off.

**Chapter VIII of Finance Act 2016: Equalisation Levy**

- Equalisation levy means the tax leviable on consideration received or receivable for any specified service.
- It shall apply to the whole of India except the State of Jammu and Kashmir
- Equalisation levy shall be charged at the rate of 6% of the amount of consideration for any specified service received or receivable by a person, being a non-resident from
  - a) a person resident in India and carrying on business or profession or
  - b) a non-resident having a permanent establishment in India.
- The equalisation levy shall not be charged where
  - a) the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment
  - b) the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed one lakh rupees or
  - c) where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.
- Specified service means
  - a) online advertisement
  - b) any provision for digital advertising space or any other facility
  - c) service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf
- Equalisation levy has to be rounded off to nearest ₹10.

**Procedures**

- Assessee shall deduct equalisation levy from the amount paid or payable to a non-resident in respect of the specified service at 6% if the aggregate amount in a previous year exceeds one lakh rupees.
- Equalisation levy so deducted during any calendar month shall be paid to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.
- Assessee who fails to deduct levy shall be liable to pay the levy to the credit of the Central Government by the 7th of the month immediately following the said calendar month
- Interest on late payment: 1% of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.
- Every assessee shall, within 30<sup>th</sup> June immediately following that financial year, prepare and deliver a statement in respect of all specified services during such financial year.

**Penal Consequences**

Failure to deduct the whole or any part of the equalisation levy	Having deducted the equalisation levy, fails to pay such levy to the credit of the Central Government	Fails to furnish the statement within the time prescribed
Penalty equal to the amount of equalisation levy that he failed to deduct	Penalty of one thousand rupees for every day during which the failure continues subject to the amount of equalisation levy that he failed to pay.	Penalty of one hundred rupees for each day during which the failure continues.
No penalty shall be imposable for any failure if the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure.		

**Section 10(50):** Any income arising from any specified service provided which is chargeable to Equalisation Levy shall be exempt in the hands of Non Resident who receives the income.

## Chapter 23 : Double Taxation Relief and Limitation of Interest

<b>DTAA u/s 90</b> - Central Government may enter into agreement with <b>Foreign Government</b> or <b>specified territory</b> outside India	<b>DTAA under Section 90A</b> - Any specified association in India may enter into agreement with <b>specified association</b> in the <b>specified territory</b> outside India
---------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### Section 91: Countries with which no agreement exists

The assessee must have been <b>resident in India</b> in the relevant previous year	Income must have accrued or arisen to him during that previous year outside India and which is <b>not deemed to accrue or arise in India</b> .	He has paid in any country with which there is <b>no agreement under section 90</b> for the relief or avoidance of double taxation
------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------

- He shall be entitled to the deduction from the Indian income tax payable by him of a
  - a) sum calculated on such doubly taxed income at the Indian rate of tax or
  - b) at the rate of tax of the said country whichever is lower.

### Section 94B: Limitation on Interest deduction in certain cases

- Where an **Indian company**, or a Permanent Establishment of a **foreign company** in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding **one crore rupees** which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a **non-resident, being an associated enterprise of such borrower**, the interest **shall not** be deductible in computation of income under the said head to the extent that it arises from **excess interest**.
- **Computation of Excess Interest**
  - a) Calculate interest paid or payable to associated enterprise for that previous year.
  - b) Compute EBITDA i.e. Earnings before interest, taxes, depreciation and amortisation of the borrower
  - c) Calculate 30% of EBITDA [30% of (a)].
  - d) Ascertain lower of (a) and (c).
  - e) Excess interest = [(a) – (d)].
- Where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.
- The interest expenditure which has not been so deducted, shall be carried forward to the following assessment year/s and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of **maximum allowable interest expenditure**.
- No interest expenditure shall be carried forward for more than **eight assessment years** immediately succeeding the assessment year for which the excess interest expenditure was first computed.
- The above provisions shall not apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.



## **Chapter 24 : Transfer Pricing**

### **Section 92/92B: Computation of income from International Transaction having regard to Arm's Length Price**

**Condition 1:** Transaction relates to

- Any income
- Allowance for any expense or interest
- allocation or apportionment of any cost or expense in connection with a benefit, service or facility to any one or more of such enterprises
- purchase, sale, transfer, lease or use of tangible or intangible property
- provision of services
- capital financing (long/short-term borrowing, lending or guarantee)
- a transaction of business restructuring or reorganization which may or may not bearing on the profit, income, losses or assets of such enterprises

**Condition 2:** Atleast 1 party to the transaction should be Non Resident

**Condition 3:** The transaction should be between Associated Enterprises (AEs)

#### **Associated Enterprises**

Two enterprises shall be deemed to be associated enterprises if at any time during the previous year

1. One enterprises holds directly shares carrying not less than 26% of the voting power in the other enterprise
2. Any person or enterprise holds directly or indirectly shares carrying not less than 26% of the voting power in each of such enterprises or
3. A loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of the total assets of the other enterprise or
4. One enterprise guarantees not less than 10% of the total borrowings of the other enterprise or
5. More than half of the board of directors or members of the governing board or one or more executive directors or executive members of the governing board of one enterprise are appointed by the other enterprise
6. More than half of the directors or members of the governing board or one or more of the executive directors or members of the governing board of each of the two enterprises are appointed by the same person or persons
7. The manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of intellectual property rights i.e. know-how patents, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights
8. 90% or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise are supplied by the other enterprise or by persons specified by the other enterprise and the prices and other conditions relating to the supply are influenced by such other enterprise or
9. The goods or articles manufactured or processed by one enterprise are sold to the other enterprise or to persons specified by buyer, and the prices, other conditions etc. are influenced by such other enterprise
10. Where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual

11. Where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative or
12. Where one enterprise is a Firm association of persons or body of individuals the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals or
13. There exists between the two enterprises any relationship of mutual interest as may be prescribed

### **Section 92BA: Specified Domestic Transactions**

Specified domestic transaction in case of an assessee means any of the following transactions, not being an international transaction:

1. any transaction referred to in section 80A
2. any transfer of goods or services referred to in section 80-IA(8)
3. any business transacted between the assessee and other person as referred to in section 80-IA(10)
4. any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of section 80-IA(8) or (10) are applicable i.e. Section 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE and 10AA.
5. **any business transacted between the persons referred to in section 115BAB(4) (w.e.f. AY 2020-21)**
6. any other transaction as may be prescribed, and where the aggregate of such transactions entered into by the assessee in the previous year **exceeds Rs. 20 crores.**

### **Section 92C(1): Methods to compute Arm's Length Price**

The arm's length price shall be determined by any of the following methods

- a) Comparable Uncontrolled Price Method
- b) Resale Price Method
- c) Cost Plus Method
- d) Profit Split Method
- e) Transactional net Margin Method
- f) **Such other method as may be prescribed by the Board under Rule 10AB i.e.** any method which takes into count the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances

<b>Point</b>	<b>Section 92: International Transfer Pricing</b>	<b>Sec 92BA: Specified Domestic Transfer Pricing</b>
<b>When will it apply?</b>	If all 3 conditions are satisfied, then provisions will apply irrespective of the value of transactions.	Provisions will not apply if value of such transactions in a year does not exceed ₹ 20 crores. The limit is for all 6 transactions for an assessee in a year. If value is ₹ 20 crores, it won't apply as it is not exceeding <b>₹ 20 crores.</b>
<b>Maintenance of specified documentation</b>	Not required if the aggregate value, as recorded in the books of account does not exceed <b>₹ 1 crore.</b>	
<b>Audit Report to be furnished in Form 3CEB</b>	If provisions of International Transfer pricing apply, then filing of Audit Report is compulsory.	

**Rule 10CA: When more than one Arm's Length Price is available**

- Where the comparable uncontrolled transaction has been identified on the basis of data relating to the current year and the enterprise has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then
  - the most appropriate method used to determine the price of the comparable uncontrolled transaction or transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined and
  - the weighted average of the prices, shall be computer by taking weighted average of the current year price and prices of last 2 financial years
- A dataset shall be constructed by placing the prices in an ascending order.

<b>6 or more entries in the data set</b>	<b>5 or less entries</b>
Arm's length range beginning from the 35th percentile of the dataset and ending on the 65 <sup>th</sup> percentile of the dataset shall be made.	ALP shall be arithmetic mean. % variation is given below.
a) Transaction price is within this range: Such price shall be deemed to be at arm's length.	
b) Transaction price is outside this range: ALP shall be median of the dataset	

<b>35th percentile of a dataset</b>	The lowest value in the dataset such that at least 35% of the values included in the dataset are equal to or less than such value.
<b>65th percentile of a dataset</b>	The lowest value in the dataset such that at least 65% of the values included in the dataset are equal to or less than such value.
<b>Median of the dataset</b>	The lowest value in the dataset such that at least 50% of the values included in the dataset are equal to or less than such value.

**Note:** If the number of values that are equal to or less than the aforesaid value is a whole number, then it shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.

**Notified Variation if there are 5 or less Arm's Length Prices available**

Variation between the arithmetic mean and the transaction price does not exceed one per cent of the latter in respect of wholesale trading and three per cent of the latter in all other cases, the transaction price shall be deemed to be the arm's length price.

Wholesale trading means trading in goods, which fulfils the following conditions:

- a) purchase cost of finished goods is 80% or more of total cost pertaining to such trading activities; and
- b) average monthly closing inventory of such goods is 10% or less of sales pertaining to such trading activities.

**Common Penal Provisions**

- **Sec 270A:** Failure to report any international transaction or specified domestic transaction represents misreporting of income. Penalty shall be 200% of tax payable on such under-reported income
- **Section 271G: Failure to furnish information or document (levied by AO / TPO) or Section 271AA:** Failure to keep and maintain information, documents
  - Failure to report such transaction which is required to be reported
  - Maintains or furnishes any incorrect information or document
 Penalty in both cases = 2% of the value of the international transaction or specified domestic transaction
- **Sec 271AA:** Failure to furnish report of international group u/s 286: ₹5,00,000
- **Section 271BA:** Failure to furnish report u/s 92E = Penalty = ₹ 1 Lakh.

**Notified Jurisdictional Area**

**Section 94A:** Special measures in respect of transactions with persons located in **Notified Jurisdictional Area**

**Notification no. 114/2016 read with Circular no. 15/2017**

The Notification specifying Cyprus as a "notified jurisdictional area" (NJA) under section 94A is rescinded with retrospective effect from 01.11.2013.

If an assessee <b><u>enters into a transaction</u></b> where one party is a person located in NJA	<b>No deduction</b> shall be allowed to the assessee	<b>Receipts / Credit</b> from a person located in NJA	<b>TDS</b> on payments made to person located in NJA
<ul style="list-style-type: none"> <li>all the parties shall be deemed to be associated enterprises</li> <li>any transaction shall be deemed to be an international transaction</li> <li>the provisions of Transfer Pricing shall apply</li> <li><b>The benefit of variation/median shall not apply.</b></li> </ul>	<ul style="list-style-type: none"> <li>for <b><u>payment to any financial institution</u></b> located in NJA (CBDT Authorisation is required to get deduction)</li> <li>in respect of any other <b><u>expenditure</u></b> (including depreciation) arising from the transaction with a person located in a NJA (Assessee should maintain documents and furnish information to claim deduction)</li> </ul>	<ul style="list-style-type: none"> <li>If the assessee <b><u>does not offer any explanation</u></b> about the source of the said sum in the hands of such person or beneficial owner or</li> <li>the <b><u>explanation offered</u></b> by the assessee, in the opinion of the Assessing Officer, is <b><u>not satisfactory</u></b></li> <li>then, such sum shall be deemed to be the income of the assessee for that previous year.</li> <li>As per section 115BBE, it shall be taxable at 77.25%</li> <li>No deductions shall be allowed from such income.</li> </ul>	<p>The tax shall be deducted at the highest of:</p> <ol style="list-style-type: none"> <li>at the rate/s in force</li> <li>at the rate specified in the relevant provisions of this Act</li> <li>at the rate of 30%</li> </ol>

**Section 92CE: Secondary adjustment in certain cases (Highlighted points added / changed w.e.f 1.4.2018 by Finance Act, 2019)**

- Primary adjustment to a transfer price means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss of the assessee.
- Secondary adjustment means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.
- Excess money means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken.
- Where a primary adjustment to transfer price
  - has been made suo motu by the assessee in his return of income
  - made by the Assessing Officer has been accepted by the assessee

- c) is determined by an advance pricing agreement entered into by the assessee under section 92CC **on or after the 1st day of April, 2017**
- d) is made as per the safe harbour rules framed under section 92CB
- e) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation, the assessee shall make a secondary adjustment
- Nothing contained in this section shall apply, if
  - a) the amount of primary adjustment made in any previous year does not exceed Rs. 1 crore **OR**
  - b) the primary adjustment is made in respect of an assessment year commencing on or before 1st April, 2016.
- **No refund of taxes paid, if any, by virtue of this provisions as they stood immediately before their amendment by the Finance (No.2) Act, 2019 shall be claimed and allowed.**
- Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss of the assessee, the excess money **or part thereof, as the case may be** which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance shall be computed.
- **It is hereby clarified that the excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.**

#### **Optional provision to pay tax**

- **Without prejudice to the above provisions, where the excess money or part thereof has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax at the rate of 18% on such excess money or part thereof. Surcharge at 12% is payable.**
- **The tax on the excess money or part thereof so paid by the assessee shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid.**
- **No deduction under any other provision of this Act shall be allowed to the assessee in respect of the amount on which tax has been paid.**
- **Where the additional income-tax is paid by the assessee, he shall not be required to make secondary adjustment and compute interest from the date of payment of such tax.**

#### **Rule 10CB: Computation of interest income pursuant to secondary adjustments (Highlighted points added / changed w.e.f. 30.9.2019)**

Imputed p.a. interest income on excess money **or part thereof** which is not repatriated within the time limit shall be computed

<b>Currency</b>	<b>Interest rate</b>
International Transaction is denominated in Indian rupee	one year marginal cost of fund lending rate of SBI as on 1st of April of the relevant previous year plus 325 basis points
International Transaction is denominated in foreign currency	six month London Interbank Offered Rate as on 30th September of the relevant previous year plus 300 basis points

The time limit for repatriation of excess money **or part thereof** shall be on or before 90 days

<b>Primary Adjustment adjustments to transfer price due to</b>	<b>90 days to be calculated from</b>	<b>Interest calculated from</b>
i. primary adjustments to transfer price has been made suo-moto by the assessee in his return of income	from the due date of filing of return under section 139(1) of the Act	<b>from the due date of filing of return under section 139(1) of the Act</b>
ii. primary adjustments to transfer price as determined in the aforesaid order has been accepted by the assessee	from the date of order of Assessing Officer or appellate authority	<b>from the date of the order of Assessing Officer or the appellate authority</b>
iii. in the case of agreement for advance pricing entered into by the assessee under section 92CD	<b>a) from the due date of filing of return u/s 139(1) if APA has been entered into on or before the due date of filing of return for the relevant previous year</b> <b>b) from the end of the month in which the APA has been entered into if the said agreement has been entered into after the due date of filing of return for the relevant previous year</b>	<b>a) from the due date of filing of return under section 139(1) of the Act</b> <b>b) from the end of the month in which the APA has been entered into by the assessee under section 92CC</b>
iv. in the case of option exercised by the assessee as per the safe harbour rules under section 92CB	from the due date of filing of return under section 139(1) of the Act	<b>from the due date of filing of return under section 139(1) of the Act</b>
v. <b>resolution arrived at under mutual agreement procedure (MAP) under a DTAA entered into under section 90 or 90A</b>	<b>from the date of giving effect by the Assessing Officer under rule 44H to the resolution arrived at under mutual agreement procedure</b>	<b>from the date of giving effect by the Assessing Officer under rule 44H to the resolution arrived at under MAP</b>

### Note

- **International transaction shall have the same meaning as assigned to it in section 92B of the Act.**
- **The rate of exchange for the calculation of the value in rupees of the international transaction denominated in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the previous year in which such international transaction was undertaken.**
- Rule 44H relates to reference received from the competent authority of a country outside India under any agreement with that country with regard to any action taken by any income-tax authority in India.

## **Furnishing of report in respect of international group in line with BEPS Action Plan – Country by Country Report and Master File**

### **Three-tier structure mandated by BEPS**

The BEPS report recommends that countries adopt a standardised approach to transfer pricing documentation; it mandates the following three-tier structure:

- a) **Master File** - Standardised information relevant for all multinational enterprises (MNE) group members
- b) **Local file** - Specific reference to material transactions of the local taxpayer
- c) **Country-by- Country Report** - Information relating to the global allocation of the MNE's income and taxes paid and indicators of the location of economic activity within the MNE group.

### **Section 92D / Rule 10DA: Documentation relating to constituent entity of an international group**

**Maintenance of Information (Master File):** Every person, being a constituent entity of an international group shall keep and maintain the following information and documents of the international group

- i. if the consolidated group revenue of the international group for the accounting year, exceeds **Rs. 500 crores** and
  - ii. the aggregate value of international transactions
    - A. during the accounting year, as per the books of account, exceeds **Rs. 50 crores**, or
    - B. in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds **Rs. 10 crores**
- **Report of Master File:** The report of the information shall be in Form No. 3CEAA and it shall be furnished to the Director General of Income-tax (Risk Assessment) on or before the due date for furnishing the return of income as specified in section 139(1).
  - Where there are more than one constituent entities resident in India of an international group, then the report or information, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information and the same has been intimated by the designated constituent entity to the Director General of Income-tax (Risk Assessment) in Form 3CEAB. Such intimation shall be made at least thirty days before the due date of filing the report.
  - The information and documents shall be kept and maintained for a period of **eight years** from the end of the relevant assessment year.

### **Section 286 read with Rule 10DB: Furnishing of report in respect of international group**

- a) The provisions shall apply if the total consolidated group revenue as reflected in the consolidated financial statement (CFS) for the accounting year preceding such accounting year is above a threshold i.e. **Rs. 5,500 crore (Country-by-Country Report – CbCR)**
- b) **Intimation** - Every constituent entity resident in India, of an international group having parent entity that is not resident in India, shall notify to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAC at least **two months** prior to the due date for furnishing of report as specified under section 286.
- c) **Report** - The parent entity of an international group or the alternate reporting entity, if it is resident in India shall be required to furnish the report for every reporting accounting year, within a period of twelve months from the end of the said reporting accounting year in Form No. 3CEAD.

- d) A constituent entity of an international group, resident in India, other than the entity referred to above (i.e. other than parent entity or the alternate reporting entity) shall furnish the report in Form No. 3CEAD, in respect of the international group for a reporting accounting year within the period as may be prescribed, if the parent entity is resident of a country or territory
- where the parent entity is not obligated to file such report
  - with which India does not have an agreement providing for exchange of the report
  - there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity.
- Such Report for every reporting accounting year shall be furnished by parent entity or the alternate reporting entity or other entity in Form No. 3CEAD.
- e) Where there are more than one such constituent entities of the group, resident in India, the report in Form No. 3CEAE shall be furnished by any one constituent entity, if
- the international group has designated such entity to furnish the report on behalf of all the constituent entities resident in India and
  - the information has been conveyed in writing on behalf of the group to the prescribed authority.
- f) A constituent entity other than parent entity or the alternate reporting entity shall not be required to file this Report if an alternate reporting entity of the international group has furnished a report with the tax authority of the country or territory in which such entity is resident, on or before the date specified by that country or territory and the following conditions are satisfied
- report is required to be furnished under the law in the said country or territory
  - the said country or territory has entered into an agreement with India providing for exchange of the said report
  - the prescribed authority has not conveyed any systemic failure in respect of the said country or territory to any constituent entity of the group that is resident in India
  - the said country or territory has been informed in writing by the constituent entity that it is the alternate reporting entity on behalf of the international group
  - the prescribed authority has been informed by the entity
- g) The prescribed authority may require the entity to produce such information and document as may be specified in the notice within **30 days** of the date of receipt of the notice. The prescribed authority may, on an application made by such entity, extend such period by a further period not exceeding **30 days**.

**Section 271GB: Penalty for non-furnishing of the report by any reporting entity which is obligated to furnish such report**

Period of delay/default	Penalty
(a) Not more than a month	₹ 5,000 per day
(b) beyond one month	₹ 15,000 per day for the period exceeding one month
(c) Continuing default even after service of order levying penalty either under (a) or under (b)	₹ 50,000 per day of continuing failure beginning from the date of service of order

**Penalty for failure to produce information and documents within prescribed time**

Default	Penalty
Failure to produce information before prescribed authority within the period allowed u/s 286(6)	₹ 5,000 per day of continuing failure, from the day immediately following the day on which the period for furnishing the information and document expires.
Continuing default even after service of penalty order	₹ 50,000 per day for the period of default beyond the date of service of penalty order



### **Penalty for submission of inaccurate information in the CBC report**

If the reporting entity has provided any inaccurate information in the report, the penalty would be Rs. 5,00,000 if

- the entity has knowledge of the inaccuracy at the time of furnishing the report but does not inform the prescribed authority or
- the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery or
- the entity furnishes inaccurate information or document in response to notice of the prescribed authority under section 286(6).

**Note:** As per section 273B, if the assessee proves that there was reasonable cause for such failure, the penalty can be waived.

## **Chapter 25 : Advance Rulings/Advance Pricing Agreement/Safe Harbour Rules**

	<b>Section 245N(a): Advance Ruling</b> means	<b>Section 245N(b)</b> : Applicant
1	determination in relation to a transaction which has been undertaken or is proposed to be undertaken by a <b>non-resident applicant</b>	<b>Non Resident</b>
2	determination in relation to <b>tax liability of a non-resident</b> arising out of a transaction which has been undertaken or is proposed to be undertaken by a <b>resident applicant</b> with <b>non-resident</b>	<b>Resident</b>
3	determination in relation to the <b>tax liability of a resident</b> applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken including the determination of any question of law or of fact	<b>Residents in relation to his tax liability arising out of transaction/s valuing ₹ 100 crores or more in total</b>
4	Determination or decision in respect of an issue relating to <b>computation of total income</b> which is <b>pending</b> before any <b>income-tax authority</b> or the <b>Appellate Tribunal</b> including the determination of any question of law or of fact relating to such computation of total income	<b>Specified Residents: Public sector company</b>
5	determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an <b>impermissible avoidance arrangement</b> as per Chapter X-A (GAAR)	<b>Resident / Non Resident</b>

### **Who cannot make an application?**

Where the question raised in the application-

- is already **pending before any income-tax authority or Appellate Tribunal** (except in the case of a resident applicant specified above in Point no 4) or any court
- involves determination of **fair market value** of any property
- relates to a transaction or issue which is designed **prima facie for the avoidance of income-tax** except in the case of a resident applicant specified above in Point no 4 or relating to Point no 5 i.e. GAAR

### **Section 245Q: Application**

- An applicant desirous of obtaining an advance ruling under this Chapter or under Chapter V of the Customs Act, 1962 or under Chapter IIIA of the Central Excise Act, 1944 or under Chapter VA of the Finance Act, 1994 shall file the application in quadruplicate with a fee-Any such application can be withdrawn within 30 days from the date of the application.

### **Section 245R: Procedure**

1. On receipt of an application the Authority shall cause a copy thereof to be forwarded to the **Principal Commissioner** or Commissioner and if necessary, call upon him to furnish the relevant records.
2. The Authority may after examining the application and the records either allow or reject the application.
3. The Authority shall after examining such further material as provided or obtained pronounce its advance ruling **within 6 months** of the receipt of application.

### **Section 245RR: Appellate Authority not to proceed in certain cases**

Where an application is made by a resident no income tax authority or the Appellate Tribunal shall proceed to decide any issue in respect of which such an application has been made.

<b>Section 245S: Applicability of advance ruling</b>	<b>Section 245T: Advance ruling to be void</b>
<ul style="list-style-type: none"> <li>• Advance ruling pronounced by the Authority under section 245R shall be binding only-                             <ol style="list-style-type: none"> <li>1. On the applicant who had sought it</li> <li>2. In respect of the transaction in relation to which the ruling had been sought and</li> <li>3. On the Principal Commissioner or Commissioner and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.</li> </ol> </li> <li>• Advance ruling shall not be binding if there is a change in law or facts on the basis of which the advance ruling has been pronounced.</li> </ul>	<ul style="list-style-type: none"> <li>• Where the Authority finds, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may by order declare such ruling to be void ab-initio.</li> <li>• All the provisions of this Act shall apply (After excluding the period beginning with the date of such advance ruling and ending with the date of this order) to the applicant as if such advance ruling had never been made.</li> </ul>

### **Advance Pricing Agreements**

#### **Section 92CC**

- The Board, with the approval of the Central Government, may enter into an APA with any person in relation to an **international transaction** to be entered into by that person
  - a) determining the arm's length price or
  - b) specifying the manner in which arm's length price is to be determined,
- The arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered.
- The agreement shall be valid for such period not exceeding **5 consecutive previous years**
- The agreement, may apply any period not exceeding **four previous years preceding** the first of the previous years and the arm's length price shall be determined in accordance with the said agreement.
- The advance pricing agreement entered into shall be binding
  - a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into and

- b) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.
- The agreement shall not be binding if there is a change in law or facts having bearing on the agreement.
  - The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

### Section 92CD: Effect to advance pricing agreement

Any <b>ROI has already been furnished</b> for any year to which such agreement applies	If the <b>assessment proceedings</b> for any year to which the agreement applies <b>have been completed</b> before the expiry of period allowed for furnishing of modified return	Where the <b>assessment proceedings</b> for year to which the agreement applies are <b>pending</b> on the date of filing of modified return
He shall furnish, within a period of <b>3 months</b> from the end of the month in which the said agreement was entered into, a <b>Modified Return</b> in accordance with and limited to the agreement. All provisions of Section 139 shall apply to such return.	A modified Return is required to be filed. AO shall <b>pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment</b> having regard to and in accordance with the agreement. ( <b>w.e.f. 1.9.2019</b> )	A modified Return is required to be filed. AO shall proceed to complete the assessment in accordance with the agreement taking into consideration the modified return so furnished.
	The order <b>of assessment</b> shall be passed within <b>one year from the end of the financial year</b> in which the modified return is furnished	The time limit to complete assessment shall be extended by a period of <b>12 months</b>

The assessment shall be deemed to have been completed where an assessment order has been passed or No notice has been issued under section 143(2) till the expiry of the limitation period.

### Safe Harbour Rules

#### Safe Harbour Rules for Specified Domestic Transactions (Rule 10TH to 10THC)

<b>Eligible specified domestic transaction</b>	<b>Circumstances</b>
Supply of electricity, transmission of electricity, wheeling of electricity by Government company engaged in the business of generation, supply, transmission or distribution of electricity	The tariff in respect of supply of electricity, transmission of electricity, wheeling of electricity is determined or the methodology for determination of the tariff is approved by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003
Purchase of milk or milk products by is a co-operative society engaged in the business of procuring and marketing milk and milk products.	The price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not FAT (SNF) content of milk and (a) the said rate is irrespective of (i) the quantity of milk procured (ii) % of shares held by the members in the co-operative society (iii) voting power held by the members in the society and (b) such prices are routinely declared by the co-operative society in a transparent manner and are available in public domain.

## **Chapter 26 : Tax Planning, Tax Avoidance and Tax Evasion (including GAAR)**

### **Section 95: Applicability of General Anti-Avoidance Rule**

- Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.
- The provisions of this Chapter may be applied to any step in, or a part of, the arrangement as they are applicable to the arrangement.

### **Section 96: Impermissible Avoidance Arrangement**

- An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it
  - a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length
  - b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act
  - c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part
  - d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes
- An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.
- **Tax benefit** includes
  - a) a reduction or avoidance or deferral of tax or other amount payable under this Act
  - b) an increase in a refund of tax or other amount under this Act
  - c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty (DTAA under section 90 / 90A)
  - d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty
  - e) a reduction in total income
  - f) an increase in lossin the relevant previous year or any other previous year;

### **Section 97: Arrangement to lack commercial substance**

- An arrangement shall be deemed to lack commercial substance, if
  - a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part
  - b) it involves or includes
    - i. round trip financing
    - ii. an accommodating party
    - iii. elements that have effect of offsetting or cancelling each other
    - iv. a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction
  - c) it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party

d) it does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained (but for the provisions of this Chapter)

**Asset** includes property, or right, of any kind.

**Benefit** includes a payment of any kind whether in tangible or intangible form.

**Party** includes a person or a permanent establishment which participates or takes part in an arrangement.

- Round trip financing includes any arrangement in which, through a series of transactions
  - a) funds are transferred among the parties to the arrangement
  - b) such transactions do not have any substantial commercial purpose other than obtaining the tax benefit (but for the provisions of this Chapter), without having any regard to
    - A. whether or not the funds involved in the round trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement
    - B. the time, or sequence, in which the funds involved in the round trip financing are transferred or received
    - C. the means by, or manner in, or mode through, which funds involved in the round trip financing are transferred or received

**Fund** includes

- a) any cash
- b) cash equivalents
- c) any right, or obligation, to receive or pay, the cash or cash equivalent

- A party to an arrangement shall be an accommodating party, if the main purpose of the direct or indirect participation of that party in the arrangement, in whole or in part, is to obtain, directly or indirectly, a tax benefit (but for the provisions of this Chapter) for the assessee whether or not the party is a connected person in relation to any party to the arrangement.

**Connected person** means any person who is connected directly or indirectly to another person and includes

- a) any relative of the person, if such person is an individual
- b) any director of the company or any relative of such director, if the person is a company
- c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals
- d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family
- e) any individual who has a substantial interest in the business of the person or any relative of such individual
- f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member
- g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member
- h) any other person who carries on a business, if

- i. the person being an individual, or any relative of such person, has a substantial interest in the business of that other person
- ii. the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person

**Relative** shall have the meaning assigned to it in section 56(2) i.e. for Gift purpose.

A person shall be deemed to have a **substantial interest in the business**, if

- a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying **20% or more** of the voting power
  - b) in any other case, such person is, at any time during the financial year, beneficially entitled to 20% or more, of the profits of such business
- The following may be relevant but shall not be sufficient for determining whether an arrangement lacks commercial substance or not, namely
- i. the period or time for which the arrangement (including operations therein) exists
  - ii. the fact of payment of taxes, directly or indirectly, under the arrangement
  - iii. the fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement

### **Section 98: Consequences of Impermissible Avoidance Arrangement**

If an arrangement is declared to be an impermissible avoidance arrangement, then, the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following:

- a) disregarding, combining or re-characterising any step in, or a part or whole of, the impermissible avoidance arrangement
- b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out
- c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person
- d) deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount
- e) reallocating amongst the parties to the arrangement
  - i. any accrual, or receipt, of a capital nature or revenue nature
  - ii. any expenditure, deduction, relief or rebate
- f) treating
  - i. the place of residence of any party to the arrangement
  - ii. the situs of an asset or of a transaction  
at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or
- g) considering or looking through any arrangement by disregarding any corporate structure.

For above purposes

- a) any equity may be treated as debt or vice versa;
- b) any accrual, or receipt, of a capital nature may be treated as of revenue nature or vice versa; or
- c) any expenditure, deduction, relief or rebate may be recharacterised.

### Section 99: Treatment of Connected Person and Accommodating Party

For the purposes of this Chapter, in determining whether a tax benefit exists

- i. the parties who are connected persons in relation to each other may be treated as one and the same person
- ii. any accommodating party may be disregarded
- iii. the accommodating party and any other party may be treated as one and the same person
- iv. the arrangement may be considered or looked through by disregarding any corporate structure

### Section 100: Application of this Chapter

The provisions of this Chapter shall apply in addition to, or in lieu of, any other basis for determination of tax liability.

### Section 144BA read with Rule 10UB / 10UC: Reference to Principal Commissioner or Commissioner relating to GAAR

- AO shall, before making a reference to the Commissioner, issue a notice in writing to the assessee seeking objections, if any, to the applicability of provisions of Chapter X-A in his case. The notice shall contain-
  - a) details of the arrangement to which the provisions of Chapter X-A are proposed to be applied
  - b) the tax benefit arising under the arrangement
  - c) basis and reason for considering that the main purpose of the identified arrangement is to obtain tax benefit
  - d) the basis and the reasons why the arrangement satisfies the condition provided in section 96 and
  - e) the list of documents and evidence relied upon
- If AO, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an **Impermissible Avoidance Arrangement** and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference **to P CIT / CIT in Form No. 3CEG**.
- If the P CIT / CIT is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee not exceeding 60 days, as may be specified in the notice.

If the assessee does not furnish any objection to the notice within the time specified in the notice issued	In case the assessee objects to the proposed action,	
	If P CIT / CIT is satisfied that GAAR provisions are not to be invoked	P CIT / CIT is not satisfied by the explanation of the assessee
P CIT / CIT shall issue such directions as he deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement within <b>one month</b> from the end of the month in which the date of compliance of the notice issued.	P CIT / CIT shall by an order in writing, communicate the same to the Assessing Officer in <b>Form 3CEH</b> with a copy to the assessee <ul style="list-style-type: none"> <li>➤ If due to reference received from AO - within <b>one month</b> from the end of month in which the reference is received by him</li> <li>➤ If due to reply of the assessee in response to the notice issued: within <b>two months</b> from the end of month in which</li> </ul>	P CIT / CIT shall record his satisfaction regarding the applicability of the provisions of Chapter X-A in <b>Form 3CEI</b> P CIT / CIT shall make a reference in the matter to the <b>Approving Panel</b> for the purpose of declaration of the arrangement as an impermissible avoidance arrangement. Reference shall be made to the Approving Panel within <b>two</b>

	the final submission of assessee in response to the notice received by him.	<b>months</b> from the end of the month in which the final submission of the assessee in response to the notice is received.
--	-----------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------

- The Approving Panel shall issue such directions in respect of the declaration of the arrangement as an impermissible avoidance arrangement including specifying of the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.
- The Assessing Officer, on receipt of directions of the P CIT / CIT or of the Approving Panel shall proceed to complete the proceedings in accordance with such directions and the provisions of Chapter X-A.
- If any direction issued specifies that declaration of the arrangement as impermissible avoidance arrangement is applicable for any previous year other than the previous year to which the proceedings pertains, then, the Assessing Officer while completing any assessment or reassessment proceedings of the assessment year relevant to such other previous year shall do so in accordance with such directions and the provisions of Chapter X-A and it shall not be necessary for him to seek fresh direction on the issue for the relevant assessment year.
- No order of assessment or reassessment shall be passed by Assessing Officer without the prior approval of the P CIT / CIT, if any tax consequences have been determined in the order under the provisions of Chapter X-A.
- The Approving Panel shall issue directions within six months from the end of the month in which the reference was received.
- The directions issued by the Approving Panel shall be binding on
  - a) the assessee and
  - b) P CIT / CIT and the income-tax authorities subordinate to him,
 No appeal shall lie against such directions.

**Rule 10U: Chapter X-A not to apply in certain cases**

- a) an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement **does not exceed Rs. 3 crores**
- b) a Foreign Institutional Investor
  - i. who is an assessee under the Act
  - ii. who has not taken benefit of an agreement referred to in section 90 or section 90A (DTAA)
  - iii. who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable, in relation to such investments
- c) a person, being a non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor
- d) any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the 1st April, 2017 by such person.

Provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after the 1st April, 2017.

**Separate Notes for Case Laws will be provided.**