

CHAPTER 46. TRANSFER PRICING

RULE 10CA: COMPUTATION OF ARM'S LENGTH PRICE IN CERTAIN CASES

- (1) Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in sub-section (1) of section 92C results in determination of more than one price, then the arm's length price in respect of such international transaction or specified domestic transaction shall be computed in accordance with the provisions of this rule.

- (2) A dataset shall be constructed by placing the prices referred to in sub-rule (1) in an ascending order and the arm's length price shall be determined on the basis of the dataset so constructed:

Provided that where the comparable uncontrolled transaction has been identified on the basis of data relating to the current year of the unrelated enterprise undertaking the said uncontrolled transaction, and the said unrelated 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, —

- (i) the most appropriate method used to determine the price of the comparable uncontrolled transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and
- (ii) the weighted average of the prices shall be computed by taking weighted average of the current year price and prices of last 2 financial years.

Provided that the weighted average of such prices shall be included in dataset constructed above.

NOTE: RANGE CONCEPT:

Rule 10CA provides that Range Concept is applicable where the most appropriate method applied is—

- (i) a method other than the profit split method or a method prescribed by the CBDT under section 92C(1)(d)/(f); and
- (ii) the dataset constructed in accordance with sub-rule (2) consists of six or more entries.

Application of multiple year data for construction of dataset

Multiple year data allowed only in cases where determination of ALP is done using TNMM, RPM or CPM

- (3) Where the dataset constructed in accordance with sub-rule (2) consists of **six or more entries**, an arm's length range beginning from the **thirty-fifth percentile** of the dataset and ending on the **sixty-fifth percentile** of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule (4) and sub-rule (5).
- (4) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is within the range referred to in sub-rule (3), then, the

price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

- (5) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the arm's length range referred to in sub-rule (3), the arm's length price shall be taken to be the **median** of the dataset.

(6) **WHEN RANGE CONCEPT NOT APPLICABLE?**

In a case where data set consists of less than six entries, the arm's length price shall be the arithmetical mean of all the values included in the dataset:

Provided that, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

- (7) For the purposes of this rule, —

- (a) **"the thirty-fifth percentile"** of a dataset, having values arranged in an ascending order, shall be:

Total entries in data set x 35/100

If this number is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the thirty fifth percentile.

If this number is a whole number, then the arithmetical average of value in data set at this number and value in data set at next higher number shall be the thirty fifth percentile.

- (b) **"the sixty-fifth percentile"** of a dataset, having values arranged in an ascending order, shall be:

Total entries in data set x 65/100

If this number is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the sixty fifth percentile.

If this number is a whole number, then the arithmetical average of value in data set at this number and value in data set at next higher number shall be the sixty fifth percentile.

- (c) **"the median"** of the dataset, having values arranged in an ascending order, shall be:

Total entries in data set x 50/100

If this number is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the median.

If this number is a whole number, then the arithmetical average of value in data set at this number and value in data set at next higher number shall be the median.

Illustration 1- TNMM

The data for the current year of the comparable uncontrolled transactions or the entities undertaking such transactions is available at the time of furnishing return of income by the assessee and based on the same, seven enterprises have been identified to have undertaken the comparable uncontrolled transaction in the current year. All the identified comparable enterprises have also undertaken comparable uncontrolled transactions in a period of two years preceding the current year. The Profit level Indicator (PLI) used in applying the most appropriate method is operating profit as compared to operating cost (OP/OC). The weighted average shall be based upon the weight of OC as computed below:

| S. No. | Name of unrelated enterprise | Year 1 | Year 2 | Year 3 [Current Year] | Aggregation of OC and OP | Weighted Average |
|--------|------------------------------|-----------------------|-----------------------|-----------------------|---------------------------------|------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1 | A | OC = 100 OP = 12 | OC = 150 OP = 10 | OC = 225 OP = 35 | Total OC = 475 Total OP = 57 | OP/OC = 12% |
| 2 | B | OC = 80 OP = 10 | OC = 125 OP = 5 | OC = 100 OP = 10 | Total OC = 305 Total OP = 25 | OP/OC = 8.2% |
| 3 | C | OC = 250 OP = 22 | OC = 230 OP = 26 | OC = 250 OP = 18 | Total OC = 730 Total OP = 66 | OP/OC = 9% |
| 4 | D | OC = 180 OP = (-)9 | OC = 220 OP = 22 | OC = 150 OP = 20 | Total OC = 550 Total OP = 33 | OP/OC = 6% |
| 5 | E | OC = 140 OP = 21 | OC = 100 OP = (-)8 | OC = 125 OP = (-)5 | Total OC = 365 Total OP = 8 | OP/OC = 2.2% |
| 6 | F | OC = 160 OP = 21 | OC = 120 OP = 14 | OC = 140 OP = 15 | Total OC = 420 Total OP = 50 | OP/OC = 11.9% |
| 7 | G | OC = 150 OP = 21 | OC = 130 OP = 12 | OC = 155 OP = 13 | Total OC = 435 Total OP = 46 | OP/OC = 10.57% |

From the above, the dataset will be constructed as follows:

| SI. No. | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---------|------|----|------|----|--------|-------|-----|
| Values | 2.2% | 6% | 8.2% | 9% | 10.57% | 11.9% | 12% |

For construction of the arm's length range the data place of thirty-fifth and sixty-fifth percentile shall be computed in the following manner, namely:

Total no. of data points in dataset $7 \times (35/100) = 2.45$

Total no. of data points in dataset $7 \times (65/100) = 4.55$

Thirty fifth percentile is next higher number to 2.45 which is a whole number i.e. 3.

Sixty fifth percentile is next higher number to 4.55 is a whole number i.e. 5.

The arm's length range will be beginning at 8.2% and ending at 10.57%.

Therefore, if the transaction price of the international transaction or the specified domestic transaction has OP/OC percentage which is equal to or more than 8.2% and less than or equal to 10.57%, it is within the range. The transaction price in such cases will be deemed

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to be the arm's length price and no adjustment shall be required. However, if the transaction price is outside the arm's length range, say 6.2%, then for the purpose of determining the arm's length price the median of the dataset shall be first determined in the following manner:

The data place of median is calculated by first computing the total number of data point in the dataset * (50/100). In this case it is $7 \times 0.5 = 3.5$.

Since this is not a whole number, the next higher data place, i.e. the value at the fourth place will be the median.

The median is the value at fourth place, i.e., 9%. Therefore, the arm's length price shall be considered as 9% and adjustment shall accordingly be made.

Illustration 2 - The following prices have been determined as arm's length prices using comparable uncontrolled transactions method:

CUP METHOD

| | | | | |
|-------|-------|--------|--------|--------|
| 1.90 | 5.102 | 9.112 | 13.118 | 17.124 |
| 2.98 | 6.104 | 10.114 | 14.119 | 18.126 |
| 3.100 | 7.107 | 11.116 | 15.120 | 19.128 |
| 4.101 | 8.110 | 12.117 | 16.122 | 20.130 |

Answer:

Since the above prices do not relate to unrelated enterprises, the prices of last two years shall not be considered.

Total entries in data set = 20

Thirty fifth percentile = $20 \times 35/100 = 7$

Since this is a whole number, the arithmetical mean of value at 7 and 8 shall be the

Thirty Fifth percentile = $107 + 110/2 = 108.50$

Sixty Fifth percentile = $20 \times 65/100 = 13$

Since, this is a whole number, the arithmetical mean of value at 13 and 14 shall be the sixty fifth percentile = $118 + 119/2 = 118.50$

Median = $50/100 \times 20 = 10$

Since this is a whole number, the arithmetical mean of value at 10 and 11 shall be the median = $114 + 116/2 = 115$

If the assessee exports goods to associated enterprise in the range of 108.50 to 118.50, then the price at which goods are exported shall be the ALP. Let's say goods are exported to associated enterprise at **Rs** 109, then the actual transaction price is the ALP and no adjustment is required. However, if goods are exported to associate enterprise at say **Rs** 100 (10 lakh goods), then ALP shall be **Rs** 115 and income of the annexure shall be increased by 15×10 lakh goods = **Rs** 150 lakh

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Illustration 3 — If in the above illustration, the ALP on the basis of CUP method were determined as under:

| | | | | |
|-----------------|-----------------|----------------|-----------------|-----------------|
| Price 1: Rs 100 | Price 2: Rs 102 | Price 3: Rs 90 | Price 4: Rs 110 | Price 5: Rs 115 |
|-----------------|-----------------|----------------|-----------------|-----------------|

Since entries in the data set are less than 6, to arithmetical mean of these prices shall be the ALP

Thus, ALP shall be

$$100+102+90+110+115/5 = 517/5 = 103.40$$

In the above illustration, the addition on account of transfer price shall be $103.40 - 100 * 10$ lakh goods = **Rs 34 lakhs**

Illustration 4— In a given case the dataset of 20 prices arranged in ascending order is as under:

| S. No. | Profits (in Rs Thousand) |
|--------|--------------------------|
| 1 | 42.00 |
| 2 | 43.00 |
| 3 | 44.00 |
| 4 | 44.50 |
| 5 | 45.00 |
| 6 | 45.25 |
| 7 | 47.00 |
| 8 | 48.00 |
| 9 | 48.15 |
| 10 | 48.35 |
| 11 | 48.45 |
| 12 | 48.48 |
| 13 | 48.50 |
| 14 | 49.00 |
| 15 | 49.10 |
| 16 | 49.35 |
| 17 | 49.50 |
| 18 | 49.75 |
| 19 | 50.00 |
| 20 | 50.15 |

Applying the formula given in the Illustration 1, the data place of the thirty-fifth and sixty-fifth percentile is determined as follows: Thirty-fifth percentile place = $20 * (35/100) = 7$. Sixty-fifth percentile place = $20 * (65/100) = 13$.

Since the thirty-fifth percentile place is a whole number, it shall be the average of the prices at the seventh and next higher, i.e.; eighth place. This is $(47+48)/2 = \text{Rs.}47,500$.

Similarly, the sixty-fifth percentile will be average of thirteenth and fourteenth place prices. This is $(48.5+49)/2 = \text{Rs.}48,750$

The median of the range (the fiftieth percentile place) = $20 * (50/100) = 10$

Since the fiftieth percentile place is a whole number, it shall be the average of the prices at the tenth and next higher, i.e.; eleventh place. This is $(48.35+48.45)/2 = \text{Rs.}48,400$.

Thus, the arm's length range in this case shall be from Rs.47,500 to Rs.48,750.

Consequently, any transaction price which is equal to or more than Rs.47,500 but less than or equal to **Rs 48,750** shall be considered to be within the arm's length range.

PROVISION FOR ROLL BACK IN APA SCHEME [SECTION 92CC]

{NOT IN SUMMARY}

- (a) In order to reduce current pending as well as future litigation in respect of the transfer pricing matters, section 92CC(9A) provides roll back mechanism in the APA scheme.
- (b) Accordingly, the APA may, subject to such prescribed conditions, procedure and manner, provide for determining the ALP or for specifying the manner in which ALP is to be determined in relation to an international transaction entered into by a person during any period not exceeding four previous years preceding the first of the previous years for which the APA applies in respect of the international transaction to be undertaken.

The CBDT has, vide Notification No.23/2015 dated 14.3.2015, in exercise of the powers conferred by 92CC(9A) read with section 295, following conditions, procedure and manner for determining the arm's length price or for specifying the manner in which arm's length price is to be determined in relation to an international transaction:

| Rule | Particulars | Conditions, Procedure & Manner of determination of ALP |
|----------------|-----------------------------|---|
| 10F(ba) | Definition of Applicant | A person who has made an application. |
| 10F(ha) | Definition of Rollback year | Any previous year, falling within the period not exceeding four previous years , preceding the first of the five consecutive previous years referred to in section 92CC(4). |
| 10MA | Roll back of the agreement | The said rule provides the following: <ol style="list-style-type: none"> 1. The agreement may provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during the rollback year (hereinafter referred as "rollback provision"). |

| | | |
|--|--|---|
| | | <p>2. Conditions for applying for rollback provisions: The agreement shall contain rollback provision in respect of an international transaction subject to the following, namely:-</p> <ul style="list-style-type: none"> (i) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies; (ii) the return of income for the relevant rollback year has been or is furnished by the applicant before the due date as specified in Explanation 2 of section 139(1). (iii) the report in respect of the international transaction had been furnished in accordance with section 92E; (iv) the applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and (v) the applicant has made an application seeking rollback in Form 3CEDA in accordance with sub-rule (5); <p>3. Non-applicability of Rollback provision: Rollback provision shall not be provided in respect of an international transaction for a rollback year, if, -</p> <ul style="list-style-type: none"> (i) the determination of arm's length price of the said international transaction for the said year has been subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement; or (ii) the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year. <p>4. Manner for determining arm length price to be the same for rollback years and other previous years: Where the rollback provision specifies the manner in which arm's length price shall be determined in relation to an international transaction undertaken in any rollback year then such manner shall be the same as the manner which has been agreed to be provided for determination of arm's length price of the same international transaction to be undertaken in any previous year to which the agreement applies, not being a rollback year.</p> <p>5. Time limit for filling application for rollback provision: The applicant may furnish along with the application for advance pricing agreement, the request for rollback provision in Form No. 3CEDA with proof of payment of an additional fee of Rs. 5 lakhs.</p> |
|--|--|---|

| | | |
|-------------|---|---|
| 10RA | Procedure for giving effect to rollback provision of an Agreement | <p>Rule 10RA has been inserted to provide the “Procedure for giving effect to rollback provision of an Agreement” as follows:</p> <ul style="list-style-type: none"> (i) The applicant shall furnish modified return of income referred to in section 92CD in respect of a rollback year to which the agreement applies along with the proof of payment of any additional tax arising as a consequence of and computed in accordance with the rollback provision. (ii) The modified return in respect of rollback year shall be furnished along with the modified return to be furnished in respect of first of the previous years for which the agreement has been requested for in the application. (iii) If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year. (iv) If any appeal filed by the Assessing Officer or the Principal Commissioner or Commissioner is pending before the Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement, shall be withdrawn by the Assessing Officer or the Principal Commissioner or the Commissioner, as the case may be, within three months of filing of modified return by the applicant. (v) The applicant, the Assessing Officer or the Principal Commissioner or the Commissioner, shall inform the Dispute Resolution Panel or the Commissioner (Appeals) or the Appellate Tribunal or the High Court, as the case may be, the fact of an agreement containing rollback provision having been entered into along with a copy of the same as soon as it is practicable to do so. (vi) In case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled. |
|-------------|---|---|

Subsequent to the notification of the rules, the CBDT has issued Circular No. 10/2015 dated 10.6.2015 adopting a Question and Answer format to clarify certain issues arising out of the said Rules. The questions raised and answers to such questions as per the said Circular are given hereunder:

Question 1

Under rule 10MA(2)(ii) there is a condition that the return of income for the relevant roll back year has been or is furnished by the applicant before the due date specified in Explanation 2 to section 139(1). It is not clear as to whether applicants who have filed returns under section 139(4) or 139(5) of the Act would be eligible for roll back.

Answer

The return of income under section 139(5) can be filed only when a return under section 139(1) has already been filed. Therefore, the return of income filed under section 139(5) of the Act, replaces the original return of income filed under section 139(1). Hence, if there is a return which is filed under section 139(5) to revise the original return filed before the due date specified in *Explanation 2* to sub-section (1) of section 139, the applicant would be entitled for rollback on this revised return of income.

However, rollback provisions will not be available in case of a return of income filed under section 139(4) because it is a return which is not filed before the due date.

Note – A belated return filed under section 139(4) can also be revised under section 139(5). In such a case, the revised return would replace the belated return. Therefore, an applicant would not be entitled for roll back provisions on a revised return which replaces a belated return.

Question 2

Rule 10MA(2)(i) mandates that the rollback provision shall apply in respect of an international transaction that is same as the international transaction to which the agreement (other than the rollback provision) applies. It is not clear what is the meaning of the word “same”. Further, it is not clear whether this restriction also applies to the Functions, Assets, Risks (FAR) analysis.

Answer

The international transaction for which a rollback provision is to be allowed should be the same as the one proposed to be undertaken in the future years and in respect of which the agreement has been reached. There cannot be a situation where rollback is finalised for a transaction which is not covered in the agreement for future years. The term same international transaction implies that the transaction in the rollback year has to be of same nature and undertaken with the same associated enterprise(s), as proposed to be undertaken in the future years and in respect of which agreement has been reached. In the context of FAR analysis, the restriction would operate to ensure that rollback provisions would apply only if the FAR analysis of the rollback year does not differ materially from the FAR validated for the purpose of reaching an agreement in respect of international transactions to be undertaken in the future years for which the agreement applies.

The word “materially” is generally being defined in the Advance Pricing Agreements being entered into by CBDT. According to this definition, the word “materially” will be interpreted consistently with its ordinary definition and in a manner that a material change of facts and circumstances would be understood as a change which could reasonably have resulted in an agreement with significantly different terms and conditions.

Question 3

Rule 10MA(2)(iv) requires that the application for rollback provision, in respect of an international transaction, has to be made by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant. Clarification is required as to whether rollback has to be requested for all four years or applicant can choose the years out of the block of four years.

Answer

The applicant does not have the option to choose the years for which it wants to apply for rollback. The applicant has to either apply for all the four years or not apply at all. However, if the covered international transaction(s) did not exist in a rollback year or there is some disqualification in a rollback year, then the applicant can apply for rollback for less than four years. Accordingly, if the covered international transaction(s) were not in existence during any of the rollback years, the applicant can apply for rollback for the remaining years. Similarly, if in any of the rollback years for the covered international transaction(s), the applicant fails the test of the rollback conditions contained in various provisions, then it would be denied the benefit of rollback for that rollback year. However, for other rollback years, it can still apply for rollback.

Question 4

Rule 10MA(3) states that the rollback provision shall not be provided in respect of an international transaction for a rollback year if the determination of arm's length price of the said international transaction for the said year has been the subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement. Further, Rule 10RA(4) provides that if any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant.

There is a need to clarify the phrase "Tribunal has passed an order disposing of such appeal" and on the mismatch, if any, between Rule 10MA(3) and Rule 10RA(4).

Answer

The reason for not allowing rollback for the international transaction for which Appellate Tribunal has passed an order disposing of an appeal is that the ITAT is the final fact finding authority and hence, on factual issues, the matter has already reached finality in that year. However, if the ITAT has not decided the matter and has only set aside the order for fresh consideration of the matter by the lower authorities with full discretion at their disposal, the matter shall not be treated as one having reached finality and hence, benefit of rollback can still be given.

There is no mismatch between Rule 10MA(3) and Rule 10RA(4).

Question 5

Rule 10MA(3)(ii) provides that rollback provision shall not be provided in respect of an international transaction for a rollback year if the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year. It may be clarified whether the rollback provisions in such situations can be applied in a manner so as to ensure that the returned income or loss is accepted as the final income or loss after applying the rollback provisions.

Answer

It is clarified that in case the terms of rollback provisions contain specific agreement between the Board and the applicant that the agreed determination of ALP or the agreed manner of determination of ALP is subject to the condition that the ALP would get

modified to the extent that it does not result in reducing the total income or increasing the total loss, as the case may be, of the applicant as declared in the return of income of the said year, the rollback provisions could be applied. For example, if the declared income is **Rs. 100**, the income as adjusted by the TPO is **Rs. 120**, and the application of the rollback provisions results in reducing the income to **Rs. 90**, then the rollback for that year would be determined in a manner that the declared income **Rs. 100** would be treated as the final income for that year.

Question 6

Rule 10RA(7) states that in case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled. It is to be clarified as to whether the entire agreement is to be cancelled or only that year for which roll back fails.

Answer

The procedure for giving effect to a rollback provision is laid down in Rule 10RA. Sub-rules (2), (3), (4) and (6) of the Rule specify the actions to be taken by the applicant in order that effect may be given to the rollback provision. If the applicant does not carry out such actions for any of the rollback years, the entire agreement shall be cancelled.

This is because the rollback provision has been introduced for the benefit of the applicant and is applicable at its option. Accordingly, if the rollback provision cannot be given effect to for any of the rollback years on account of the applicant not taking the actions specified in sub-rules (2), (3), (4) or (6), the entire agreement gets vitiated and will have to be cancelled.

Question 7

If there is a Mutual Agreement Procedure (MAP) application already pending for a rollback year, what would be the stand of the APA authorities? Further, what would be the view of the APA Authorities, if MAP has already been concluded for a rollback year?

Answer

If MAP has been already concluded for any of the international transactions in any of the rollback year under APA, rollback provisions would not be allowed for those international transactions for that year but could be allowed for other years or for other international transactions for that year, subject to fulfilment of specified conditions in Rules 10MA and 10RA. However, if MAP request is pending for any of the rollback year under APA, upon the option exercised by the applicant, either MAP or application for roll back shall be proceeded with for such year.

Question 8

Rule 10MA(1) provides that the agreement may provide for determining ALP or manner of determination of ALP. However, Rule 10MA(4) only specifies that the manner of determination of ALP should be the same as in the APA term. Does that mean the ALP could be different?

Answer

Yes, the ALP could be different for different years. However, the manner of determination of ALP (including choice of Method, comparability analysis and Tested Party) would be same.

Question 9

Will there be compliance audit for roll back? Would critical assumptions have to be validated during compliance audit?

Answer

Since rollback provisions are for past years, ALP for the rollback years would be agreed after full examination of all the facts, including validation of critical assumptions. Hence, compliance audit for the rollback years would primarily be to check if the agreed price or methodology has been applied in the modified return.

Question 10

Whether applicant has an option to withdraw its rollback application? Can the applicant accept the rollback results without accepting the APA for the future years?

Answer

The applicant has an option to withdraw its roll back application even while maintaining the APA application for the future years. However, it is not possible to accept the rollback results without accepting the APA for the future years. It may also be noted that the fee specified in Rule 10MA(5) shall not be refunded even where a rollback application is withdrawn.

Question 11

For already concluded APAs, will new APAs be signed for rollback or earlier APAs could be revised?

Answer

The second proviso to Rule 10MA(5) provides for revision of APAs already concluded to include rollback provisions.

Question 12

For already concluded APAs, where the modified return has already been filed for the first year of the APA term, how will the time-limit for filing modified return for rollback years be determined?

Answer

The time to file modified return for rollback years will start from the date of signing the revised APA incorporating the rollback provisions.

Question 13

In case of merger of companies, where one or more of those companies are APA applicants, how would the rollback provisions be allowed and to which company or companies would it be allowed?

Answer

The agreement is between the Board and a person. The principle to be followed in case of merger is that the person (company) who makes the APA application would only be entitled to enter into the agreement and be entitled for the rollback provisions in respect of international transactions undertaken by it in rollback years. Other persons (companies) who have merged with this person (company) would not be eligible for the rollback provisions.

To illustrate, if A, B and C merge to form C and C is the APA applicant, then the agreement can only be entered into with C and only C would be eligible for the rollback provisions. A and B would not be eligible for the rollback provisions. To illustrate further, if A and B merge to form a new company C and C is the APA applicant, then nobody would be eligible for rollback provisions.

Question 14

In case of a demerger of an APA applicant or signatory into two or more companies (persons), who would be eligible for the rollback provisions?

Answer

The same principle as mentioned in the previous answer, i.e., the person (company) who makes an APA application or enters into an APA would only be entitled for the rollback provisions, would continue to apply. To illustrate, if A has applied for or entered into an APA and, subsequently, demerges into A and B, then only A will be eligible for rollback for international transactions covered under the APA. As B was not in existence in rollback years, availing or grant of rollback to B does not arise.

SEC 286: COUNTRY BY COUNTRY REPORTING:

- (a) **Threshold limit for applicability of CbC reporting [Sub-section (7)]:** The reporting provision shall apply in respect of an international group for an accounting year, 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 to be prescribed i.e., ***Rs. 6,400 crore. (Earlier it was Rs. 5,500 crore)***
- Where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate (TTBR) of such currency on the last day of the accounting year preceding the accounting year [Rule 10DB(7)].
- (b) **Time limit for furnishing CbC report [Sub-section (2)]:** 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 in respect of the group to the **Joint Commissioner, designated by Director General of Income-tax (Risk Assessment)** for every reporting accounting year, within a period of twelve months from the end of the said reporting accounting year for which the report is being furnished, in Form No. 3CEAD.

- (c) **Details to be furnished by constituent entity resident in India [Sub-section (1):** Every constituent entity resident in India, of an international group having parent entity that is not resident in India, shall notify the **Joint Commissioner, designated by Director General of Income-tax (Risk Assessment)** at least two months prior to the due date for furnishing Cbc report—

- (1) whether it is the alternate reporting entity of the international group; or
- (2) the details of the parent entity or the alternate reporting entity, if any of the international group, and the country of territory of which the said entities are resident.

The report shall be furnished in Form No.3CEAC.

- (d) **Details/ information to be included in CbC report [Sub-section (3)]:** It should contain aggregate information in respect of:

- (1) the amount of revenue,
- (2) profit and loss before income-tax,
- (3) amount of income-tax paid and accrued,
- (4) details of stated capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalent in respect of each country or territory along with details of each constituent's incorporation country and residential status, nature and details of main business activity or activities of each constituent entity and any other information as may be prescribed.

This shall be based on the template provided in the OECD BEPS report on Action Plan 13.

- (e) **Furnishing of CbC report by resident constituent entity [Sub-section (4):** A constituent entity of an international group resident in India, other than the parent entity or the alternate reporting entity, shall be required to furnish CbC report within the **twelve months from the end of the reporting accounting year** to the **Joint Commissioner, designated by the Director General of Income-tax (Risk Assessment)**, if the parent entity of the group is resident of a country or territory,-

- (1) in which it is not obligated to file report of the nature of CbC report;
- (2) with which India does not have an arrangement for exchange of the CbC report; or
- (3) there has been a systemic failure of the country or territory i.e., such country is not exchanging information with India even though there is an agreement and this fact has been intimated to the entity by the prescribed authority.

However, in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report would be **six months from the end of the month in which said systemic failure has been intimated.**

- (f) **Nomination of one constituent entity for furnishing CbC report [Proviso to sub-section (4)]:** If there are more than one such constituent entity of the group, resident in India, other than the parent entity or the alternate reporting entity, then, the report shall be furnished by any one constituent entity, if the group has nominated such entity on behalf of all the constituent entities resident in India **and information**

has been conveyed in writing on behalf of the group to the prescribed authority in Form 3CEAE.

- (g) **No obligation to furnish CbC report in certain cases [Sub-section (5)]:** If an international group, having parent entity which is not resident in India, had designated an alternate entity for filing its report with the tax jurisdiction in which the alternate entity is resident and such alternate entity has furnished such report on or before the date specified by that country or territory, then, the entities of such group operating in India would not be obliged to furnish report if
- the report is required to be furnished under the law for the time being in force in the said country or territory
 - the report can be obtained under the agreement of exchange of such reports by Indian tax authorities
 - No systemic failure in respect of the said country or territory has been conveyed 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 alternative reporting entity on behalf of the international group
 - the same has been informed to the prescribed authority by the entity in accordance with section 286(1).
- (h) **Entity to furnish documents and information called for [Sub-section (6)]:** The *Joint Commissioner, designated by the Director General of Income-tax (Risk Assessment)* may call for such document and information from the entity furnishing the report as it may specify in notice in writing for the purpose of verifying the accuracy. The entity shall be required to make submission within thirty days of receipt of notice or further period if extended by the prescribed authority, but extension shall not be beyond a further period of 30 days.

- (i) **Penalty for non-furnishing of the report by any reporting entity which is obligated to furnish such report [Section 271GB(1) & (3)]**

| | Period of delay/default | Penalty |
|-----|--|--|
| (a) | Not more than a month | Rs. 5,000 per day |
| (b) | beyond one month | Rs. 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) | Rs. 50,000 per day of continuing failure beginning from the date of service of order |

- (ii) **Penalty for failure to produce information and documents within prescribed time [Section 271GB(2) & (3)]**

| | Default | Penalty |
|-----|---|--|
| (a) | Failure to produce information before prescribed authority within the period allowed u/s 286(6) | Rs. 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. |

| | | |
|-----|--|--|
| (b) | Continuing default even after service of penalty order | Rs. 50,000 per day for the period of default beyond the date of service of penalty order. |
|-----|--|--|

(iii) Penalty for submission of inaccurate information in the CBC report [Section 271GB(4)]:

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

- (a) the entity has knowledge of the inaccuracy at the time of furnishing the report but does not 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 period of fifteen days of such discovery; or
- (c) the entity furnishes inaccurate information or document in response to notice of the prescribed authority under section 286(6).

(iv) Non-levy of penalty if reasonable cause for failure is proved [Section 273B]

Section 273B provides for non-levy of penalty under various sections if the assessee proves that there was reasonable cause for such failure. Section 271GB has been included within the scope of section 273B. Therefore, the entity can offer reasonable cause defence for non-levy of penalties mentioned above.

(v) Maintenance and furnishing of Master file: Consequent amendments in the Income-tax Act, 1961

| | Section | Provision |
|-----|------------|--|
| (1) | 92D(1)(ii) | Every person, being constituent entity of an international group, has to keep and maintain the prescribed information and document in respect of the international group. Constituent entity has to keep and maintain such prescribed information and document irrespective of the fact whether or not any international transaction is undertaken by such constituent entity. The rules shall, thereafter, prescribe the information and document as mandated for master file under OECD BEPS Action 13 report; |
| (2) | 92D(4) | The information and document shall also be furnished to the prescribed authority u/s 286(1) within such period as may be prescribed and the manner of furnishing may also be provided for in the rules |
| (3) | 271AA(2) | For non-furnishing of the information and document to the prescribed authority, a penalty of Rs. 5 lakh shall be leviable. |
| (4) | 273B | Reasonable cause defence against levy of penalty shall be available to the entity. |

(vi) Maintenance and furnishing of information and documents by certain person under section 92D [Rule 10DA]

| Rule | Particulars |
|---------------|--|
| 10DA(1) | <p><u>Persons required to keep and maintain the information and documents:</u></p> <p>Every person, being a constituent entity of an international group shall –</p> <p>(i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds Rs. 500 crore; and</p> <p>(ii) the aggregate value of international transactions –</p> <p>(A) during the accounting year, as per the books of accounts, exceeds Rs. 50 crore, or</p> <p>(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 crore</p> <p>keep and maintain information and documents of the international group.</p> <p>Note – The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate (TTBR) of such currency on the last day of the accounting year. [Rule 10DA(7)]</p> <p>Part A of Form No. 3CEAA (Master File), however, shall be furnished by every person, being a constituent entity of an international group, whether or not the above conditions are satisfied [Rule 10DA(3)].</p> |
| 10DA(2) | <p><u>Due date for furnishing report:</u></p> <p>The information and document shall be furnished in Form No. 3CEAA to the Joint Commissioner as may be designated by DGIT (Risk Assessment) and it shall be furnished on or before the due date for furnishing the return of income specified under section 139(1).</p> |
| 10DA(4) / (5) | <p><u>Furnishing of report in case of more than one constituent entity:</u></p> <p>Where there are more than one constituent entities resident in India of an international group, then, the Form No 3CEAA may be furnished by any one constituent entity, if, -</p> <p>(a) the international group has designated such entity for this purpose and</p> <p>(b) the information has been conveyed to the Joint Commissioner in Form No 3CEAB, in this behalf at least 30 days before the due date of furnishing the Form No. 3CEAA.</p> |
| 10DA(6) | <p><u>Period for which such information and document to be kept or maintained:</u></p> <p>The information and documents shall be kept and maintained for a period of eight years from the end of the relevant assessment year.</p> |

(vii) Meaning of certain terms [Section 286(9)]

| | Term | Meaning | |
|-----|-----------------|--|-----------------|
| (a) | Accounting year | Case | Accounting year |
| | | In a case where the parent entity or alternate reporting entity is | A previous year |

| | | | |
|------------|----------------------------------|---|---|
| | | resident in India; or | |
| | | In any other case | An annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident |
| (b) | Agreement | A combination of all of the following agreements, namely – (i) an agreement referred to in section 90(1) or section 90A(1); or (ii) an agreement for exchange of the CbC report referred to in section 286(2) as may be notified by the Central Government. | |
| (c) | Alternate reporting entity | Any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the CbC report in the country or territory in which the said constituent entity is resident on behalf of such group. | |
| (d) | Constituent entity | (i) any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange; (ii) any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or (iii) any permanent establishment of any separate business entity of the international group included in clause (i) or clause (ii), if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes | |
| (e) | Group | This includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes,— (i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or (ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident. | |
| (f) | Consolidated financial statement | The financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity | |
| (g) | International group | Any group that includes,— (i) two or more enterprises which are resident of different countries or territories; or (ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories; | |
| (h) | Parent entity | A constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of | |

| | | |
|-----|---------------------------|--|
| | | <p>the international group, such that,—</p> <p>(i) it is required to prepare a consolidated financial statement under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident; or</p> <p>(ii) it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange,</p> <p>and, there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a consolidated financial statement, under the circumstances referred to in clause (i) or clause (ii), that includes the separate financial statement of the first mentioned constituent entity.</p> |
| (i) | Permanent establishment | Meaning assigned to it in clause (iiia) of section 92F i.e., includes a fixed place of business through which the business of the enterprise is wholly or partly carried on. |
| (j) | Reporting accounting year | The accounting year in respect of which the financial and operational results are required to be reflected in the report to be furnished every year by the parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent under section 286(2) or by a constituent entity of an international group referred to in section 286(4). |
| (k) | Reporting entity | The constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report referred to in section 286(2). |
| (l) | Systemic failure | <p>Systemic failure, with respect to a country or territory, means that the country or territory has an agreement with India providing for exchange of report of the nature referred to in section 286(2), but—</p> <p>(i) in violation of the said agreement, it has suspended automatic exchange; or</p> <p>(ii) has persistently failed to automatically provide to India the report in its possession in respect of any international group having a constituent entity resident in India</p> |

**CHAPTER-49 DEDUCTIONS UNDER CHAPTER VI-A
[SEC 80C TO SEC 80U]**

As per the provisions of Section 80A(2), in computing the total income of the Assessee, there shall be allowed, from the gross total income, deductions as specified u/s 80C to Sec 80U.

However, the aggregate amount of deductions u/s 80C to 80U, shall NOT exceed, the Gross Total Income of the Assessee.

Deduction u/s 80C to 80U > GTI (No)

Deduction u/s 80C to 80U \leq GTI (YES)

Hence, the total income after deductions, will either be:

(a) Positive (or)

(b) Nil.

It cannot be Negative due to deductions. If the Gross Total Income is Negative (or) Nil, no deduction can be permitted under this chapter.

Certain Incomes which are NOT ELIGIBLE for any deduction:

- (i) Long Term Capital Gains (LTCG)
- (ii) Short Term Capital Gains (STCG) covered u/s 111A.
- (iii) Winnings income.
- (iv) Incomes of Non Residents specified u/s 115A, 115AB, 115AC, 115ACA, 115AD, 115BBA & 115D etc.

Section 80C: Deductions w.r.t. Specified payments or Investments

| | | | | |
|------------------------|-------------|-----------|---|-----------------|
| ↓ | | | ↓ | |
| Eligible Assessee | | | Maximum Amount of Deduction u/s 80C | |
| ↓ ↓ ↓ | | | | |
| Individuals | HUF | Any other | Lower of following: | |
| (Resident Resident) | or Non | Person | (i) Aggregate of Specified Payments / Investments | xx |
| (Y) | (Y) | (N) | | |
| | | | (OR) | |
| | | ↓ | (ii) Maximum Amount of deduction u/s 80C | Rs. 1,50,000 |
| Subject to Sec 80CCE | | | | |

Note 1 : Specified payments / investments

- 1) Insurance premium paid to effect (take) or to keep in force (renew), a life Insurance policy taken by :

| | | | | |
|-------------------|--------|-----------------------------|------------|--|
| ↓ | | | ↓ | |
| An Individual for | | | A HUF, for | |
| ↓ | ↓ | ↓ | | |
| Self | Spouse | Any child of the individual | Any Member | |

Note 1.1 : Life Insurance premium of the EE paid by the ER' is allowed as a deduction u/s 80C for the EE'

Note 1.2 : Premium paid in respect of any of the above policy, shall be eligible, subject to:

| Date of Issue of Policy | | Amount of Eligible premium |
|------------------------------------|--|---|
| i) | On or after 01.04.2003 but on or before 31.03.2012 | Maximum of 20% of Capital sum Assured. Maximum of 10% of Capital Sum Assured |
| ii) | On or after 01.4.2012, but on or before 31.03.2013. | |
| iii) | On or after 01.04.2013 | Maximum 10% of Capital sum Assured. |
| | - for any NORMAL Assessee | Maximum 15% of Capital sum Assured |
| | - for a person, suffering | |
| ↓ | | |
| Any disability referred to u/s 80U | Any disease (or) ailment, as specified in the rules made u/s 80DDB | |

Also refer Finance Act 2021 amendment which we have already done.

Note 1.3: Amount received from any life Insurer

| | | |
|-----------------------------|----------------------------------|--|
| ↓ | ↓ | ↓ |
| As Annuity | As Death Benefit by the Nominees | As a lumpsum on Maturity of the policy |
| Taxable under the head IFOS | Fully Exempt u/s 10(10D) | Fully Exempt u/s 10(10D) |

[Sec 80C to sec 80U]

Exemption i.r.of. maturity proceeds is granted, only if the amount of Annual premium paid in any of the years, during the term of the policy does not exceed 20% or 10% or 15% as the case may be. *(Also Refer FA 2021 amendment)*

Note 1.4 : Amount received under the keyman Insurance Policy is taxable under the head PGBP or SALARY or IFOS (as the case may be) i.e. No Exemption u/s 10(10D) is available.

Note 1.5 : Life Insurance Policy is terminated or it is discontinued within 2 years after its date of commencement or before the premium for 2 years has been paid.



No deduction u/s 80C is available in the year of termination / discontinuation and aggregate deduction granted in the past years, shall be deemed to be the income of the PY in which the policy is terminated / discontinued.

2) Payment in respect of Non-Commutable Deferred Annuity plan, taken by an individual for :

| | | |
|------|--------|-----------------------------|
| | | |
| ↓ | ↓ | ↓ |
| Self | Spouse | Any child of the individual |

3) Any **sum deducted** from the salary of any Government EE towards Deferred Annuity plan for making provision for / benefit of:

| | | |
|------|--------|-----------------------------|
| | | |
| ↓ | ↓ | ↓ |
| Self | Spouse | Any child of the individual |

Such sum deducted should NOT EXCEED 1/5th of Salary

4) Payment made by an individual / HUF towards **Notified Annuity Plans** of LIC, or any other approved insurer.

| |
|-------------------------------|
| Jeevan Dhara & Jeevan Akshaya |
|-------------------------------|

5) Employees contribution towards.

| | | | |
|-------------|------------|------------|-------------|
| | | | |
| ↓ | ↓ | ↓ | ↓ |
| ASAF (Y) | SPF (Y) | RPF (Y) | URPF (N) |

Note : EE's contribution to PF should NOT EXCEED 1/5th of salary.

[Sec 80C to sec 80U]

6) Any contribution / Deposit, made into Public Provident Fund A/c (PPF) by

| | | | |
|-------------------|--------|-----------------------------|------------|
| An Individual for | | | A HUF, for |
| Self | Spouse | Any child of the individual | Any Member |

Note 6.1 : Interest on PPF a/c is fully Exempt u/s 10(11).

7) Contribution / subscription by an Individual / HUF to **National**

| | | | |
|----------------------|---|--------------------------------|---|
| Savings scheme (NSS) | Savings certificate (NSC) [Including Accrued Interest thereon] (Refer IFOS) | Housing Bank (NHB) (- Schemes) | Bank for Agricultural & Rural Development (NABARD) (- notified bonds) |
|----------------------|---|--------------------------------|---|

8) Contribution by an Individual / HUF to unit linked Insurance Plans (ULIP'S) of :

| | |
|----------------------------|-----------------|
| Units Trust of India (UTI) | LIC Mutual Fund |
|----------------------------|-----------------|

Note 8.1: If the assessee terminates his participation or ceases to participate because of Non payment of his CONTRIBUTION before making contribution for 5 years.



Deduction u/s 80C shall NOT be allowed in the year of termination and the aggregate amount of deduction allowed in the past years shall also be deemed to be the Income of the PY in which the plan is terminated.

9) Subscription made by an Individual / HUF to any notified deposit scheme of :

| | |
|--|--|
| Any public sector company (eg. LIC Housing Finance Limited), engaged in providing Long Term finance for - purchase (Y) - Construction (Y) of Residential HP | Any Authority (eg. MHADA, SRA, MMRDA, etc.) constituted in India for Infrastructural Development of cities / towns/ villages, (OR) for dealing with / satisfying the need for Housing. |
|--|--|

[Sec 80C to sec 80U]

10) Any sum paid by an Individual as Tuition fees, for Full Time Education of any 2 children to any school / college/ university in India.

11) Subscription by an Individual / HUF to notified **Units** of

| | |
|---------------------------|------------------|
| ↓ | ↓ |
| Unit Trust of India (UTI) | Any Mutual fund. |

Note 11.1: Equity linked savings scheme [ELSS] has been notified in this regard.

12) Contribution by an Individual to a Notified **Pension Fund** of

| | |
|---------------------------|------------------|
| ↓ | ↓ |
| Unit Trust of India (UTI) | Any Mutual fund. |

13) Term Deposit made with any Scheduled Bank in accordance with a scheme framed and notified by the central Government (Minimum 5 years)

| Where | |
|--|---|
| ↓ | ↓ |
| In case the term deposit a/c is jointly held, deduction u/s 80C shall be allowable, only to the 1 st Holder of the deposit a/c. | Term Deposit w.r.t. which a deduction was claimed shall NOT be pledged or kept as security. |

14) Any sum deposited under the **Senior Citizen savings Scheme** as per the "Senior Citizens Savings Scheme Rules, 2004".

15) Any sum deposited in the Post office Time Deposit Account as per the Post Office Time Deposit Rules 1981 (Minimum 5 years)

Note (applicable for Point No 14 & 15)

If any sum is WITHDRAW (including interest thereon) from the SCSS (or) POTD a/c, before the expiry of 5 years from the DATE OF DEPOSIT, the amount so withdraw shall be deemed to be the Income of the PY in which it is withdrawn.

However, if such amount is received by the Nominee (or) legal heir of the assessee on the death of the assessee then it is NOT Taxable in the hands of such nominee (or) legal heir.

- 16) Subscription to Equity shares (or) Debentures of any PUBLIC Company engaged in Infrastructure Facility / Power Sector.

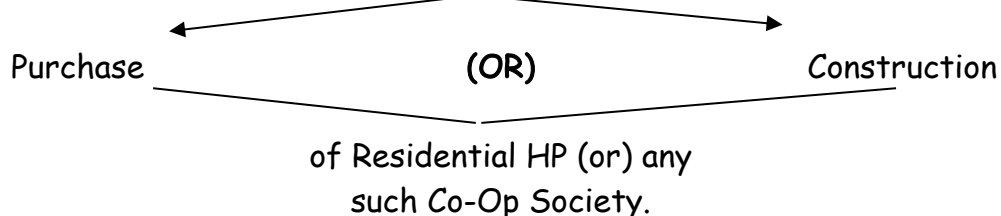


Minimum Lock-in Period for the above shares or debentures is 3 years. If they are transferred within 3 years from the date of acquisition, then the amount of deduction allowed earlier u/s 80C shall be deemed to be the Income of that PY in which the shares / debentures are transferred.

- 17) Subscription to Notified units of Mutual Funds investing in Approved Public Companies (as stated in Point No 16 above)
- 18) Any payment made by an Individual or HUF for the purpose of :
- Purchase (or)
 - Construction
- of a Residential HP, the Income of which is chargeable to tax, under the head IFHP.

Note 18.1: Payment should be made towards

- a) Any Installment or part payment of the amount due under any scheme of any development authority or housing board or any other authority engaged in the construction and sale of Residential House Properties.
- b) Any Installment or Part Payment of the amount due to any company (or) Co-Operative Society of which the assessee is the shareholder / member towards the cost of the HP allotted to him.
- c) Repayment of Amount borrowed from:
 - Central / State Govt [CG / SG]
 - Any Bank.
 - LIC of India
 - National Housing Bank (NHB)
 - Any Indian Public Company engaged in providing Long term finance for:



- the Employer (Public Co. public sector Co, university or college affiliated to such university local authority Co-operative society any authority or board or corporation, or any other body established under any law)
- d) Stamp Duty Registration fees, & other expenses for the purpose of transfer of such HP to the Assessee.

Note 18.2: Following payments shall NOT QUALIFY for deduction u/s 80C:

- Admission fee, cost of share, Initial Deposit, etc payable by the Shareholder / member of the company or Co-Op Society for becoming such shareholder / member.
- Cost of any Addition Alteration Repairs Renovation carried out
- Any expenditure w.r.t which deduction is allowable u/s 24 (i.e. Interest on Housing Loan).

Note 18.3: If the residential HP w.r.t which deduction u/s 80C has been claimed is transferred before the expiry of 5 yrs from the date of its Acquisition then NO Deduction shall be allowed in the year of Transfer & the aggregate amount of deduction allowed in the earlier PY's shall be deemed to be the Income of the PY in which such Residential HP is transferred.

- Any amount deposited in the name of any girl child in the Sukanya Samriddhi Scheme a/c.

AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:

To enable the Central Government employees to have more options of tax saving investments under National Pension System, it is proposed to amend the section 80C so as to provide that any amount paid or deposited by a Central Government employee as a contribution to his Tier-II account of the pension scheme for a fixed period of not less than 3 years shall be eligible for deduction under the said section.

Section 80CCC Deductions w.r.t contributions to certain Pension Funds.

| Eligible Assessee | | Maximum Amt of Deduction u/s 80CCC | |
|---|--------------------------|--|-----------------------|
| Individual (Resident or Non Resident) (Y) | Any other person (No) | Amt contributed by the assessee (OR) | xx |
| | | | L O W E R |
| | | Maximum amt of deduction u/s 80CCC [Subj to Sec 80CCE] | Rs. 1,50,000 |

[Sec 80C to sec 80U]

Contribution must be made in the pension plans / pension Policies / Pension Scheme / Pension fund / Annuity of:

| | | |
|---|------|--------------------------------------|
| | | |
| Life Insurance Corporation of India (LIC) | (OR) | Any other approved Insurance Company |

Note 1: Payment towards Pension plan or Policy or Scheme or fund shall be for the Individual himself.

Note 2: The contribution must be made out of Taxable Income of the assessee.

Note 3: Where the assessee or his nominee surrenders the Annuity before maturity the surrender value including Bonus or Interest (if any), shall be taxable in the hands of the assessee or nominee in the PY in which it is received.

Note 4: Where deduction u/s 80CCC is allowed w.r.t. contribution made to Specified pension plans no deduction u/s 80C shall be granted.

Section 80CCD : Deductions w.r.t Contributions to Notified Pension Schemes (NPS) of Central Government [CG]

| Eligible Assessee : | |
|--|-------------------------|
| Individuals (Resident & Non Residents) (Y) | Any other Person (N) |

Amount is contributed in NPS of the central Govt. by

| A salaried Individual | | | A self Employed Individual | | |
|---|----|---|---|----|---|
| ↓ | | | ↓ | | |
| <u>Amount of dedⁿ u/s 80CCD(1)</u> | | | <u>Amount of dedⁿ u/s 80CCD(1)</u> | | |
| Amt of Contribution | xx | L | Amt of Contribution | xx | L |
| (OR) | | O | (OR) | | O |
| Max 10% of <u>Salary</u> | xx | W | Max 20% of <u>GTI</u> | xx | W |
| ↙ | | | ↙ | | |
| Basic (+) DA (interms) | | | Gross Total Income | | |

Note 1: In case of a salaried Individual his ER's contribution toward NPS is also eligible as a deduction u/s 80CCD and the contribution of the ER' to the EE's NPS a/c is taxable as a perquisite under the head "salaries" in the hands of the EE'.

Amount of Deduction u/s 80CCD(2):

| | | |
|--|----|---|
| Amount of Employer's contribution | xx | L |
| (OR) | | O |
| Maximum 10%/14% for <u>CG Employees</u> of Salary. | xx | W |

It is to be noted that ER's contribution to NPS, though eligible for deduction u/s 80CCD(2) in the hands of the EE', it will NOT be eligible for the benefit of Excess limit u/s 80CCD (1B) and neither will it be covered u/s 80CCE as well.

Note 2: Amount standing to the credit of NPS a/c, for which a dedⁿ is already claimed u/s 80CCD, and accretions to such account shall be taxed as the Income of that PY in which the same is received by the assessee or his nominee on the closure of A/c (or) on opting out of the scheme (or) on receipt of pension from the said scheme.



However, such amount shall NOT be taxed on Receipt Basis, if it is Invested in other annuity plans in the SAME PY.

Note 3: An additional limit of Rs. 50,000 has been inserted by way of Inserting Sec 80CCD(1B) to allow the excess amount of contribution which remains unallowed u/s 80CCD(1) [Subject to Max Rs. 50,000].

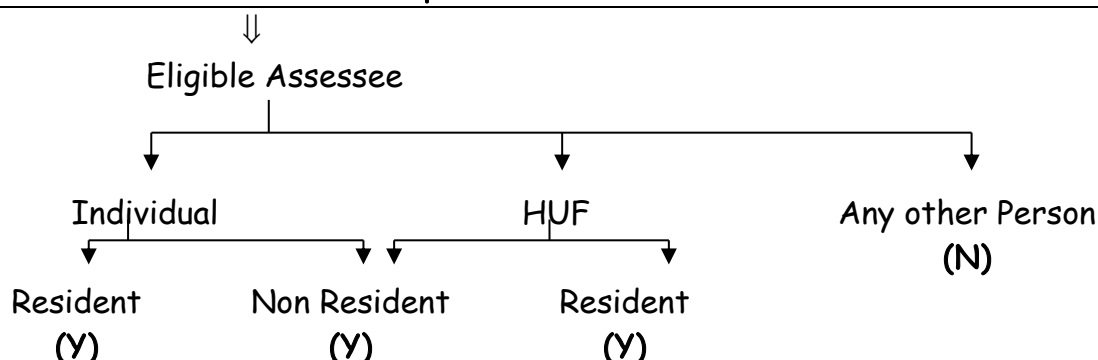
Note 4: The Central Government vide Notification no 07/2016 (dated 19.02.2016) has notified " Atal Pension Scheme "as a Notified Pension Scheme.

Section 80CCE Limit on deductions u/s 80C, 80CCC and 80CCD

The aggregate amount of deductions u/s 80C, 80CCC and 80CCD (excluding Employer's contribution to NPS) shall not in any case exceed Rs. 1,50,000.i.e

| | | |
|--|--------------|---|
| Eligible Amt u/s 80C | xx | |
| Eligible Amt u/s 80CCC | xx | |
| Eligible Amt u/s 80CCD(1) [excl. ER' cont ⁿ] | <u>xx</u> | |
| Total 80C (+) 80CCC (+) 80CCD → | xxx | L |
| (OR) | | O |
| Maximum Amt u/s 80CCE | Rs. 1,50,000 | W |

Section 80D: Deduction w.r.t. Medical Insurance Premium & / or Preventive Health Check-up.



Senior Citizen = Resident Individual whose age is 60 years at any time during the PY.

Section 80D: Mediclaim Premium:

Note: Mediclaim premium should be paid other than cash. However, Preventive checkup payment can be made in cash.

Sec 80D provisions is narrated in the table given below -

| | | Deduction in the case of individual | | Deduction in the case of HUF |
|---------------------------------------|--|-------------------------------------|------------|------------------------------|
| For whose benefit payment can be made | | Family | Parents | Any member of HUF |
| A. | a. Medi-claim insurance premium | Eligible | Eligible | Eligible |
| | b. Contribution to CGHS/notified scheme | Eligible | - | - |
| | c. Preventive health check-up payment | Eligible | Eligible | - |
| | Maximum deduction - | | | |
| | - General deduction [applicable in respect of (a), (b) and (c)] | Rs. 25,000 | Rs. 25,000 | Rs. 25,000 |
| | - Additional deduction [applicable only in case of (a) when medi-claim policy is taken on the life of a senior citizen] | Rs. 25,000 | Rs. 25,000 | Rs. 25,000 |
| B. | Medical expenditure on the health of a person who is a senior citizen if medi-claim insurance is not paid on the health of such person | Eligible | Eligible | Eligible |
| | Maximum deduction in respect of (B) - | Rs. 50,000 | Rs. 50,000 | Rs. 50,000 |
| C. | Maximum deduction in respect of (A) and (B) - | Rs. 50,000 | Rs. 50,000 | Rs. 50,000 |

Section 80DD :Deduction w.r.t. Expenditure incurred on Maintenance (including Medical Treatment) of HANDICAP DEPENDENT Relative (HDR)

| | | | |
|-------------------|----------|--------------|------------------|
| Eligible Assessee | | | |
| | | | |
| | | | |
| Individual | | HUF | Any other Person |
| | | | (N) |
| Non Resident | Resident | Non Resident | |
| (N) | (Y) | (N) | |

Deduction u/s 80DD would be available if the assessee has:

| | | | | | |
|---|----------------|---------|------|---|--|
| | | | | | |
| | | | | | |
| Incurred Expenditure on the Medical Treatment of HDR including expenditure on : | | | (OR) | Deposited / Contributed any amount in any Special Deposit Scheme of | |
| | | | | | |
| Training | Rehabilitation | Nursing | | LIC | (or) UTI (or) Any Approved Institution |

Handicap Dependent Relative

- SSPC → - Spouse
- Siblings(brother(s)/ Sister(s))
- Parents
- Children

↓
A Person with any physical
** Mental Disability as
Specified in this regard.

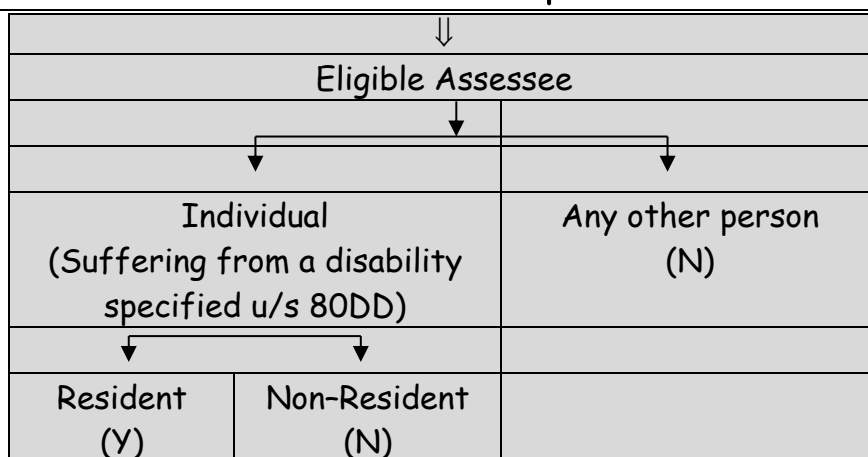
Amount of deduction u/s 80DD

| (%) of Disability | Nature of Disability | Amount of Deduction |
|--------------------|----------------------|---------------------|
| a) Less than 40% | No disability | NIL |
| b) ≥ 40% but < 80% | Ordinarily Disabled | Rs. 75,000 |
| c) ≥ 80% | Severely Disabled | Rs. 1,25,000 |

Notes :

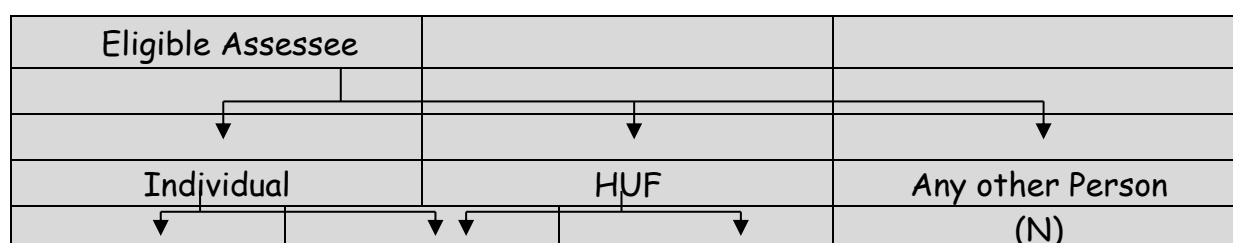
- i) Amount of deduction u/s 80DD does NOT depend upon the amount of Expenditure Incurred. Hence, the same has to be ignored. Only a fixed deduction as specified above, depending on the (%) of disability of the HDR, is allowed as a deduction.
- ii) Certificate of Disability of the HDR has to be obtained from an Approved Medical Authority in order to claim the deduction u/s 80DD.
- iii) If the HDR dies before the assessee, then any amount received by the Assessee from the Special Schemes, shall be taxable in the hands of the assessee as IFOS in the year in which it is so received.
- iv) No deduction u/s 80DD shall be granted to the assessee, in respect of expenditure incurred on the HDR, if such HDR is claiming the deduction u/s 80U, under his / her own assessment.

Section 80U: Deduction in case of a person with DISABILITY



- Deduction u/s 80U is granted to the assessee if he / she is suffering from any specified disability at any time during the PY.
- Certificate as issued by any approved medical authority specifying the nature and % of disability must be OBTAINED and FURNISHED in the prescribed form in order to get deduction u/s 80U.
- Amount of Deduction u/s 80U = Amount as specified u/s 80DD.

Section 80DDB: Deduction w.r.t. expenditure on Treatment of Specified Diseases or Ailments



[Sec 80C to sec 80U]

| | | | |
|--------------|----------|--------------|--|
| Non Resident | Resident | Non Resident | |
| (N) | (Y) | (N) | |

- ↳ Deduction u/s 80DDB shall be allowed only if the assessee has incurred expenditure on treatment of diseases / ailments as specified under Rule 11DD.



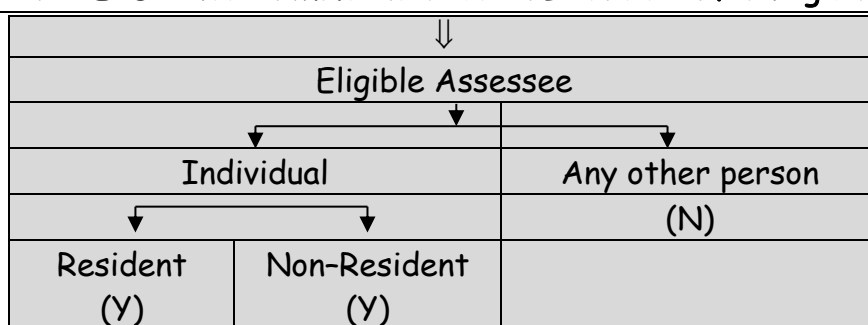
| Should be incurred in relation to | | |
|-----------------------------------|---|---|
| An Individual on treatment of | | A HUF, on treatment of |
| Self | Dependent SSPC | Any member who is dependent wholly (or) mainly on such HUF for support & Maintenance. |
| | <ul style="list-style-type: none"> - Spouse - Siblings (Brothers Sisters) | |
| | <ul style="list-style-type: none"> - Parents - Children | |

Amount of Deduction u/s 80DDB

| | | |
|---|-----------|---|
| Actual Amt Incurred on Treatment | xx | L |
| (OR) | | O |
| Maximum Amt as specified u/s 80DDB | Rs.40,000 | W |
| * [Rs. 1,00,000 if Expense is incurred on treatment of Resident senior Citizen] | | |
| Lower of the above 2 Amts | xxxx | |
| (-) Amt received as Re-imbursement from the Insurance Co / Employer' | (xx) | |
| Deduction u/s 80DDB | xxx | |

Note 1: Certificate for Treatment of Specified disease / ailments shall be obtained by the assessee from a specialist Doctor working in any Government Hospital.

Section 80E: Deduction w.r.t interest on Loan taken for Higher Education



- Deduction u/s 80E shall be allowed only if the assessee has paid interest on Higher Education Loan, taken for the Education of:

| | | | |
|------|--------|-----------|--|
| ↓ | ↓ | ↓ | ↓ |
| Self | Spouse | Any child | A student for whom, the assessee is a legal guardian |

□

Such loan should be taken from

| | | |
|---------------------------|------|-------------------------------------|
| ↓ | | |
| Any Financial Institution | (OR) | Any Approved Charitable Institution |

Amount of deduction u/s 80E

| | |
|---------------------------------|---|
| ↓ | |
| Principal Amount of Loan repaid | Whole of the Interest Paid on such loan |
| (N) | (Y) |

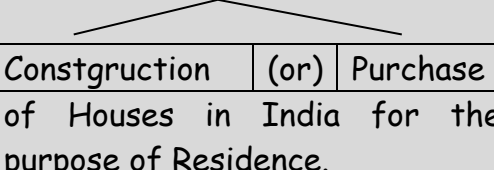
100% of the Deduction u/s 80E is Available w.r.t the initial Year i.e. AY relevant to the PY in which the assessee starts paying the interest on such loan and Immediately succeeding 7 AY's (OR) until the interest on such loan is paid in full by the assessee.

Note : Higher Education means any course of study pursued after passing the senior secondary Examination, or its equivalent, from any School / Board / University, approved by the CG / SG / Local authority / any other authorized authority.

Section 80EE : Additional Deduction for interest on Loan Borrowed for acqⁿ of SOP (R) HP by an individual

Under Section 80EE, a deduction of upto Rs. 1,00,000 w.r.t Interest paid on loan by an individual for Acquisition of a Residential HP was allowed for AY 2014-15 and AY 2015-16.

As a step towards achieving the Government's aim of providing "Housing for all", first-home buyers availing home loans are encouraged by providing on ADDITIONAL DEDUCTION U/S 80EE from AY 2017-18 w.r.t interest on loan taken by an Individual for Acquisition of Residential HP, from any Financial Institution

| | | | |
|---|---|---|--|
| | | | |
| | | | |
| A Banking Co. to which the "Banking Regulation Act, 1949" applies | Any bank or Banking Institution referred u/s 51 of the Banking regulation Act, 1941 | A HOUSING finance Co .i.e.□ A Public Company formed (or) registered in India, with the main object of coming on the Business of providing long term finance, for | |
| | | <div style="text-align: center;">  </div> | |
| | | | |

Amt of Dedⁿ u/s 80EE:

| | | |
|----------------------------|---------------|---|
| Interest on Loan borrowed | Xx | L |
| (OR) | | O |
| Maximum Deduction u/s 80EE | Rs. 50,000 | W |

Conditions for Availing dedⁿ u/s 80EE:

- i) The Loan should be sanctioned during the PY 2016-2017.
- ii) The Assessee should NOT own, any Residential HP, on the date of sanction of loan
- iii) Value of loan sanctioned \leq Rs. 35 lakhs.
- iv) Value of HP taken \leq Rs. 50 lakhs.

Notes

- i) The benefit of deduction u/s 80EE would be available till the Repayment of loan continues.
- ii) This deduction of Rs. 50,000 is over and above the deduction of upto Rs. 2,00,000 available u/s 24(b), for Interest paid w.r.t. loan borrowed for acquisition of sop (R).

Illustration

Mr A purchased a Residential SOP(R) at a cost of Rs. 45 lakhs on 01.06.16 w.r.t. which he took a housing loan of Rs. 35 lakhs, from Bank of India @ 11% p.a. on the same date. Compute the eligible deduction w.r.t. Int on Housing loan for AY 2017 - 2018, under the provisions of the IT Act, 1961, assuming that the entire loan was outstanding on 31.03.2017, and he does not own any other HP.

Solution :

| Particulars | | | Rs. |
|--|----------|---|----------|
| # Income from HP | | | |
| Deduction u/s 24(b) : Int on Housing Loan | | | |
| Amount of Interest [35L (x) 11% (x) $\frac{10\text{cm}}{12\text{m}}$] | 3,20,833 | L | |
| (OR) | | O | |
| Max amt u/s 24(b) | 2,00,000 | W | 2,00,000 |
| # Deduction u/c vi-A from GTI | | | |
| - <u>Sec 80EE</u> : Amt of Interest [Rs. 3,20,833 (-) Rs. 2,00,000] | 1,20,833 | L | |
| | | O | |
| (OR) Max Amt u/s 80EE | 50,000 | W | 50,000 |

Sec. 80EEA: Deduction in respect of interest on loan taken for certain house property:

Section 80EEA has been inserted with effect from the assessment year 2020-21. Deduction under this section is available if the following conditions are satisfied -

1. The assessee is an individual.
2. He is not eligible to claim any deduction under section 80EE.
3. He has taken a loan for the purpose of acquisition of residential house property.
4. The loan is sanctioned by a financial institution (i.e., a bank or banking institution or a housing finance company) during April 1, 2019 and **March 31, 2022. (FA 2021)**
5. The stamp duty value of the residential house property does not exceed

Rs. 45 lakhs. The expression "stamp duty value" means value adopted (or assessed or assessable) by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

6. The assessee does not own any residential house property on the date of sanction of loan.

• **Amount of deduction** - If the above conditions are satisfied, the assessee can claim deduction under section 80EEA. Deduction is available in respect of interest payable on the above loan or Rs. 1,50,000, whichever is less. Deduction is available for the assessment year 2020-21 and subsequent assessment year.

• **Same interest is not deductible twice** - If interest is claimed as deduction under section 80EEA, such interest (or such portion of interest) is not again deductible under section 24(b) or under any other provision of the Act for the same or any other assessment year.

Section 80G : Deductions w.r.t. Certain contributions or donations to Notified Institutions.

| Eligible Assessee | | | |
|-------------------|--------------|------------------|--------------|
| Individual | | Any other Person | |
| | | | |
| Resident | Non Resident | Resident | Non Resident |
| (Y) | (Y) | (Y) | (Y) |

Deduction u/s 80G shall be allowed only if the amount is contributed to Notified Institutions

| Donations | | | |
|---------------------------------|-----------------|------------------------|--|
| | | | |
| Monetary | | Non Monetary (in kind) | |
| | | | |
| up to Rs. 2,000 | Above Rs. 2,000 | Deduction u/s 80G (N) | |
| | | | |
| Can be made by any of the modes | | | |
| | | | |
| Cash | Other than cash | Cash | |
| (Y) | (Y) | (N) | |
| | | | |

| | | |
|--------------------------|--------------------------|--|
| Deduction u/s 80G (Y) | Deduction u/s 80G (N) | |
|--------------------------|--------------------------|--|

Amount of Deduction u/s 80G

| Unlimited Deduction | | Limited Deduction | |
|-------------------------------------|--------------------------------------|---|--------------------------------------|
| a) 50% of the Amt of Donation | b) 100% of the Amt of Donation | c) 50% of the Amt of donation | d) 100% of the Amt of Donation |
| ↓ | ↓ | ↓ | ↓ |
| Fully Allowed u/s 80G (Y) | | Restricted to Maximum 10% of Adjusted Total Income | |
| | | Gross total Income | xx |
| | | (-) LTCG | (xx) |
| | | (-) STCG specified u/s 111A | (xx) |
| | | (-) All ded ⁿ s u/s VI-A (except Sec 80G) | (xx) |
| | | Adjusted TI | xxx |

- a) Donations to the following Institutions / funds are eligible upto 50% of amount donated & allowed fully:
- 1) Prime Minister's Drought Relief fund
 - 2) Jawaharlal Nehru Memorial fund
 - 3) Indira Gandhi Memorial Trust
 - 4) Rajiv Gandhi foundation
- b) Donations to the following Institutions / funds are eligible upto 100% of amount donated & allowed fully.
- 1) Prime Ministers
 - National Relief fund(or PM CARES FUND)
 - Amenia Earthquake Relief fund.
 - 2) Govt / local authority / Institution / Association towards other than promoting FAMILY PLANNING.
 - 3) Fund set up by
 - Gujarat for relief to victims of Earthquake
 - the State of □ Any state (including Gujarat) for MEDICAL Relief to the Poor.

- 4) Chief Ministers
 - Earthquake Relief fund (Maharashtra)
 - Cyclone Relief fund (Andhra Pradesh)
 - Relief fund, (or) Lieutenant Governor's Relief Fund (for any state or union Territory)
- 5) National
 - Children's fund
 - Defense fund
 - Foundation for Communal Harmony
 - Illness Assistance fund
 - Sports fund
 - Cultural Fund
 - Control of Drug Abuse (constituted u/s 7A of the Narcotics Drugs and Psychotropic Substances Act, 1985)
 - Blood Transfusion council (or) state Blood Transfusion Council.
 - Welfare Trust for Persons with autism cerebral palsy mental retardation & multiple disabilities.
6. Zila saksharta Samiti of any district.
7. Africa (Public contributions - India) Fund.
8. University / Educational Institution of National Eminence.
9. Army / Air Force Central Welfare fund / Naval Benevolent fund
10. Fund for Technology Development & application set up by the Central Government.
11. Clean Ganga fund.
12. Swachch Bharat Kosh.
- c) Donations to the following Institutions / funds are eligible upto 50% of the Amount donated & Restricted to limit of 10% of ATI
 - 1) Government / local Authority / Approved Institutions for Charitable Purposes
 - 2) Institutions for promoting MINORITY INTEREST
 - 3) Housing Development Authority
 - 4) Temple, Mosque, church, Gurudwara any other place of public worship, (or) any other place of :
 - Artistic (or)
 - Historic, (or)

- Archaeological Importance
- d) Donations to the following Institutions / funds are eligible upto 100% of the Amt donated & Restricted to limit of 10% of ATI
 - 1) Government / local Authority / Approved Institutions, for promoting FAMILY PLANNING
 - 2) Indian Olympic Association (or) National sports Bodies
 Deduction w.r.t. this contribution, is available, ONLY for Company Assessee & not to any other assessee.

Amendment made by Finance Act 2020:(Applicable from 01.04.2021)

Approval for the purpose of section 80G(5) - All entities which are currently approved for the purpose of section 80G(5) are required to apply for a fresh approval under the amended scheme of section 80G. Likewise, all new entities which want approval under section 80G(5) are required to apply for approval under the amended provisions. The process of approval for the new and existing entities will be completely electronic under which a unique approval number shall be issued to all new and existing entities. The table given below summarises these amendments -

| <i>Different entities</i> | <i>Time-limit for up-loading approval application [First proviso to sec. 80G(5)]</i> | <i>Time-limit for grant of approval [Third proviso to sec. 80G(5)]</i> | <i>For which date/ year approval will be available [Fourth-proviso to sec. 80G(5)]</i> | <i>Validity of approval [Second proviso to sec. 80G(5)]</i> |
|--|--|---|--|--|
| Where such entity is approved under section 80G(5)(vi) on or before March 31, 2021 | On or before June 30, 2021 | Within 3 months calculated from the end of the month in which application is received | From the assessment year from which such entity was earlier granted approval | 5 years |
| Where such entity is registered under section 80G(5)(vi) and the period of such approval is due to | At least 6 months prior to the expiry of such approval | Within 6 months calculated from the end of the month in which application is received | From the assessment year immediately following the financial year in which approval | 5 years (to be granted after satisfying about the object of the trust and genuineness of its |

[Sec 80C to sec 80U]

| expire | | | application is uploaded | activities) |
|---|--|---|---|--|
| Where such entity has been provisionally approved under section 80G | At least 6 months prior to expiry of the period of the provisional approval or within 6 months of commencement of its activities, whichever is earlier | Within 6 months calculated from the end of the month in which application is received | From the first of the assessment years for which it was provisionally approved | 5 years (to be granted after satisfying about the object of the trust and genuineness of its activities) (5 year time-limit to be counted from the first year of provisional approval) |
| In any other case (including case of fresh approval) | At least 1 months prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought. | Within 1 month calculated from the end of the month in which application is received | From the assessment year immediately following the financial year in which approval application is received | Provisional approval for a period of 3 years from the assessment year from which approval is sought |

Amendment made by Finance Act 2020:

Filing of statement of donation by donee to cross-check claim of donation by donor - With effect from April 1, 2021, an entity which gets donation under section 80G(5)(vi) is required to upload a statement of donation in prescribed form to the prescribed authority. Further, it is required to give a certificate of donation to the donor in prescribed form. The donor will get deduction under section 80G on the basis of statement of donation submitted by the donee-entity. If the donee entity does not submit the statement of donation (or a correction statement to rectify any mistake), it is liable for fee under section 234G.

Amendment made by Finance Act 2020 (Already done)

With effect from 01.04.2021, section 234G has been inserted. If a person fails to deliver a statement (given below), he shall be liable to pay, by way of fee, Rs.200 for every day during which the failure continues. However, the amount of said fees cannot exceed the amount in respect of which the failure referred therein has occurred. In the following cases, fees are applicable-

1. Where the research association, university, college or other institution or the company fails to deliver a statement of donation or certificate of donation referred to in section 35(1)(ii)/(iia)/(iii) within the time prescribed under section 35(1A).
2. Where the institution/fund fails to deliver-
 - (i) A statement of donation within the time prescribed under section 80G(5)(viii).
 - (ii) A certificate of donation prescribed under section 80G(5)(ix).

The aforesaid fees shall be paid before delivering statement of donation or before furnishing certificate of donation.

Section 80GG: Deduction w.r.t. Rent paid for OWN Residence

| | | | |
|-------------------|--------------|--|------------------|
| ↓ | | | |
| Eligible Assessee | | | |
| ↓ | | | ↓ |
| Individual | | | Any other Person |
| ↓ | | | (N) |
| Resident | Non Resident | | |
| (Y) | (Y) | | |

Deduction u/s 80 GG shall be granted w.r.t. rent paid by the Individual for his OWN residence provided that he has satisfied the following conditions :

- a) The Assessee is NOT in receipt of HOUSE Rent Allowance (HRA)
- b) The Assessee does NOT own any residential House either himself, or by his spouse or minor child or by the HUF of which he is the member, at a place where the assessee ordinarily resides (or) carries on his Business / Profession (or) performs his duties of office or employment (and even if he owns at any other place it should NOT be assessed to tax as SOP (R))

Amount of deduction u/s 80GG:

| | | |
|---|----|---|
| 25% of Adjusted Total Income [@] | xx | L |
| (OR) | | O |
| Rent in excess of 10% of Adjusted Total Income [@] | xx | W |

[Sec 80C to sec 80U]

| | | |
|----------------------------|------------------|---|
| (OR) | | E |
| Maximum deduction u/s 80GG | Rs. 5000 p.m. | R |

@ Adjusted Total Income shall have the SAME Meaning as under Sec 80G (where Sec 80G, shall be substituted by Sec 80GG)

Section 80GGA : Deduction w.r.t Certain Specific Donations / Contributions

| | | | | |
|--|--|--------------|---|--|
| Eligible Assessee | | | | |
| | | | | |
| | | | | |
| Individual | | | Any other Person | |
| Resident | | Non Resident | Non Resident | |
| (Y) | | (Y) | (Y) | |
| | | | | |
| 100% of the Donation / Contribution will be allowed as a deduction u/s 80GGA | | | To claim a deduction u/s 80GGA, the eligible assessee, should NOT HAVE any Business / Professional Income | |

| | | |
|-------|---|---------------------------|
| | Donation | |
| | | |
| Donor | for nature of donation eligible for ded ⁿ u/s 80GGA. | Donee |
| | Refer Sec 80G. | Shall be approved u/s |
| | | |
| | | 35 (or) 35 CCA (or) 35 AC |

The assessee shall make donations to approved institutions for :

- Scientific Research or
- Research in Social Sciences or
- Research in Rural Development or
- Conservation of Natural Resources, or
- National urban Poverty Eradication fund, or

- Eligible Project / Scheme.

Amendment made by Finance Act 2020

No deduction shall be allowed under this section in respect of any sum exceeding TWO thousand rupees unless such sum is paid by any mode other than cash.

(From 1st Oct 2020, earlier it was Rs.10,000)

Explanation added by Finance Act 2020: (From 1st April 2021)

"Explanation.-For the removal of doubts, it is hereby declared that the claim of the assessee for a deduction in respect of any sum referred to in sub-section (2) in the return of income for any assessment year filed by him, shall be allowed on the basis of information relating to such sum furnished by the payee to the prescribed income-tax authority or the person authorised by such authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time."

Section 80GGB: Deduction w.r.t Donations / Contributions to Political Parties or Electoral Trusts.

| | | | |
|-------------------|----------------|------------------|--|
| Eligible Assessee | | | |
| Company | | Any other Person | |
| Indian (Y) | Foreign (N) | (N) | |
| | | | |

Mode of Payment

| | | |
|-------------------------------|-----------------------------|----------------------------------|
| Monetary Donations | | Non Monetary Donations (in kind) |
| Made by | | No deduction u/s 80GGB |
| Cash | Other than cash | |
| No ded ⁿ u/s 80GGB | Deduction u/s 80GGB Allowed | |

[Sec 80C to sec 80U]

| | | |
|--|--|--|
| | | |
| | The entire amt of donation / contribution will be allowed as a deduction u/s 80GGB | |

Section 80GGC : Deduction w.r.t Donations / Contributions to Political Parties or Electoral Trusts.

| | | | |
|---------------------|----------------|-----------------------------|------------------|
| ↓ | | | |
| Eligible Assessee | | | |
| ↓ | | ↓ | ↓ |
| Local Authority | | Artificial judicial persons | Any other Person |
| ↓ | | ↓ | (Y) |
| Not funded by Govt. | Funded by Govt | Not funded by Govt | |
| (Y) | (N) | (Y) | |

All other provisions w.r.t. Mode of payment & Quantum of dedⁿ are same as that of section 80GGB.

Section 80JJA : Profits derived from the Business of Collecting / Processing / Treatment of BIO-DEGRADABLE WASTE

| | | | | |
|-------------------|--------------|------------------|--|--|
| ↓ | | | | |
| Eligible Assessee | | → | Engaged in the Collection processing Treatment of Bio Degradable waste in order to | |
| ↓ | | ↓ | ↓ | |
| Individual | | Any other person | | |
| ↓ | | ↓ | | |
| Resident | Non Resident | Resident | Generate power | Produce Bio Gas, Bio - Palettes (or) Briquettes for fuel or organic Manure |
| (Y) | (Y) | (Y) | | |
| | | | | |
| | | | | |

Quantum of Deduction

Whole of the profits & gains from such activity shall be allowed as a deduction u/s 80JJA, for first 5 Consecutive AY's beginning from the AY, relevant to the PY, in which the Business Commences.

However, deduction u/s 80JJA will be allowed, ONLY if it is claimed in the Return of Income by the eligible assessee.

Section 80JJAA : Deduction in respect of Employment of NEW Employee's

Conditions to claim deduction u/s 80JJAA:

Deduction u/s 80JJAA would be allowed, only subject to fulfillment of the following conditions:

- The Business should Not be formed by splitting up or reconstruction of an Existing Business.
- The Business is Not Acquired by the Assessee by way of Transfer, from any other person, (or) as a result of any Business Re-Organization.
- The report of the Accountant, giving the prescribed particulars, has to be furnished before the specified date u/s 44AB. (Amended by Finance Act 2020)

* Quantum of Deduction

Accordingly, where the GTI of an Assessee, to whom Sec 44AB applies, includes any profits and gains derived from Business a deduction of an amount equal to 30% of the additional Employee Cost incurred in the course of such business in the PY, would be allowed for 3 AYs (including the AY. Relevant to the PY, in which such employment is provided)

Notes

i) Additional Employee Cost :

- Total Emoluments, paid or payable to Additional Employees, employed during the previous Year.

| In case of Existing Business | | In case of a New Business |
|--|---|--|
| ↓ | | ↓ |
| Additional EE' Cost = NIL, (if) | | Emoluments paid / payable to the EE's employed during that PY shall be deemed to be the Additional EE' cost. This can be paid by cash. |
| There is NO Increase in the NO of EE's from the TOTAL NO of Employees employed as on the | (or) | |
| | Emoluments are paid otherwise than by an Account Payee cheque, (or) A/c payee Bank Draft, | |

| | |
|---------------------------------|---|
| last day of the preceding year. | (or) by use of Electronic Clearing System (ECS) through a Bank Account. |
|---------------------------------|---|

ii) Additional Employee

| Means | Does NOT Include |
|---|--|
| ↓ | ↓ |
| An EE' who has been employed during the PY, and whose EE' ment has the effect of Increasing the Total No. of EE's employed by the ER: as on the last day of the preceding year. | i) An EE' whose Total Emoluments > Rs. 25000 p.m. ii) An EE' employed for < 240 days in the PY. For Apparel/Footwear & leather Business 240 days will be replaced by 150days. |
| | iii) An EE' who does NOT Participate in Recognition Provident fund. |
| | iv) An EE' for whom, the Entire Contribution paid by the Government under the EE's pension Scheme notified in accordance with the provisions of the "Employees PF and Miscellaneous Provisions Act, 1952". |

Note: Where a new employee is employed during the previous year for a period of less than 240 days (or 150 days, as the case may be) but is employed for a period of 240 days (or 150 days, as the case may be), in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of section 80JJAA shall apply accordingly.

iii) Emoluments

| Means | Does NOT Include |
|-------|------------------|
| ↓ | ↓ |

| | |
|--|--|
| Any sum paid / payable to an EE' in lieu of his EE'ment by whatever name called. | i) Any contribution, paid or payable by the ER' to any pension fund / provident fund / any other fund for the benefit of the EE' under any law, for the time being in force. |
| | ii) Any lumpsum payment, paid / payable to an EE' at the time of super Annuation, or Termination of his service or Voluntary Retirement such as : |
| | - Gratuity - Severance Pay |
| | - Leave Encashment |
| | - Commutation of pension |
| | - Voluntary Retrenchment Benefits. |

Amendment made by Finance Act 2020:

Deduction under section 80JJAA is not available unless audit report is submitted. With effect from the assessment year 2020-21 audit report in Form No. 10DA is required to be uploaded one month prior to the due date of submission of return of income. If the due date of submission of return of income is October 31 of the assessment year, audit report should be uploaded on or before September 30 of the assessment year. Conversely, if the due date of submission of return of income is November 30 of the assessment year, audit report should be uploaded on or before October 31 of the assessment year.

Section 80QQB : Deductions w.r.t Royalty Income of Authors

| | | |
|-------------------|--------------|------------------|
| ↓ | | |
| Eligible Assessee | | |
| ↓ | | ↓ |
| Individual | | Any other person |
| ↓ | ↓ | (N) |
| Resident | Non Resident | |
| (Y) | (N) | |

Conditions to claim deduction u/s 80QQB

- i) The assessee should either be : an author (or)
a Joint Author

- ii) The book authored by him is a work of literary, artistic (or) scientific nature. However, the book shall NOT include :

| | |
|---|--------------|
| - Brochures | - Guides |
| - Commentaries | - Magazines |
| - Diaries | - Newspapers |
| - Journals | - Pamphlets |
| - Textbooks for schools & other publications of similar Nature by whatever name called. | |

- iii) The GTI of the Tax payer shall include the following.

| | |
|---|--|
| Royalty / Copyright fees (payable in lumpsum or otherwise) w.r.t. the above book <u>including</u> any NON-REFUND ADVANCE rec ^d) | Lumpsum Consideration for transfer (or grant) of any Interest, in the Copyright of the Book. |
|---|--|

Amount of Deduction u/s 80QQB

| | | | |
|-------------------------|------|--------------|---|
| Income from Royalty | xx | | |
| (-) Related Expenditure | (xx) | xxx | L |
| (OR) | | | O |
| Maximum amt u/s 80 QQB | | Rs. 3,00,000 | W |

Notes

- i) Royalty Income earned OUTSIDE India, should be Brought Into India, within 6 months from the end of the PY; (or) the time extended by RBI, to avail deduction u/s 80QQB.
- ii) Where the Royalty Income (or the Copyright fees) is NOT a lumpsum consideration, so much of the Income [Before Allowiing Related Expenditure] is in excess of 15% of the value of such books SOLD during the relevant PY, shall be ignored.

Section 80RRB : Deduction w.r.t. Royalty on Patents

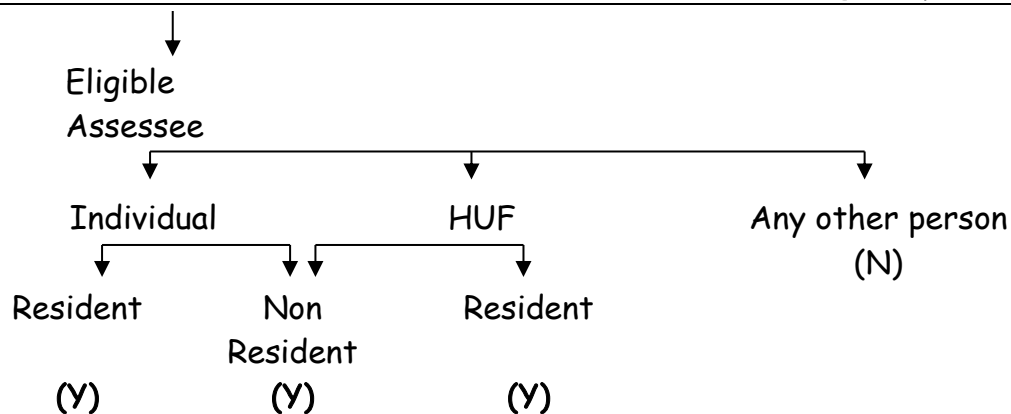
The propvisons of Sec 80RRB, are similar to those of Sec 80QQB, except the following (including the Amt of Deduction u/s 80RRB)

- i) The words author / joint authors, have been replaced with "owner / Co owner".

[Sec 80C to sec 80U]

- ii) The Royalty should be derived w.r.t. Registered Parents only. However it does not Include any Consideration for sale of product Manufacture with the use of :
- Patented Process, (or)
 - Patented Article per se,
 - for Commercial use.
- iii) Any consideration chargeable to tax under the head "Capital Gains is not Royalty income for the purpose of Section 80RRB.

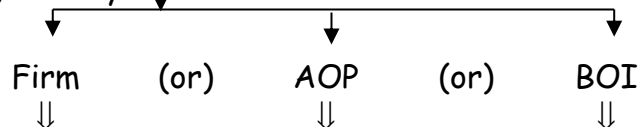
Section 80TTA: Deduction w.r.t. Interest on savings Deposit Account:



Deduction u/s 80TTA shall be allowed w.r.t Interest on Deposits in a savings Account maintained with;

- A Banking Company, (or)
- A Co-Operative Bank, (or)
- A Post Office

However, if the aforesaid income, is derived from any deposit in a savings Account, held by on on behalf of a :



No deduction shall be allowed in respect of such Income in computing the total Income of any partner of the firm (or) any member of the AOP (or) any individual of the BOI.

Amount of Deduction

| | | |
|-------------------------------------|--------|---|
| Interest on savings Deposit Account | xx | L |
| (OR) | | O |
| Maximum Amt u/s 80TTA | Rs. | W |
| | 10,000 | |

AMENDMENT MADE BY FINANCE ACT 2018:

Amendment to section 80TTA

Section 80TTA provides for a deduction (up to Rs. 10,000) to an individual/HUF if his income includes any income by way of interest on deposits in a savings bank account (or savings account with post office/co-operative society).

- **Amendment** - With effect from the assessment year 2019-20, a senior citizen (who can avail of deduction under section 80TTB, which is given below) shall not be eligible for the deduction under section 80TTA.

Deduction in respect of interest on deposits in case of senior citizens

[Sec. 80TTB]

Deduction under section 80TTB is available (from the assessment year 2019-20), if the following conditions are satisfied -

1. The assessee is a senior citizen (ie., a resident individual who is at least 60 years of age at any time during the previous year).
2. His income includes interest on deposits with a bank/co-operative bank/post office (it may be interest on fixed deposits, interest on savings account or any other interest).

- **Amount of deduction** - If these conditions are satisfied, the assessee can claim deduction under section 80TTB which is equal to Rs. 50,000 or the amount of aforesaid interest, whichever is lower.

Where the aforesaid income is derived from any deposit in an account held by, or on behalf of a firm, an association of persons or a body of individuals, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the association or body.

Deduction in respect of interest on loan taken for purchase of electric vehicle

[Sec. 80EEB]

Section 80EEB has been inserted from the assessment year 2020-21. Under this section, deduction is available if the following conditions are satisfied -

1. The assessee is an individual.
2. He has taken a loan for the purpose of purchase of an electric vehicle. For this purpose, "electric vehicle" means -
 - a vehicle which is powered "exclusively" by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle, and
 - it has such electric regenerative braking system, which during braking

provides for the conversion of vehicle kinetic energy into electrical energy. As the word "exclusive" is used, interest on loan taken for purchase of a "hybrid car" (which derives some of its power from conventional engine) is not eligible for deduction.

3. Loan is taken from a financial institution (i.e. a bank or any deposit taking NBFC or a systematically important non-deposit taking NBFC).
4. Loan is sanctioned during April 1, 2019 and March 31, 2023.

Amount of deduction - If the above conditions are satisfied, the assessee can claim deduction under section 80EEB. Deduction is available in respect of interest payable on the above loan or Rs. 1,50,000, whichever is less. Deduction is available for the assessment year 2020-21 and subsequent assessment years.

Some interest is not deductible twice - If interest is claimed as deduction under section 80EEB, such interest (or such portion of interest) is not again deductible under any other provision of the Act for the same or any other assessment year.

AMENDMENT MADE BY FINANCE ACT (NO.2) 2019: Amendment to section 80LA

- Under the existing provisions of section 80LA, deduction is available to -
- a. a scheduled bank and having an offshore banking unit in a special economic zone; or
 - b. a foreign bank and having an offshore banking unit in a special economic zone; or
 - c. a unit of International Financial Services Centre.
 - d. *Income arising from transfer of an aircraft, which was leased by a unit of International Financial Services Centre to a person subject to condition that the unit has commenced operation on or before March 31, 2024 (for this purpose "aircraft" means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof) (FA 2021)*

These assesses can claim deductions pertaining to (a) & (b) at 100 per cent of the aforesaid income for first 5 years and 50 per cent for next 5 years.

- **Amendment** - Under the amended version (which is applicable from the assessment year 2020-21). Deduction available to a unit of International Financial Services Centre shall be increased to 100 per cent for any 10 consecutive years. The assessee, at his option, may claim the said deduction for any 10 consecutive assessment years out of 15 years beginning with the year in which the necessary permission is obtained.

[Sec 80C to sec 80U]

However, MAT will be applicable.

In case the unit is registered under the International Financial Services Centre Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the International Financial Services Centre Authority Act, 2019. (FA 2021)

CHAPTER 50 - TAXATION OF ACCRETED INCOME

(NOT IN SUMMARY)

Tax on Accreted Income of Certain Trust and Institutions [Chapter XII-EB]

Effective from: 1st June 2016

The income of the charitable trusts is exempt subject to certain conditions. The acquisition of assets by a charitable trust is also a mode of application of the funds of the trust. However, since there is no mechanism to keep a vigil on the trust in respect of it ceasing to be for charitable purpose, the provisions in respect of exit tax have been enacted. Earlier, the assets acquired by applying the exempt income of the trust would be transferred to other entities. This led to misuse of the exemption provisions that the trust is eligible for.

THREE EXCLUSIONS:

Meaning of Accreted income

Section 115TD (2):

Aggregate FMV of Total Assets
(-)
Total Liability
=
Accreted Income

Accreted
Income

Any asset which is established to have been directly acquired by the trust out of agricultural income referred to in Section 10(1).

COMMENT: The logic behind this clause is that the income is otherwise exempt.

As on specified date

Any asset acquired by the trust during the period

- Beginning from the date of its creation and
- Ending on the date from which the registration became effective or deemed effective.

i.e. when the trust was ineligible for the benefit of Section 11 & Section 12 for the said period.

COMMENT: The logic behind this clause is that income was already taxed during the mentioned period

Date of Conversion

: Conversion of trust into a form not eligible for registration u/s

Date of merger:

Merger with an entity not having similar objects and registered u/s 12AA/12AB.

Date of Dissolution

: Non distribution of assets on dissolution to any charitable institution registered u/s 12AA /

The date of the order cancelling registration u/s

The date of adoption or modification of any object which do not conform to the conditions of registration

12AB/10 (23C) within a period of 12 months from dissolution

Asset and liabilities of charitable organisation which have been transferred to another charitable organisation within specified time.

COMMENT: The logic behind this clause is that such income is deemed to have been utilised for charitable purpose

Taxation of Accreted Income

1. **Exit tax payable even if no income-tax is payable by the Trust/institution: Section 115TD(4)**
Even if no income-tax is payable by the trust or institution on its total income, tax on accreted income shall be payable by the trust or institution, like any other additional income-tax.
2. **Non-availability of deduction under any other provision of the Act: Section 115TD(7)**
No deduction is allowable under any other provision of the Act to the trust or institution or any other person in respect of the income which has been charged to tax or the tax thereon.
3. **Interest for non-payment of tax within prescribed time: Section 115TE**
In case of failure of payment of tax within the prescribed time, a simple interest @ 1% Per month or part of it shall be applicable for the period of non-payment.
Period of non-payment:
Beginning from: the date immediately after the last date on which such tax was payable
Ending with: the date on which the tax is actually paid
4. The Cost of Acquisition of the asset on which the exit tax was imposed u/s 115TD: FMV of the asset as on specified date on which tax was levied u/s 115TD.
5. **Tax shall be charged at MMR. MMR for the purpose of this section is 30% + 12% Surcharge + 4% Health & Education Cess = 34.944%. For any other sections in this ACT MMR shall be = 42.744%.**

Question:

ABC Charitable Trust is setup with the objectives of furtherance of yoga among people. Further, it undertakes business activities in its course of main object. The following is the statement of affairs of the trust as on **31/03/2022**:

| Liabilities | Amount (Rs.) | Assets | Amount (Rs.) |
|---------------------|------------------|------------------|------------------|
| Corpus | 12,00,000 | Tractor | 2,00,000 |
| Loan for tractor | 50,000 | Building 1 | 5,50,000 |
| Loan for building 2 | 1,50,000 | Building 2 | 4,00,000 |
| | | Office furniture | 2,00,000 |
| | | Cash | 50,000 |
| Total | 14,00,000 | Total | 14,00,000 |

Notes:

1. Building 2 has been purchased at the time when the trust was not registered under section 12AA/12AB.
2. Tractor is purchased from the income generated from agricultural operations and is also used for agricultural activities.
3. Office Furniture has been donated to another trust registered under section 12AA/12AB with the object of preservation of environment.
4. The values in the statement of affairs are as per the prescribed method of valuation

Compute the liability of the trust on its accreted income if it is converted into an entity not eligible for registration under section 12AA/12AB on 31/03/2022

Further, compute the interest liability that shall arise in case if the trust makes the payment of the tax on the accreted income only on 28/04/2022.

Solution:

Computation of liability of the trust under section 115TD

Tax is liable to be paid by the trust on the accreted income as on the specified date. The specified date in the given case is the conversion date. The valuation of accreted income 01/04/2022 is as under:

| Particulars | Amount (Rs.) | Amount (Rs.) |
|----------------------------------|--------------|-----------------|
| <u>Total Assets</u> | | |
| Tractor | 2,00,000 | |
| (-) Tractor value (Note 1) | (2,00,000) | 0 |
| Building 1 | | 5,50,000 |
| Building 2 | 4,00,000 | |
| (-) Building 2 value (Note 2) | (4,00,000) | 0 |
| Office Furniture | 2,00,000 | |
| (-) Office Furniture (Note 3) | (2,00,000) | 0 |
| Cash | | 50,000 |
| TOTAL ASSETS | | 6,00,000 |
| <u>Total Liabilities</u> | | |
| Loan from tractor | 50,000 | |
| (-) Loan value (Note 1) | (50,000) | 0 |
| Loan for building 2 | 1,50,000 | |
| (-) Loan for building 2 (Note 2) | (1,50,000) | 0 |
| TOTAL LIABILITIES (B) | | 0 |
| ACCREDITED INCOME (A-B) | | 6,00,000 |

Tax on accreted income

= Accreted Income * 34.94% (30%+12%+4%)

= 6,00,000*34.94%

= 2,09,640

The payment of the tax is supposed to be done within 14 days of the specified date. In the above case, the specified date is the date of conversion, i.e. 31/03/2022. Therefore, payment of tax has to be made within 14/04/2022.

The trust has paid the tax only on 28/04/2022. Thus, it is liable to pay interest along with the tax on the accreted income. The interest liability is as under:

No. of days delay: 14

Beginning date: 15/04/2022

Ending date: 28/04/2022

Thus, interest will be charged at 1% for the part of the month of delay.

Interest amount = Rs.2,09,640* 1%

= Rs.2,096.40

Taxation of Accreted Income

Notes:

1. Since the tractor is purchased from agricultural income, being exempt under the ITA, the assets and liabilities in respect thereof are ignored from the calculation of accreted income.
2. Building 2 is purchased with the income generated at the time when the trust was not registered under section 12AA/12AB. This implies that no exemption was allowed to the income that was used for the purchase of building. Thus, all assets and liabilities in connection with Building 2 are ignored.
3. The office furniture is donated to a trust registered under section 12AA/12AB. Therefore, that will not form part of the accreted income.
4. As per section 2(4) of the Finance Act, 2018, the surcharge for the purpose of section 115TD (and also for section 115-O) shall be calculated at 12%.

HOW TO DETERMINE FMV OF ASSETS & LIABILITIES FOR SEC 115TD?

Rule 17CB.

| | | | | |
|------------------------|---|--|-----|----------------------------------|
| Accreted Income | = | Aggregate FMV of Total Assets {Note 1} | (-) | Total liabilities {Note 3} |
|------------------------|---|--|-----|----------------------------------|

Note 1: Aggregate FMV of total Assets =

| | | |
|---|--------------------|--|
| Aggregate FMV of all Assets {Note 2} | Less Excl – (1) | $\left\{ \begin{array}{l} \text{T.D.S/T.C.S/} \\ \text{Advance Tax} \end{array} \right\}$ √ |
| | Less Excl – (2) | Any Fictitious Asset. |

Note 2: How to determine FMV of Various Assets?

(1) Valuation of Quoted Shares & Securities:

- (i) average of Lowest & Highest price on Recognised Stock Exchange on the specified date, (or)
- (ii) where no trading on specified date, then the average of immediately preceding date on which trading happened.

(2) Valuation of unquoted Shares: {Equity ONLY}

$$= (A + B - L) \times \frac{PV}{PE}$$

A = B.V of all assets in the B/S (other than Bullion, Jew, precious Stone, artistic work, shares, securities & Immovable Property) **(1) TDS/ADVANCETAX/TCS**
(-) **(2) Any Fictitious Asset.**

B = FMV of Bullion, Jewelry, Precious Stone, artistic work, shares, securities & Immovable Property as per this Rule.

L = Book Value of Liabilities shown in Balance Sheet, **but exclude the following:**

Taxation of Accreted Income

- (1) Contingent liability **other than arrears of dividends payable i.r. of paid up capital i.r. of equity shares.**
 - (2) Amount set aside for payment of dividends on pref Shares & equity Shares.
 - (3) Any Reserves & Surplus, **other than those set apart towards depreciation.**
 - (4) Provision for Tax **other than T.D.S / TCS / Advance Tax.**
 - (5) Provision for unascertained liability.
 - (6) Any amount of Cumulative Preference Shares.
- (3) **Valuation of Shares & Securities other than Eq. Shares:**
= Price it would fetch if sold in open Market on Specified Date on the basis of Valuation Report of Merchant Banker or Accountant.
- (4) **Valuation of Immovable Property:**
Higher of: NO BV
- (a)

Price that property shall fetch in open market on Specified date

(b)

SDV on Specified date
- (5) **Valuation of a Business Undertaking:**
= it shall be determined according to the following formula:
i.e. $(A + B - L)$
- (6) **Valuation of other Assets:**
Price that Asset shall fetch in open Market on Specified date. **NO BV.**

NOTE 3: TOTAL LIABILITIES:

- = Book Value of all liabilities in Balance Sheet on Specified date but excluding the following items:
- (1) Capital Fund / Accumulated Funds / Corpus.
 - (2) Reserves & Surplus or excess over Income.
 - (3) Provision for unascertained liabilities.
 - (4) Provision for Tax.

CHAPTER 54 – Alternative Tax Regimes

Tax on income of certain manufacturing domestic companies. (Finance Act 2016)

115BA. (1) Notwithstanding anything contained in this Act but subject to the other provisions of this Chapter, other than those mentioned under section 115BAA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

- (a)** the company has been set-up and registered on or after the 1st day of March, 2016;
- (b)** the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and
- (c)** the total income of the company has been computed,—
 - (i)** without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;
 - (ii)** without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and
 - (iii)** depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner⁵ on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Following second proviso shall be inserted after the existing proviso to sub-section (4) of section 115BA by the Taxation Laws (Amendment) Act, 2019, w.e.f. 1-4-2020:

Provided further that where the person exercises option under section 115BAA, the option under this section may be withdrawn.

Note: Surcharge if applicable.

Health & Education Cess Always.

Following sections 115BAA and 115BAB shall be inserted after section 115BA by the Taxation Laws (Amendment) Act, 2019, w.e.f. 1-4-2020:

Tax on income of certain domestic companies.

115BAA. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent, if the conditions contained in sub-section (2) are satisfied:

Provided that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) For the purposes of sub-section (1), the total income of the company shall be computed,—

- (i)** without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any *provisions of Chapter VIA other than the provisions of section 80JJAA or 80M*;
- (ii)** without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);
- (iii)** without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i); and
- (iv)** by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss and depreciation referred to in clause (ii) and clause (iii) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year:

Provided that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2020, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.

(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the

deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

Explanation.—For the purposes of this sub-section, the term "Unit" shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

(5) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that in case of a person, where the option exercised by it under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, such person may exercise option under this section:

Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Note: Surcharge always applicable irrespective of the Total Income.

Health & Education Cess Always.

Tax on income of new manufacturing domestic companies.

115BAB. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of fifteen per cent, if the conditions contained in sub-section (2) are satisfied:

Provided that where the total income of the person, includes any income, which has neither been derived from nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided separately under this Chapter, such income shall be taxed at the rate of twenty-two per cent and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income:

Provided further that the income-tax payable in respect of the income of the person deemed so under second proviso to sub-section (6) shall be computed at the rate of thirty per cent:

Provided also that the income-tax payable in respect of income being short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed at the rate of twenty-two per cent:

Provided also that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the company has been set-up and registered on or after the 1st day of October, 2019, and has commenced manufacturing or production of an article or thing on or before the 31st day of March, 2023 and,—

(i) the business is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of a company, business of which is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in the said section;

(ii) does not use any machinery or plant previously used for any purpose.

Explanation 1.—For the purposes of sub-clause (ii), any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

(A) such machinery or plant was not, at any time previous to the date of the installation used in India;

(B) such machinery or plant is imported into India from any country outside India; and

(C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in

computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Explanation 2.—Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed twenty per cent of the total value of the machinery or plant used by the company, then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with;

- (iii) does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.

Explanation.—For the purposes of this sub-clause, the expressions "hotel" and "convention centre" shall have the meanings respectively assigned to them in clause (a) and clause (b) of sub-section (6) of section 80-ID;

- (b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

Explanation.—For the removal of doubts, it is hereby clarified that the business of manufacture or production of any article or thing referred to in clause (b) shall not include business of,—

- (i) development of computer software in any form or in any media;
- (ii) mining;
- (iii) conversion of marble blocks or similar items into slabs;
- (iv) bottling of gas into cylinder;
- (v) printing of books or production of cinematograph film; or
- (vi) any other business as may be notified by the Central Government in this behalf; and

- (c) the total income of the company has been computed,—

- (i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under *provisions of Chapter VIA other than the provisions of section 80JJAA or 80M*;
- (ii) without set-off of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i);

Explanation.—For the removal of doubts, it is hereby clarified that in case of an amalgamation, the option under sub-section (7) shall remain valid in case of the amalgamated company only and if the conditions contained in sub-section (2) are continued to be satisfied by such company; and

- (iii) by claiming the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

Explanation.—For the purposes of clause (b), the “business of manufacture or production of any article or thing” shall include the business of generation of electricity. (Added by Finance Act 2020)

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) If any difficulty arises regarding fulfilment of the conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (2) or clause (b) of said sub-section, as the case may be, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery.

(5) Every guideline issued by the Board under sub-section (4) shall be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.

(6) Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F:

Provided further that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person.

(7) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Explanation.—For the purposes of section 115BAA and this section, the expression "unabsorbed depreciation" shall have the meaning assigned to it in clause (b) of sub-section (7) of section 72A.

Note: Surcharge always applicable irrespective of the Total Income.

Health & Education Cess Always.

NEWLY INSERTED SECTION BY FINANCE ACT 2020:

 ALTERNATIVE TAX REGIME FOR INDIVIDUALS / HUFs
 UNDER SECTION 115BAC:
Income of individuals and Hindu undivided family

Currently, individuals/HUFs are taxable as per progressive tax slabs and the highest tax slab rate is 30 per cent which is applicable if income exceeds Rs. 10 lakhs. Section 115BAC has been inserted with effect from the assessment year 2021-22 to provide new optional tax regime to individuals/HUFs.

Rate of income-tax under the alternative tax regime [Sec. 115BAC(1)]

Under the alternative tax regime income-tax shall be computed at the option of the assessee as per the rate given in the following table –

| <i>Total income</i> | <i>Rate of tax</i> |
|-------------------------------------|---------------------------|
| Up to Rs. 2,50,000 | Nil |
| From Rs. 2,50,001 to Rs. 5,00,000 | 5 per cent |
| From Rs. 5,00,001 to Rs. 7,50,000 | 10 per cent |
| From Rs. 7,50,001 to Rs. 10,00,000 | 15 per cent |
| From Rs. 10,00,001 to Rs. 12,50,000 | 20 per cent |
| From Rs. 12,50,001 to Rs. 15,00,000 | 25 per cent |
| Above Rs. 15,00,000 | 30 per cent |

• **Exemption limit** – Exemption limit is Rs. 2,50,000. It is applicable even in the case of senior citizen and super senior citizen. To put it differently, under normal provisions exemption limit for senior citizen is Rs. 3,00,000 and for super senior citizen it is Rs. 5,00,000. But in the case of alternative tax regime, it is Rs. 2,50,000 for any individual.

• **Rebate under section 87A** – Rebate under section 87A is available. An individual who has opted for alternative tax regime can claim rebate under section 87A if he is resident and his taxable income does not exceed Rs. 5,00,000. Rebate is 100 per cent of income-tax or Rs. 12,500, whichever is lower.

• **Tax on other incomes** – If an individual / HUF (who has opted for the alternative tax regime) has other incomes which are taxable under other provisions of Chapter XII (i.e., sections 110 to 115BBG but other than section 115BAC), then tax on such other incomes will be calculated as per the rate(s) specified by these sections and balance amount of income will be taxable under section 115BAC as per the rate given in above table.

• **Surcharge and education cess** – Surcharge applicable under the existing tax regime, is also applicable in the case of alternative tax regime under section 115BAC. In other words, surcharge is nil, if total income (or taxable income) (which is computed under the alternative tax regime) does not exceed Rs. 50 lakh. Surcharge is 10 per cent of income-tax, if such income is above Rs. 50 lakh but does not exceed Rs. 1 crore. If such income is in the range of 1 crore to 2 crore, surcharge is 15 per cent of income-tax. It is 25 per cent, if income is in the range of Rs. 2 crore to Rs. 5 crore. If such income (which is computed within the parameter of alternative tax regime of section 115BAC) exceeds Rs. 5 crore, surcharge is 37 per cent of

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income-tax. If, however, income includes capital gain taxable under sections 111A and / or 112A, surcharge cannot exceed 15 per cent of income-tax.

Income-tax and surcharge are further increase by health and education cess of 4 per cent. Maximum marginal rate of tax (even under the alternative tax regime) is 42.744 per cent.

Conditions and restrictions [Sec. 115BAC(2)]

The following conditions should be satisfied in order to avail the benefit of lower tax rate under the alternative tax regime of section 115BAC –

• **Individual / HUF** – The alternative tax regime under section 115BAC is available only in the case of an individual or Hindu undivided family from the assessment year 2021-22 onwards. It is optional. Individual / HUF may be resident or non-resident. Individual may be a salaried/retired employee (having salary income) or a self-employed person (having business income) or any other person (having any other income).

• **A few incentives not available** – Total income of individual/HUF is calculated under the alternative tax regime of section 115BAC without claiming the following deductions / exemptions (which are otherwise available under normal tax regime) –

- Leave travel concession [sec. 10(5)]
- House rent allowance [sec. 10(13A)]
- Special allowance(s) (other than those as may be prescribed) [sec. 10(14)]
- Allowance to MPs/MLAs [sec. 10(17)]
- Exemption up to Rs. 1,500 available in the case of clubbed income of a minor child [sec. 10(32)]
- Special economic zone [sec. 10AA]
- Standard deduction [sec. 16(ia)]
- Entertainment allowance deduction [sec. 16(ii)]
- Professional tax deduction [sec. 16(iii)]
- Interest on housing loan in the case of one or two self-occupied properties [sec. 24(b)]
- Additional Depreciation [sec. 32(1)(ia)]
- Investment allowance in the case of backward area [sec. 32AD]
- Tea / coffee / rubber development account [sec. 33AB]
- Site restoration fund [sec. 33ABA]
- Deduction for scientific research [sec. 35(1)(ii)/(ia)/(iii), 35(2AA)]
- Capital expenditure pertaining to specified business [sec. 35AD]
- Agriculture extension project [sec. 35CCC]
- Standard deduction in the case of family pension [sec. 57(ia)]
- Deduction under sections 80C to 80U [except employer's contribution towards NPS under section 80CCD(2), deduction under section 80JJAA and deduction under section 80LA (1A)]

Interest on public provident fund (as well as final payment at the time of maturity) will remain exempt under section 10(11) even if a person opts for the alternative tax regime under section 115BAC. Likewise, interest on Sukanya Samriddhi Account (as well as withdrawal or final payment from such account) will enjoy exemption under section 10(11A) even if the concerned person has opted for the lower tax regime of section 115BAC. Moreover, the following exemptions will be available even under the alternative tax regime of section 115BAC –

- Exemption under section 10(10) pertaining to gratuity
- Exemption under section 10(10A) pertaining to commutation of pension

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- Exemption under section 10(10AA) pertaining to leave encashment
- Exemption under section 10(10B) pertaining to retrenchment compensation
- Exemption under section 10(10C) pertaining to compensation on voluntary retirement or separation
- Exemption under section 10(10CC) pertaining to tax on non-monetary perquisites paid by employer
- Exemption under section 10(10D) pertaining to sum received under a life insurance policy
- Exemption under section 10(12) pertaining to interest and withdrawal from recognized provident fund
- Exemption under section 10(12A)/(12B) pertaining to payment (including withdrawal) from NPS
- Exemption under section 10(13) pertaining to payment from approved superannuation fund.

• **Adjustment of losses** – The total income of the individual/HUF is calculated without adjusting brought forward loss (and/or additional depreciation) from any earlier year (if such loss / additional depreciation pertains to any deduction under the aforesaid sections). Moreover, any loss under the head “Income from house property” cannot be set off with any other income under any other head of income.

• **Adjustment of depreciated value of block of assets** – Brought forward loss / depreciation, as mentioned above, shall be deemed to have been given full effect to and no further deduction for such loss / depreciation shall be allowed for any subsequent year. However, where unadjusted depreciation in respect of a block of assets has not been given full effect to prior to the assessment year 2021-22, corresponding adjustment shall be made to the written down value of such block as on April 1, 2020 in the prescribed manner (if option is exercised for the lower tax regime under section 115BAC for the assessment year 2021-22).

• **Depreciation in prescribed mode** – Total income of the individual/HUF is calculated after claiming depreciation (other than additional depreciation) in such manner as may be prescribed.

• **Alternate minimum tax not applicable** – Alternate minimum tax (AMT) under section 115JC is not applicable if the assessee opts for the alternative tax regime under section 115BAC. Consequently, AMT tax credit of earlier years cannot be adjusted against the tax liability which is computed under section 115BAC.

Option [Sec. 115BAC(5)]

An individual / HUF (who wants to avail the benefit of lower rate under the alternative tax regime of section 115BAC) is required to upload an option in prescribed mode on or before the due date of submission of return of income as follows –

Assessee does not have business / profession income – If the assessee does not have business / profession income, the option must be exercised along with the return of income for every previous year.

Provisions illustrated – X is an individual and does not have any business / profession income for the assessment year 2021-22. He exercises the option for the alternative tax

regime for the assessment year 2021-22. In this case, option is valid only for the assessment year 2021-22. For the next assessment year, he may (or may not) avail of the alternative tax regime under section 115BAC. If he wants to avail the benefit of lower taxation for the assessment year 2022-23, he will have to exercise a fresh option by uploading the relevant form on or before the due date of submission of return of income for the assessment year 2022-23.

Assessee has business / profession income – If the assessee has business / profession income, this option can be exercised, on or before the due date u/s 139(1), for any previous year relevant to the assessment year 2021-22 (or any subsequent year). Once the individual / HUF has exercised the option of lower tax regime under section 115BAC for any previous year, it remains valid for subsequent years (the assessee is not required to upload a fresh option in the next year or subsequent years). Option under this clause, once exercised for any previous year can be withdrawn only once for a previous year other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise option under this section, except where such person ceases to have any income from business or profession in which case, one can exercise the option which is available for other income assessee's.

Option by an employee under section 115BAC for lower tax regime – CBDT vide Circular No. C1/2020, dated April 13, 2020 has clarified that an employee (not having income from business / profession) can opt for the lower tax regime under section 115BAC by intimating the same to the employer (i.e., deductor) of such intention for each previous year. Upon such intimation, the deductor shall compute the amount of tax deductible (under section 192) according to the provisions of section 115BAC. The following points should be noted –

1. The above intimation to the employer shall be only for the purpose of the TDS and cannot be modified during that year.
2. Such intimation to the employer does not amount to exercise of option by the concerned employee under section 115BAC(5). The concerned employee is required to exercise the option under section 115BAC(5) at the time of submission of his return of income (such option could be different from the intimation made to the employer).
3. If the above intimation is not made by the employee, the employer (or deductor) shall deduct tax at source ignoring the provisions of section 115BAC.

CASE STUDIES

The following case studies will give better understanding of the provisions of section 115BAC.

Question 1:

X (37 years) is a businessman. His income for the previous year 2021-22 from business is Rs. 14,00,000. Besides, he has interest on savings bank account of Rs. 21,000. He annually contributes Rs. 1,50,000 towards public provident fund. X wants to know whether he should opt for alternative tax regime from the assessment year 2022-23.

Answer:

Computation of income of X –

| | <i>Existing tax regime Rs.</i> | <i>Alternative tax regime Rs.</i> |
|---|--|---|
| Business income | 14,00,000 | 14,00,000 |
| Income from other sources (interest on saving bank account) | 21,000 | 21,000 |
| Gross total income | 14,21,000 | 14,21,000 |
| Less: Deductions | | |
| Under section 80C (PPF contribution) | 1,50,000 | Blocked |
| Under section 80TTA (interest on saving bank account) | 10,000 | Blocked |
| Net income | 12,61,000 | 14,21,000 |
| <i>Tax on net income</i> | | |
| Income-tax | 1,90,800 | 1,67,750 |
| Less: Rebate under section 87A (not available, net income is more than Rs. 5,00,000) | Nil | Nil |
| Tax after rebate under section 87A | 1,90,800 | 1,67,750 |
| Add: Surcharge | Nil | Nil |
| Income-tax and surcharge | 1,90,800 | 1,67,750 |
| Add: Health and education cess | 7,632 | 6,710 |
| Tax liability | 1,98,432 | 1,74,460 |

Tax liability of X is lower under the alternative tax regime. He may opt for it by uploading the option under section 115BAC(5) for the assessment year 2022-23. X has business income. X should note that the option once exercised shall apply to subsequent assessment years.

Question 2:

X (44 years) is a businessman. His business income as per profit and loss account for the year ending **March 31, 2022** is Rs. 71,88,000. **Debit side of the profit and loss account includes the following –**

- Contribution given to National Laboratory [for claiming deduction under section 35(2AA)]: Rs. 40,000.
- Revenue expenditure on scientific research related to the business of X [for claiming deduction under section 35(1)(i)]: Rs. 30,000.
- Cash payment of a bill: Rs. 35,000.

Credit side of the profit and loss account includes the following –

- Dividend from Indian companies : Rs. 95,000.
- Refund of income-tax pertaining to the assessment year 2017-18 (without interest): Rs. 2,000.

X is entitled to claim the following deductions (which are not debited to profit and loss account) under the existing tax regime for the current year -

- Additional depreciation: Rs. 60,000.
- Donation given to Prime Minister's Relief Fund: Rs. 20,000.
- Deduction available under section 80JJAA: Rs. 80,000.
- Deduction under sections 80C, 80D, 80E and 80EEB: Rs. 1,70,000.

X wants to know whether he should opt for alternative tax regime from the assessment year **2022-23**.

Answer:

| | <i>Existing tax regime Rs.</i> | <i>Alternative tax regime Rs.</i> |
|--|--|---|
| Net profit as per profit and loss account | 71,88,000 | 71,88,000 |
| Add: Contribution to National Laboratory | 40,000 | 40,000 |
| Add: Revenue expenditure on research | 30,000 | 30,000 |
| Add: Cash payment exceeding Rs. 10,000 | 35,000 | 35,000 |
| Less: Dividend from Indian companies | (-95,000) | (-95,000) |
| Less: Additional depreciation | (-60,000) | Blocked |
| Less: Income-tax refund | (-2,000) | (-2,000) |
| Total | 71,36,000 | 71,96,000 |
| Less: Deduction under section 35(1)(i) [revenue expenditure on scientific research] | (-30,000) | (-30,000) |
| Less: Deduction under section 35(2AA) [contribution to National Laboratory] | (-40,000) | Blocked |
| Business income | 70,66,000 | 71,66,000 |
| Income from other sources (being dividend income) | 95,000 | 95,000 |
| Gross total income | 71,61,000 | 72,61,000 |
| Less: Deductions | | |
| Under sections 80C, 80D, 80E and 80EB | 1,70,000 | Blocked |
| Under section 80G | 20,000 | Blocked |
| Under section 80JJAA | 80,000 | 80,000 |

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| | | |
|---|------------------|------------------|
| Net income | 68,91,000 | 71,81,000 |
| <i>Tax on net income</i> | | |
| Income-tax | 18,79,800 | 18,91,800 |
| Less: Rebate under section 87A (not available, net income is more than Rs. 5,00,000) | Nil | Nil |
| Tax after rebate under section 87A | 18,79,800 | 18,91,800 |
| Add: Surcharge | 1,87,980 | 1,89,180 |
| Income-tax and surcharge | 20,67,780 | 20,80,980 |
| Add: Health and education cess | 82,711 | 83,239 |
| Tax liability | 21,50,491 | 21,64,219 |

Tax liability of X is lower under the existing tax regime. Therefore, he is not advised to opt for the alternative tax regime. In the next year, he can compare the two calculations and decide whether (or not) the alternative tax regime is better.

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Question 3:

X (32 years) is a salaried employee, employed by A Ltd. as finance advisor. His income and tax incentives for the previous year **2021-22** are as follows –

| | Rs. |
|---|-------------|
| Basic salary | 40,00,000 |
| House rent allowance [out of Rs. 90,000, Rs. 60,000 is exempt under section 10(13A)] | 90,000 |
| Leave travel concession (LTC) [out of Rs. 1,95,000, Rs. 1,80,000 is exempt under section 10(5)] | 1,95,000 |
| NPS contribution by A Ltd. (12% of basic salary) | 4,80,000 |
| Payment of professional tax | 2,000 |
| Income from Property A (self-occupied) | (-)1,05,000 |
| Income from Property B (let out) | 60,000 |
| Income from Property C (let out) | (-)80,000 |
| Savings bank account interest received by minor son of X | 800 |
| Savings bank account interest received by minor daughter of X | 2,000 |
| Interest on savings bank account of X | 28,000 |
| Interest on public provident fund credited on March 31, 2022 | 3,55,000 |
| Interest credited to Sukanya Samriddhi Account in the name of minor daughter | 29,000 |
| Deductions under sections 80D, 80E, 80EEA, 80EEB and 80G | 2,81,000 |
| NPS contribution by X | 4,00,000 |
| PPF contribution by X | 20,000 |

X wants to know whether he should opt for alternative tax regime from the assessment year **2022-23**.

Answer:

| | Existing tax regime Rs. | Alternative tax regime Rs. |
|---|----------------------------|-------------------------------|
| Basic salary | 40,00,000 | 40,00,000 |
| House rent allowance | 90,000 | 90,000 |
| Exemption available under section 10(13A) | (-)60,000 | Blocked |
| Leave travel concession | 1,95,000 | 1,95,000 |
| Exemption available under section 10(5) | (-)1,80,000 | Blocked |
| NPS contribution by employer | 4,80,000 | 4,80,000 |
| Gross salary | 45,25,000 | 47,65,000 |
| Less: Standard deduction | (-)50,000 | Blocked |
| Less: Professional tax payment | (-)2,000 | Blocked |
| Income from salary | 44,73,000 | 47,65,000 |
| Income from self-occupied Property A | (-)1,05,000 | Blocked |
| Income from let out properties [Property B: Rs. 60,000 + Property C: Rs. (-)80,000] | (-)20,000 | Blocked |
| Income from other sources - | | |
| – Savings bank interest of minor son | 800 | 800 |
| – Less: Exemption under section 10(32) | (-) 800 | Blocked |

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| | | |
|---|------------------|------------------|
| – Savings bank interest of minor daughter | 2,000 | 2,000 |
| – Less: Exemption under section 10(32) | (–)1,500 | Blocked |
| – Saving bank interest of X | 28,000 | 28,000 |
| – Interest credited in PPF account of X | 3,55,000 | 3,55,000 |
| – Less: Exemption under section 10(11) | (–) 3,55,000 | (–) 3,55,000 |
| – Interest credited in Sukanya Samriddhi Account of minor daughter | 29,000 | 29,000 |
| – Less: Exemption under section 10(11A) | (–)29,000 | (–)29,000 |
| Gross total income | 43,76,500 | 47,95,800 |
| Less: Deductions | | |
| Under sections 80D, 80E, 80EEA, 80EEB and 80G | (–)2,81,000 | Blocked |
| Under section 80CCD(2) [i.e., employer's contribution towards NPS, subject to maximum of 10% (14% in the case of Central Government employees) of salary] | (–)4,00,000 | (–)4,00,000 |
| Under section 80CCD(1B) | (–)50,000 | Blocked |
| Under sections 80C and 80CCD(1) [section 80C : Rs. 20,000 + section 80CCD(1) : Rs. 3,50,000, subject to maximum of Rs. 1,50,000] | (–)1,50,000 | Blocked |
| Under section 80TTA | (–)10,000 | Blocked |
| Net income | 34,85,500 | 43,95,800 |
| Tax on net income | | |
| Income-tax | 8,58,150 | 10,56,240 |
| Less: Rebate under section 87A (not available, net income is more than Rs. 5,00,000) | Nil | Nil |
| Tax after rebate under section 87A | 8,58,150 | 10,56,240 |
| Add: Surcharge | Nil | Nil |
| Income-tax and surcharge | 8,58,150 | 10,56,240 |
| Add: Health and education cess | 34,326 | 42,250 |
| Tax liability | 8,92,476 | 10,98,490 |

Tax liability of X is lower under the existing tax regime. Therefore, he is not advised to opt for the alternative tax regime. In the next year, he can compare the two calculations and decide whether (or not) the alternative tax regime is better.

ALTERNATIVE TAX REGIME FOR RESIDENT CO-OPERATIVE SOCIETIES UNDER SECTION 115BAD:

Tax on certain resident co-operative societies

Currently, co-operative societies are taxable as per progressive tax slabs and the highest tax slab rate is 30 per cent which is applicable if income exceeds Rs. 20,000. Section 115BAD has been inserted with effect from the assessment year 2021-22 to provide new optional tax regime to resident co-operative societies.

Conditions and restrictions under section 115BAD

The following conditions should be satisfied in order to avail the benefit of lower tax under section 115BAD –

- **Resident co-operative society** – The assessee is a resident co-operative society.
- **A few incentives – Not available** – Total income of the resident co-operative society is computed without claiming additional depreciation under section 32(1)(iia) and deduction under sections 10AA, 32AD, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii)/35(2AA), 35AD, 35CCC, sections 80C to 80U [not being sections 80JJAA and 80LA(1A)]
- **Adjustment of losses** – The total income of the resident co-operative society is calculated without adjusting brought forward loss (and / or depreciation) from any earlier year (if such loss/depreciation pertains to any deduction under the aforesaid sections).
- **Adjustment of depreciated value of block of assets** – Brought forward loss/depreciation, as mentioned above, shall be deemed to have been given full effect to and no further deduction for such loss/depreciation shall be allowed for any subsequent year. Where, however, unadjusted additional depreciation in respect of a block of assets has not been given full effect to prior to the assessment year 2021-22, corresponding adjustment shall be made to the written down value of such block as on April 1, 2020 in the prescribed manner (if option is exercised for the lower tax regime under section 115BAD for the assessment year 2021-22).
- **Depreciation** – Total income of the resident co-operative society is calculated after claiming depreciation (other than additional depreciation) in such manner as may be prescribed.
- **Alternate minimum tax not applicable** - Alternate minimum tax (AMT) under section 115JC is not applicable if the cooperative society opts for the alternative tax regime under section 115BAD. Consequently, AMT tax credit of earlier years cannot be adjusted against the tax liability which is computed under section 115BAD.

TAX RATE

If the aforesaid conditions are satisfied, income of the resident co-operative society will be taxable at the rate of 22 per cent (+SC + HEC). If such resident co-operative society has other incomes which are taxable under other provisions of Chapter XII (i.e., sections 110 to 115BBG but other than section 115BAD), then tax on such other incomes will be calculated as per the rate(s) specified by these sections and balance amount of income will be taxable under section 115BAD at the rate of 22 per cent.

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- **Surcharge and education cess** – In the case of a resident co-operative society whose income is taxable under section 115BAD, income-tax computed at the rates given above shall be increased by surcharge at the rate of 10 per cent of income-tax (irrespective of quantum of income). Health and education cess is applicable at the rate of 4 per cent of income-tax and surcharge.

Option [Sec. 115BAD(5)]

A resident co-operative society (which wants to avail the benefit of lower rate under the alternative tax regime of section 115BAD) is required to upload an option in prescribed mode on or before the due date of submission of return of income. Option can be exercised for any previous year relevant to the assessment year 2021-22 (or any subsequent year). Once the resident co-operative society has exercised the option of lower tax regime under section 115BAD for any previous year, it remains valid for subsequent years (the assessee is not required to upload a fresh option in the next year or subsequent years and it cannot be withdrawn in subsequent years).

CHAPTER 56. EQUALISATION LEVY

SECTION 40(a)(ib): NON-COMPLIANCE WITH THE PROVISIONS OF EQUALISATION LEVY (ADDED BY FINANCE ACT, 2016)

Any consideration paid or payable to a non-resident for a specified service on which Equalisation Levy is deductible under the provisions of Chapter VIII of the Finance Act, 2016, and such levy has not been deducted or after deduction, has not been paid on or before the due date specified in section 139(1):

Provided that where in respect of any such consideration, the Equalisation Levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid.

SECTION 10(50): INCOME EXEMPT FROM TAX

Any income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force *or arising from any e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2021* and chargeable to equalisation levy under that Chapter.

AMENDMENT MADE BY FINANCE ACT 2021:

Amendment to section 10(50)

Section 10(50) has been amended with effect from the assessment year 2021-22 as follows –

- *It has been clarified that provisions of section 10(50) will apply for the e-commerce supply or services made or provided or facilitated on or after April 1, 2020.*
- *Further, it has been clarified that exemption under section 10(50) shall not include and shall never be deemed to have included any income which is chargeable to income-tax as royalty or fees for technical services in India, read with the agreement notified by the Central Government under section 90 or section 90A.*

Explanation. — For the purposes of this clause, "specified service" shall have the meaning assigned to it in Chapter VIII of the Finance Act, 2016.

ANALYSIS

1. Facebook, Google, Yahoo, etc. are non-residents and do not have a permanent establishment in India, (i.e., do not have a fixed place of business in India through which they carry on business).

A large number of:

- (a) persons resident in India and carrying on business or profession; and
- (b) non-residents having permanent establishment (fixed place of business) in India make payments to Facebook, Google, Yahoo, etc. for online advertisement and digital marketing. The above payers claim deduction of advertisement expenses as business expenditure. The amount received by Facebook, Google, Yahoo, etc. is not taxable in India as per Double Taxation Avoidance Agreements since they do not have any PE in India. If they

Equalisation Levy

had any PE in India, then the amount received by Facebook, Google, Yahoo, etc. would have been taxable in India as per relevant DTAA (**Refer Article 7 of DTAA in the Chapter of Model Tax Convention**).

Now Indian tax authorities are losing revenues since the payer gets the deduction of amount paid by him and the amount received by Facebook, Google, Yahoo, etc. is not taxable in India.

In light of this, the Finance Act, 2016 has introduced the concept of EQUALISATION LEVY to get revenue.

2. The provisions of Equalization Levy are contained in Chapter VIII of Finance Act, 2016 and this Chapter has come into force w.e.f. 1-6-2016. Therefore, any amount payable to Facebook, Google, Yahoo, etc. on or after 1-6-2016 is subject to Equalization Levy.
3. The following words have been defined in Chapter VIII relating to EQUALISATION LEVY.
 - (a) **"equalisation levy"** means the tax leviable on consideration received or receivable for any specified service under the provisions of this Chapter;
 - (b) **"online"** means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network;
 - (c) **"permanent establishment"** includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;
 - (d) **"specified service"** means **online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement** and includes any other service as may be notified by the Central Government in this behalf;
4. Section 165 of Chapter VIII which provides for Charge of Equalisation Levy states as under:

| |
|---|
| SECTION 165: CHARGE OF EQUALISATION LEVY |
|---|

- (1) On and from 1-6-2016, there shall be charged an Equalisation Levy **at the rate of six per cent** of the amount of consideration for any **specified service received or receivable by a person, being a non-resident** from—
 - (i) a person resident in India and carrying on business or profession; or
 - (ii) a non-resident having a permanent establishment in India.
- (2) The Equalisation Levy under sub-section (1) 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.**

5. Section 166, Section 170 and Section 171 of Chapter VIII provides as under:

SECTION 166: COLLECTION AND RECOVERY OF EQUALISATION LEVY

- (1) Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India (here in this Chapter referred to as assessee) shall deduct the Equalisation Levy from the amount paid or payable to a non-resident in respect of the specified service at the rate specified in section 165, if the aggregate amount of consideration for specified service in a previous year **exceeds one lakh rupees.**
- (2) The Equalisation Levy so deducted during any calendar month in accordance with the provisions of sub-section (1) shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.
- (3) Any assessee who fails to deduct the levy in accordance with the provisions of sub-section (1) shall, notwithstanding such failure, be liable to pay the levy to the credit of the Central Government in accordance with the provisions of sub-section (2).

SECTION 170: INTEREST ON DELAYED PAYMENT OF EQUALISATION LEVY

Every assessee, who fails to credit the Equalisation Levy or any part thereof as required under section 166 to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one per cent of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

SECTION 171: PENALTY FOR FAILURE TO DEDUCT OR PAY EQUALISATION LEVY

Any assessee who—

- (a) fails to deduct the whole or any part of the Equalisation Levy as required under section 166; or
- (b) having deducted the equalisation levy, fails to pay such levy to the credit of the Central Government in accordance with the provisions of sub-section (2) of that section,

shall be liable to pay,—

- (i) in the case referred to in clause (a), in addition to paying the levy in accordance with the provisions of sub-section (3) of that section, or interest, if any, in accordance with the provisions of section 170, a penalty equal to the amount of Equalisation Levy that he failed to deduct; and
- (ii) in the case referred to in clause (b), in addition to paying the levy in accordance with the provisions of sub-section (2) of that section and interest in accordance with the provisions of section 170, a penalty of one thousand rupees for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of Equalisation Levy that he failed to pay.

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6. If a resident in India makes payment of **Rs. 10,00,000** to Google on or after 1-6-2016, then he is required to deduct 6% Equalisation Levy and remit **Rs. 9,40,000** to Google. As per section 40(a)(ib), **Rs. 10,00,000** is deductible to Indian resident if he deducts **Rs. 60,000** Equalisation Levy in previous year **31-3-2022** and pays **Rs. 60,000** to Govt, by due date of filing of return i.e., **31-7-2022 or 31-10-2022 or 30-11-2022** as the case may be. Such deduction of **Rs. 10,00,000** shall be allowed in previous year **31-3-2022**.
7. As per section 10(50), amount of 10,00,000 received by Google is exempt income in its hands.
8. Practically, Google will insist on payment of **Rs. 10,00,000** without deduction of Equalisation Levy. In such a case, the resident will have to do grossing up as under:
 $10,00,000 \times 100 / 94 = 10,63,830$

The resident will show that a payment of **Rs. 10,63,830** is due to Google and he will deduct 6% of **Rs. 10,63,830** i.e., **Rs. 63,830** as Equalisation Levy and remit **Rs. 10,00,000** to Google. The resident will get deduction of **Rs. 10,63,830** if he deducts Equalisation Levy in Previous Year **31-3-2022** and pays the same on or before due date of filing of Return of Income.

Rs. 10,63,830 is exempt from tax in India under section 10(50) in the hands of Google.

AMENDMENT MADE BY FINANCE ACT 2020

EQUALISATION LEVY ON E-COMMERCE SUPPLY OR SERVICES [SEC. 165A OF THE FINANCE ACT, 2016]

Equalisation levy has been imposed on e-commerce supply or services as follows –

DEFINITIONS:

e-Commerce operator – It means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

e-Commerce supply or services – It means –

- a. **online sale of goods** owned by the e-commerce operator; **or**
- b. **online provision of services** provided by the e-commerce operator; **or**
- c. online sale of goods or provision of services facilitated by the e-commerce operator; **or**
- d. any combination of the above 3 activities.

AMENDMENT MADE BY FINANCE ACT 2021:

• **Definition of “online sale of goods” and “online provision of services”** - An Explanation has been inserted in section 164(cb) of the Finance Act, 2016 (with effect from April 1, 2020) to provide that for the purposes of defining e-commerce supply or service, “online sale of goods” and “online provision of services” shall include one or more of the following

Equalisation Levy

activities taking place online -

- *acceptance of offer for sale;*
- *placing the purchase order;*
- *acceptance of the Purchase order;*
- *payment of consideration; or*
- *supply of goods or provision of services, partly or wholly.*

CHARGE OF EQUALISATION LEVY (SEC 165A)

With effect from **April 1, 2020**, equalisation levy shall be charged at the rate of 2 per cent of the amount of “**consideration received / receivable by an e-commerce operator from e-commerce supply of goods / services**” made (or provided or facilitated) by it –

- a. to a person resident in India; **or**
- b. to a non-resident in the “specified circumstance”; **or**
- c. to a person who buys such goods / services using internet protocol (IP) address located in India.

• **Specified circumstances** – For the above purpose, “specified circumstances” mean –

- a. sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through IP address located in India; **and**
- b. sale of data collected from a person who is resident in India or from a person who uses IP address located in India.

AMENDMENT MADE BY FINANCE ACT 2021:

Consideration received or receivable from e-commerce supply or services shall include—

- (i) *consideration for sale of goods irrespective of whether the e-commerce operator owns the goods, so, however, that it shall not include consideration for sale of such goods which are owned by a person resident in India or by a permanent establishment in India of a person non-resident in India, if sale of such goods is effectively connected with such permanent establishment.*
- (ii) *consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator, so, however, that it shall not include consideration for provision of services which are provided by a person resident in India or by permanent establishment in India of a person non-resident in India, if provision of such services is effectively connected with such permanent establishment.*

• **When levy is not applicable** – In the following cases, levy is not applicable -

- a. where the e-commerce operator making supply of goods / services has a permanent establishment (PE) in India and such e-commerce supply is effectively connected with such PE;
- b. where equalization levy is levied under the provisions given under section 165 of the Finance Act, 2016; **or**
- c. sales / turnover / gross receipts of the e-commerce operator from e-commerce supply of goods / services made (or provided or facilitated) is less than Rs. 2 crores during the previous year.

COLLECTION, RECOVERY AND OTHER PROCEDURE –

The above equalization levy shall be paid by every e-commerce operator to the credit of Central Government quarterly as follows–

- For the quarter ending June 30 of the financial year: On or before July 7 of the financial year.
- For the quarter ending September 30 of the financial year: On or before October 7 of the financial year.
- For the quarter ending December 31 of the financial year: On or before January 7 of the financial year.
- For the quarter ending March 31 of the financial year: On or before March 31 of the financial year.

• **Furnishing of statement** – Every e-commerce operator (covered by the above provisions) shall furnish a statement electronically within a specified time in a specified form in respect of e-commerce supply of goods/ services during the financial year.

• **Interest** – Same as Online Advertisement.

• **Penalty** – The e-commerce operator shall be liable for penalty as follows –

| Different situations | Penalty (in addition to paying equalization levy and interest) |
|---|--|
| Failure to pay equalization levy (wholly or partly) | A penalty equal to amount of equalization levy |
| Failure to furnish statement | Rs. 100 for each day of default |

Penalty is not impossible if the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause for the failure given above.

Income-tax exemption [Sec. 10(50)] – Section 10(50) has been amended (with effect from the assessment year 2021-22) to provide that income arising from any e-commerce supply or services made (or provided or facilitated) on or after April 1, 2020 is exempt from income-tax in the hands of e-commerce operator. (**Finance Act 2021**)

AMENDMENT MADE BY FINANCE ACT 2021:

Equalisation levy not to apply in the case of royalty or fees for technical services - An Explanation has been inserted in section 163 of the Finance Act, 2016 (with effect from April 1, 2020), so as to clarify that consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which is taxable as royalty or fees for technical services in India under the Income-tax Act, read with ADT agreement notified by the Central Government under section 90/90A of the Income-tax Act.

Question 1: Tanzon Web is owned by Tanzon Inc., USA. It provides online marketplace for goods/services and mainly targets customers in India and other Asian and African countries. Inventory of individuals/companies / firms of goods/supply are sold through Tanzon Web. Generally, sale proceeds are collected by Tanzon which are later on remitted to suppliers after deducting agreed commission. Besides, advertisement facility is provided by Tanzon

Equalisation Levy

against fixed charges. The following information is noted from the records of Tanzon Inc. for the financial year **2021-22** –

| (Rs. in crore) | | | | | |
|----------------|---|--------------|--------------|------------|-----------|
| | | Case 1 | Case 2 | Case 3 | Case 4 |
| 1. | Goods sold [or service provided (other than advertisement service)] to persons resident in India (or to persons using IP address in India) | 0.6 | 0.6 | 19 | 12 |
| 2. | Service provided to persons resident in India by way of sale of online advertisement - | | | | |
| | 2.1 When amount of bill (or aggregate amount of bills) to a recipient of service during the financial year does not exceed Rs. 1 lakh per recipient of service (amount of all bills issued to such recipients is given →) | 0.3 | 0.1 | 2 | 3 |
| | 2.2 When amount of bill (or aggregate amount of bills) to a recipient of service during the financial year exceeds Rs. 1 lakh per recipient of service (amount of all bills issued to such recipients is given →) | Nil | 0.4 | Nil | 10 |
| 3. | Service provided to non-residents by way of sale of online advertisements which target Indian customers | 0.8 | 0.8 | 9 | 18 |
| | Total of (1) + (2.1) + (2.2) + (3) | 1.7 | 1.9 | 30 | 43 |
| 4. | Goods sold/ service provided to non-residents (not covered by above data and not covered by section 165/165A of the Finance Act, 2016) | 100 | 150 | 96 | 10 |
| | Total of (1) + (2.1) + (2.2) + (3) + (4) | 101.7 | 151.9 | 126 | 53 |

Tanzon Inc. wants to know tax consequences in India pertaining to above information in the following situations –

SITUATION 1 – Tanzon Inc. has PE in India and the above activities are effectively connected with such Indian PE.

SITUATION 2 – Tanzon Inc. does not have any PE in India.

Answer:

SITUATION 1 – If Tanzon Inc. has PE in India and e-commerce supply or services is effectively connected with such PE, then the provisions of equalisation levy (as given by section 165/165A of the Finance Act, 2016) are not applicable. Consequently, in Situation 1, equalisation levy is not applicable and income of India PE of Tanzon Inc. from the above activities shall be calculated under normal provisions of the Income-tax Act. However, tax is deductible by Tanzon Inc. within the parameters of section 194-O in respect of consideration paid or payable (pertaining to the above activities) to a person resident in India.

Equalisation Levy

SITUATION 2- In Situation 2, equalisation levy is applicable as follows –

Equalisation levy at the rate of 6% under section 165 of the Finance Act, 2016 –

Every resident person shall deduct equalisation levy at the rate of 6% (with effect from June 1, 2016) from amount paid / payable to e-commerce operator pertaining to activities given under section 165 of the Finance Act, 2016 [i.e., activities given in point 2.2 in the above case study]. However, equalisation levy at the rate of 6% is deductible only if aggregate consideration (of one or more bills during the financial year) exceeds Rs. 1 lakh. In such a case, income from this activity is exempt from income-tax in the hands of e-commerce operator under section 10(50) with effect from June 1, 2016.

Equalisation levy at the rate of 2% under section 165A of the Finance Act, 2016 –

Equalisation levy shall be charged at the rate of 2% (with effect from the assessment year **2021-22**) of the amount of consideration received/receivable by an e-commerce operator from e-commerce supply or services made by it to persons given under section 165A of the Finance Act, 2016 [i.e., activities given in Points 1, 2.1 and 3 in the above case study]. However, the equalisation levy at the rate of 2% is chargeable only if the aggregate turnover / gross receipts of the e-commerce operator [from transactions given in Points 1, 2.1, 2.2 and 3] is Rs. 2 crore or more during the financial year. In such a case, income of the e-commerce operator is exempt from income-tax under section 10(50) with effect from the assessment year **2021-22** (in respect of e-commerce supply or service made or provided on or after **April 1, 2020**).

Double equalisation levy, not possible –

Equalisation of levy at the rate of 2% under section 165A of the Finance Act, 2016 is not chargeable if the person making payment to e-commerce operator, is liable to deduct 6% equalisation levy under section 165 of the Finance Act, 2016 [i.e., activities given in Point 2.2].

Tax deduction under section 194-O –

Tax is deductible by Tanzon Inc. within the parameters of section 194-O in respect of consideration paid or payable (pertaining to the above activities) to a person resident in India.

Keeping in view the above legal provisions, tax consequences in Situation 2 are as follows –

| | (Rs. in crore) | | | |
|---|----------------|--------|--------|--------|
| | Case 1 | Case 2 | Case 3 | Case 4 |
| <u>Equalisation levy @ 6% -</u> It is deductible under section 165 of the Finance Act, 2016 by a resident person out of consideration paid or payable by him / it to e-commerce operator (i.e., Point 2.2) - | | | | |
| – Is it applicable | No | Yes | No | Yes |
| – Amount deductible as equalization levy (6% of Point 2.2) | NA | 0.024 | NA | 0.60 |
| – Whether income-tax exemption is available to e-commerce operator pertaining to income from activities given under Point 2.2 | NA | Yes | NA | Yes |
| <u>Equalisation levy @ 2% -</u> It is chargeable under | | | | |

Equalisation Levy

| | | | | |
|---|----|----|-----|------|
| section 165A of the Finance Act, 2016 and payable by e-commerce operator if its turnover from activities given under Points 1 to 3 is Rs. 2 crore or more in a financial year - | | | | |
| – Is it applicable | No | No | Yes | Yes |
| – Amount chargeable as equalization levy in the hands of e-commerce operator [2% of (Points 1 + 2.1 + 3)] | NA | NA | 0.6 | 0.66 |
| – Whether income-tax exemption is available to e-commerce operator pertaining to income from activities given under Points 1, 2.1 and 3 | No | No | Yes | Yes |

Notes –

1. When equalization levy is not applicable under section 165/165A of the Finance Act, 2016, income of e-commerce operator shall be calculated under normal provisions of the Income-tax Act.
2. Apart from equalization levy at the rate of 2% under section 165A of the Finance Act, 2016, Tanzon Inc. is required to deduct tax at source from the gross amount of consideration paid or payable to resident e-commerce participants. Tax is deductible by Tanzon Inc. even if it has a PE in India and the above activities are effectively connected with such PE.

Summary of provisions relating to Equalisation Levy and TDS on E-commerce Transactions

| Particulars | Section 165 of the Finance Act, 2016 | Section 165A of the Finance Act, 2016 | Section 194-O of the Income-tax Act, 1961 |
|---|---|---|---|
| Nature of levy/ deduction | Equalisation Levy | Equalisation Levy | TDS under the Income-tax Act, 1961 |
| Chargeability of EL/ Deductibility of income-tax | On consideration received or receivable by an assessee, being a non-resident (NR), for specified services | On consideration received or receivable by an E-commerce Operator, being a non-resident owning, operating or managing digital or electronic facility or platform for online sale of goods or online provision of services or both, for e-commerce supply or services made or provided or facilitated on or after 1.4.2020 | Where sale of goods or provision of services of an e-commerce participant (being a person resident in India selling goods or providing services or both, including digital products) is facilitated by an e-commerce operator through its digital or electronic facility or platform, such e-commerce operator is liable to deduct tax at source from 1.10.2020 at the time |

| | | | |
|--|--|--|--|
| | | | of credit or payment, whichever is earlier. |
| Rate | 6% | 2% | 1% |
| Person responsible for paying/ deducting | Every person, being a resident and carrying on business or profession or a non-resident having a PE in India | An e-Commerce Operator, being a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both | An e-commerce operator shall be the person responsible for paying to the resident e-commerce participant. Further, wherever the purchaser of goods or service recipient (eg. end customer) directly makes any payment to the e-commerce participant, then, in such cases, such payments shall be deemed to have been made by the e-commerce operator to the resident e-commerce participant and accordingly, deduction has to be made by the e-commerce operator. |
| Consideration on which EL is chargeable/ income-tax is deductible | The amount of consideration for specified service received or receivable by a person, being a NR from - (a) a person resident in India and carrying on business or profession; or (b) a NR having a PE in India. | The amount of <i>consideration received or receivable by an e-commerce operator from e-commerce supply or services</i> made or provided or facilitated by it— (1) to a person resident in India; or (2) to a NR in the specified circumstances, namely – (i) sale of advertisement (advt), which targets a customer, who is resident in India or a customer who | Gross amount of sale or services or both. |

| | | | |
|---|--|--|--|
| | | <p>accesses the advt through internet protocol address (IPA) located in India; and</p> <p>(ii) sale of data, collected from a person who is resident in India or from a person who uses IPA located in India; or</p> <p>(3) to a person who buys such goods or services or both using IPA located in India.</p> | |
| Meaning of certain terms | <p>“Specified Services” means-</p> <p>(i) Online advt;</p> <p>(ii) Any provision for digital advertising space or any other facility or service for the purpose of online advt;</p> <p>(iii) Any other service as may be notified by the Central Government.</p> <p>Note – ‘Online’ means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network.</p> | <p>“E-Commerce Supply or Services” mean –</p> <p>(i) <i>online sale of goods</i> owned by the e-commerce operator; or</p> <p>(ii) <i>online provision of services</i> provided by the e-commerce operator; or</p> <p>(iii) <i>online sale of goods or provision of services</i> or both, facilitated by the e-commerce operator; or</p> <p>(iv) any combination of activities listed in clause (i), (ii) or clause (iii).</p> | <p>“Services” include fees for technical and fees for professional services as defined u/s 194J of the Income-tax Act, 1961.</p> |
| Non-chargeability of EL / Non-deduction of tax at source | <p>EL is not chargeable, where –</p> <p>(a) the NR providing the specified service has a PE in India and the specified service is</p> | <p>EL is not chargeable where –</p> <p>(a) where the e-commerce operator making or providing or facilitating e-</p> | <p>No tax is required to be deducted u/s 194-O in case of any sum credited or paid to an e-commerce participant, being an individual or HUF,</p> |

| | | | |
|--|---|---|--|
| | <p>effectively connected with such PE;</p> <p>(b) the aggregate amount of consideration for specified service received or receivable in a PY by the NR from a person resident in India and carrying on business or profession, or from a NR having a PE in India, does not exceed Rs. 1 lakh; or</p> <p>(c) where the payment for the specified service by the person resident in India, or the PE in India is not for the purposes of carrying out business or profession.</p> | <p>commerce supply or services has a PE in India and such e-commerce supply or services is effectively connected with such PE;</p> <p>(b) where the EL is leviable u/s 165; or</p> <p>(c) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than Rs. 2 crores during the PY.</p> | <p>where the gross amount of such sale or services or both during the previous year does not exceed Rs. 5 lakh and such e-commerce participant has furnished his PAN/ Aadhaar number to e-commerce operator.</p> |
|--|---|---|--|

CHAPTER 58. TAX RATES

TAX RATES APPLICABLE FOR A.Y. 2022-2023

(A) INDIVIDUALS, HINDU UNDIVIDED FAMILIES, AOP'S, BOI'S, ETC -

The rates applicable for the assessment year **2022-23** are as follows:

✓ **For Individuals / HUFs / AOPs / BOIs etc.:**

| S L A B S | Senior Citizens | Super Senior Citizens | Others | Basic Tax Rate (%) of Net Taxable Income |
|-----------------------|--|---|---|---|
| | Resident Individuals of 60 Years but not more than 80 years at any time during the PY | Resident Individuals of 80 Years and Above at any time during the PY | Other Individuals, HUFs, AOPs, BOIs etc. (R and NR) | |
| | Up to 3,00,000 | Up to 5,00,000 | Up to 2,50,000 | |
| | 3,00,001 to 5,00,000 | | 2,50,001 to 5,00,000 | |
| | 5,00,001 to 10,00,000 | 5,00,001 to 10,00,000 | 5,00,001 to 10,00,000 | |
| | Above 10,00,000 | Above 10,00,000 | Above 10,00,000 | |
| | | | | NIL |
| | | | | 5% |
| | | | | 20% |
| | | | | 30% |

The rates of surcharge applicable for **A.Y.2022-23** are as follows:

Individual/HUF/AOP/BOI/Artificial juridical person

| | Particulars | Rate of surcharge on income- tax | Example | |
|-------|---|--|---|--|
| | | | Components of Total Income | Applicable rate of surcharge |
| (i) | Where the total income (including income under section 111A ,112A & Dividend) > Rs. 50 lakhs but is ≤ Rs. 1 crore | 10% | <ul style="list-style-type: none"> STCG u/s 111A Rs. 10 lakhs; LTCG u/s 112A Rs. 5 lakhs; and Other income Rs. 40 lakhs | Surcharge would be levied@10% on income-tax computed on total income of Rs. 55 lakhs. |
| (ii) | Where total income (including income under section 111A ,112A & Dividend) > Rs. 1 crore but is ≤ Rs. 2 crores | 15% | <ul style="list-style-type: none"> STCG u/s 111A Rs. 20 lakhs; LTCG u/s 112A Rs. 25 lakhs; and Other income Rs. 80 lakhs | Surcharge would be levied@15% on income-tax computed on total income of Rs. 1.25 crores. |
| (iii) | Where total income (excluding income under section 111A , 112A & Dividend) > Rs. 2 crore but is ≤ Rs. 5 crore | 25% | <ul style="list-style-type: none"> STCG u/s 111A Rs. 24 lakhs; LTCG u/s 112A Rs. 25 lakhs; and Other income Rs. 3 crores | Surcharge would be levied @15% on income-tax on: |
| | Rate of surcharge on the income-tax | 15% | | <ul style="list-style-type: none"> STCG of Rs. 24 lakhs chargeable to tax u/s 111A; and LTCG of Rs. 25 lakhs chargeable to |
| | payable on the portion of | | | |

| | | | | |
|------|---|-----|---|---|
| | income chargeable to tax under section 111A and 112A | | | tax u/s 112A. Surcharge@25% would be leviable on income-tax computed on other income of Rs. 3 crores included in total income |
| (iv) | Where total income (excluding income under section 111A, 112A & Dividend) > Rs. 5 crore | 37% | <ul style="list-style-type: none"> • STCG u/s 111A Rs. 40 lakhs; • LTCG u/s 112A Rs. 55 lakhs; and • Other income Rs. 6 crores | Surcharge@15% would be levied on income-tax on: |
| | Rate of surcharge on the income-tax payable on the portion of income chargeable to tax under section 111A and 112A | 15% | | <ul style="list-style-type: none"> • STCG of Rs. 40 lakhs chargeable to tax u/s 111A; and • LTCG of Rs. 55 lakhs chargeable to tax u/s 112A. Surcharge@37% would be leviable on the income-tax leviable on other income included in total income. |
| (v) | Where total income (including income under section 111A, 112A & Dividend) > Rs. 2 crore in cases not covered under (iii) and (iv) above | 15% | <ul style="list-style-type: none"> • STCG u/s 111A Rs. 40 lakhs; • LTCG u/s 112A Rs. 55 lakhs; and • Other income Rs. 1.30 crore | Surcharge would be levied@15% on income-tax computed on total income of Rs. 2.25 crore. |

⇒ **Health & Education Cess:** @ 4% leviable on {tax plus surcharge}

⇒ **Rebate u/s 87A:** In case of Resident Individual, whose total income does not exceed Rs.5,00,000, there shall be allowed a rebate of –

(a) 100% of the Income Tax; or

(b) Rs. 12,500

Whichever is less from the amount of Income Tax.

Note: The above tax rate is one of the options for Individual's & HUF's. The second option is given in sec 115BAC which is introduced by Finance Act 2020. We have already discussed that in Chapter No-_____.

Clarification regarding attaining prescribed age of 60 years/ 80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April [Circular No. 28/2016, dated 27.07.2016]

An individual who is resident in India and of the age of 60 years or more (senior citizen) and 80 years or more (very senior citizen) is eligible for a higher basic exemption limit of Rs. 3,00,000 and Rs. 5,00,000, respectively.

The contentious issue is regarding the attainment of the aforesaid qualifying ages for availing higher basic exemption limit in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have completed a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

The Supreme Court had an occasion to consider a similar issue in the case of Prabhu Dayal Sesma vs. State of Rajasthan & another 1986, AIR, 1948 wherein it has dealt with on the general rules to be followed for calculating the age of the person. The Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the day preceding, the anniversary of his birthday. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

The CBDT has, vide this Circular, clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would be decided on the basis of above criteria.

Therefore, a resident individual whose 60th birthday falls on **1st April, 2022**, would be treated as having attained the age of 60 years in the **P.Y.2021-22**, and would be eligible for higher basic exemption limit of Rs. 3 lakhs in computing his tax liability for **A.Y.2022-23**. Likewise, a resident individual whose 80th birthday falls on **1st April, 2022**, would be treated as having attained the age of 80 years in the **P.Y.2021-22**, and would be eligible for higher basic exemption limit of Rs. 5 lakhs in computing his tax liability for **A.Y.2022-23**.

- **Alternate minimum tax** – Tax payable by a non-corporate assessee cannot be less than 18.5 per cent (+ SC+ HE CESS) of “adjusted total income” as per section 115JC.
9 per cent for UNIT located in IFSC subject to some conditions.

(B) **PARTNERSHIP FIRM (INCLUDING LLP)**

A firm is taxable at the rate of 30 per cent for the assessment year **2022-23**.

Surcharge – Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a person having a net income of exceeding Rs. 1 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

Health & Education cess – It is 4 per cent of income-tax and surcharge.

- **Alternate minimum tax** – Tax payable by a non-corporate assessee cannot be less than 18.5 per cent (+ SC+HE CESS) of “adjusted total income” as per section 115JC.
9 per cent for UNIT located in IFSC subject to some conditions.

(C) COMPANIES –

For the assessment years **2021-22** and **2022-23** the following rates of income-tax are applicable:

| Company | Rate of Income-tax (per cent) | |
|--|-------------------------------------|--|
| | Assessment year 2021-22 (Last year) | Assessment year 2022-23 (Current year) |
| In the case of a domestic company - | | |
| - where its total turnover or gross receipt during the previous year 2018-19 does not exceed Rs. 400 crores | 25 | NA |
| - where its total turnover or gross receipt during the previous year 2019-20 does not exceed Rs. 400 crores | NA | 25 |
| - any other domestic company | 30 | 30 |
| In the case of a foreign company- | 40 | 40 |

Surcharge – Surcharge is applicable at the rates given below –

| | If net income does not exceed Rs. 1 crore | If net income is in the range of Rs. 1 crore – Rs. 10 crore | If net income exceeds Rs. 10 crore |
|------------------|---|---|------------------------------------|
| Domestic company | Nil | 7%* | 12%** |
| Foreign company | Nil | 2%* | 5%** |

*** Marginal relief –** In the case of a company having a net income of exceeding Rs. 1 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

****Marginal relief –** In the case of a company having a net income of exceeding Rs. 10 crores, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 10 crores by more than the amount of income that exceeds Rs. 10 crores.

Health & Education cess – It is 4 per cent of income-tax and surcharge.

MINIMUM ALTERNATE TAX – The following rate of minimum alternate tax shall be applicable –

MAT Rate = 15 % of Book Profit.

9 per cent for UNIT located in IFSC subject to some conditions.

Surcharge – Surcharge is applicable at the rates given below –

| | If Book Profit does not exceed Rs. 1 crore | If Book Profit is in the range of Rs. 1 crore – Rs. 10 crore | If Book profit exceeds Rs. 10 crore |
|------------------|--|--|-------------------------------------|
| Domestic company | Nil | 7% | 12% |
| Foreign company | Nil | 2% | 5% |

Health & Education cess – It is 4 per cent of income-tax and surcharge.

(D) CO-OPERATIVE SOCIETIES – The following rates are applicable to a co-operative society for the assessment year **2022-23** – (Per cent)

| Total Income range | Rate of income-tax |
|-------------------------|--------------------|
| Up to Rs. 10,000 | 10 |
| Rs. 10,000 – Rs. 20,000 | 20 |
| Above Rs. 20,000 | 30 |

Surcharge – Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a person having a net income of exceeding Rs. 1 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

Note: The above tax rate is one of the options for Resident Cooperative Society. The second option is given in sec 115BAD which is introduced by Finance Act 2020. We have already discussed that in Chapter No-_____.

Health & Education cess – It is 4 per cent of income-tax and surcharge.

- **Alternate minimum tax –** Tax payable by a non-corporate assessee cannot be less than 18.5 per cent (+ SC+ HE CESS) of “adjusted total income” as per section 115JC
9 per cent for UNIT located in IFSC subject to some conditions.

Note: However, in case of Cooperative Society covered u/s 80P, AMT is not applicable.

(E) LOCAL AUTHORITIES –

Local authorities are taxable at the rate of 30 per cent.

Surcharge – Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a person having a net income of exceeding Rs. 1 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

Health & Education cess – It is 4 per cent of income-tax and surcharge.

- **Alternate minimum tax –** Tax payable by a non-corporate assessee cannot be less than 18.5 per cent (+ SC+ HE CESS) of “adjusted total income” as per section 115JC
9 per cent for UNIT located in IFSC subject to some conditions.

TAX RATES FOR CAPITAL GAINS INCOME:

| STCG | | LTCG | |
|-------------------------------|---|--|---|
| STCG u/s 111A taxed at 15% | Other STCG taxed at Normal Tax Rate | LTCG u/s 112A taxed at 10% subject to exemption of Rs. 1,00,000/- | Other LTCG u/s 112 (See Note Below) |

NOTE: OTHER LTCG TAXED AS PER SEC 112:

| | Person | Rate of tax | Particulars | |
|----|--|----------------|---|--|
| 1. | Resident persons, other than companies | | | In case of transfer of listed securities (other than units) and Zero Coupon Bonds, LTCG would be taxable at the lower of the following rates – (1) 10% without indexation benefit; and (2) 20% with indexation benefit. |
| | Resident Individuals and HUFs | 20% | Unexhausted basic exemption limit can be exhausted against LTCG taxable u/s 112 | |
| | Resident AOPs and BOIs | 20% | Unexhausted basic exemption limit cannot be adjusted against LTCG taxable u/s 112 | |
| | Resident Firms and LLPs | 20% | | |
| 2. | Domestic companies | 20% | | |
| 3. | Non-corporate non- residents and foreign companies | 20% | Capital assets, other than unlisted securities or shares of closely held companies | |
| | | 10% | Unlisted securities or shares of closely held companies (without benefit of indexation or foreign currency fluctuation) | |

CHAPTER 59 – LIST OF IMPORTANT SECTIONS & SPECIAL TAX RATES

| Sections | Particulars |
|--------------------|---|
| 1) 2(11) | <i>Block of Asset (FA 2021 amendment)</i> |
| 2) 28(ii)(e) | Compensation received on termination/modification of Business Contract |
| 3) 28(va) | Non - Compete Fees from Business/Profession |
| 4) 28(iv) | Value of benefit / perquisite arising from Business/Profession |
| 5) 32(1)(iia) | Additional depreciation [20%, 35%] |
| 6) 43(3) | Meaning of Plant (excludes.....) |
| 7) 43(6) | WDV (Explanation 3 & 7) |
| 8) 43(1) | Actual cost (Explanation 3, 4**) |
| 9) 43A/43AA | Foreign currency loan (+) Foreign Asset imported/ Other than 43A. |
| 10) 32(2) | UAD (Priority: CY Dep (+) B/F loss (+) UAD) |
| 11) 36(1)(iii) | Interest on Borrowed capital |
| 12) 36(1)(vii) | Actual Bad Debts |
| 13) 32AD | Special Incentives to 4 states |
| 14) 33AB | Growing (+) Manufacture of T/C/R in India |
| 15) 35 | Expenditure on Scientific Research |
| 16) 35ABB 35ABA | / Amortisation of Telecom license / Spectrum fees |
| 17) 35D | Amortisation of Preliminary Expenses |
| 18) 35AD | Investment Linked deductions |
| 19) 36(1)(viiia) | Provision for Bad Debts to Banks (+) NBFC |
| 20) 36(1)(viii) | Transfer to Special Reserves |
| 21) 37(1) | General Deduction and its 2 Explanations |
| 22) 37(2B) | Advertisement in brochure of Political Party |
| 23) 40A(2) | Excess (+) Unreasonable (+) FMV (+) to relatives/ Legitimate Needs |
| 24) 40A(3)/(3A) | Payment > Rs. 10,000 in a day to a person other than 4 modes |
| 25) 40A(7) | Provision for payment of Gratuity is disallowed |
| 26) 40(a)(i) | TDS in case of Non Resident Payee (100% Disallowed) |
| 27) 40(a)(ia) | TDS in case of Residents Payee (30% Disallowed) |
| 28) 40(a)(ib) | Disallowance of Equalisation Levy not deducted or not paid. |
| 29) 40(a) | IT/WT/Tax on Non monetary perquisite are Disallowed |
| 30) 43B | <i>Certain deductions allowed on actual payment (Finance Act 2021)</i> |
| 31) 41(1) | Recovery / write off of expenses |
| 32) 41(4) | Recovery of Bad debts |
| 33) 14A | Expense i.r.t. exempt income disallowed |
| 34) 44AB | <i>Tax Audit (Finance Act 2021)</i> |
| 35) 44AD | Presumptive income for Business (T/O ≤ 2 Crore) |
| 36) 44ADA | <i>Presumptive income for Specified Profession (GR ≤ 50 lacs)</i> |

List of Important Sections & Special Tax Rates

| | <i>(Finance Act 2021)</i> |
|-------------------|---|
| 37) 80P | Deduction under Chapter VI-A for Cooperative Societies |
| 38) 40(b) | Book Profits, Remuneration, Interest to Partners of Firm / LLP |
| 39) 10(2A) | Share of Profit from a Firm registered in India is exempt |
| 40) 40(ba) | Remuneration, Interest paid by AOP to Members always disallowed. |
| 41) 86 | Share of Income from AOP is exempt in the hands of Members, if AOP is taxable at MMR (Relaxation in MAT also) |
| 42) 13A | Exemption to Political Party |
| 43) 2(15) | Definition of Charitable Purpose |
| 44) 11 | Various exemptions to Charitable or Religious Trust [11(1)(2) etc] |
| 45) 11(1A) | Exemption from Capital Gains for Trust |
| 46) 12A | Application for registration of Trust |
| 47) 12AA | Registration granted before Finance Act 2020 |
| 48) 12AB | Registration granted after Finance Act 2020 |
| 49) 115BBC | Anonymous Donation |
| 50) 115JB | MAT |
| 51) 115JAA | MAT Credit (15 years) |
| 52) 115JC | AMT |
| 53) 115JD | AMT Credit (15 years) |
| 54) 139(1) | <i>Return of Income on time (Finance Act 2021)</i> |
| 55) 139(3) | Loss Return |
| 56) 139(4) | <i>Belated Return (Finance Act 2021)</i> |
| 57) 139(5) | <i>Revised Return (Finance Act 2021)</i> |
| 58) 234F | <i>Fee for Late Filing of Return (Finance Act 2021)</i> |
| 59) 142(1)(i)(ii) | <i>Notice for ROI after 139(1) (+) Enquiry (Finance Act 2021)</i> |
| 60) 142(2A) | Special Audit |
| 61) 142A | Reference to valuation Officer |
| 62) 143(1) | <i>Scheme of processing of Return (Finance Act 2021)</i> |
| 63) 143(2) | <i>Scrutiny Notice (+) 292BB (Finance Act 2021)</i> |
| 64) 143(3) | Scrutiny Assessment |
| 65) 144B | Faceless Assessment |
| 66) 144 | Best Judgement Assessment |
| 67) 144A | Power of Joint Commissioner |
| 68) 147 | <i>Income Escaping Assessment (148 - ROI) (Finance Act 2021)</i> |
| 69) 148A | <i>Enquiry before issuing notice u/s 148 (Finance Act 2021)</i> |
| 70) 149 | <i>Time Limit to issue notice u/s 148 (Finance Act 2021)</i> |
| 71) 153(1)/(2) | <i>Time Limit to complete Regular/Best Judgement/Income Escaping Assessment (Finance Act 2021)</i> |
| 72) 154 | Rectification of mistake apparent from Records |
| 73) 263 | Revision by CIT, prejudicial to department |
| 74) 264 | Revision by CIT, prejudicial to assessee |
| 75) 133A | Survey |
| 76) 132 | Search and Seizure |

List of Important Sections & Special Tax Rates

| | |
|---|--|
| 77) 270A | Penalty for Under reporting / Misreporting of Income |
| 78) 271AAB | Penalty in Special Cases of Search and Seizure |
| 79) 271AAC | Penalty w.r.t Income referred u/s 68 to 69D |
| 80) 271AAD | Penalty for False entry in the BOA |
| 81) 273A(1)(4) | Waiver / Reduction of Penalty by CIT |
| 82) 271J | Penalty on CA/Registered Valuer/Merchant Banker |
| 83) 271K | Penalty for failure to furnish statement/certificate of donation (FA 2020) |
| 84) 269SS & 269T | Cash loan taken or repaid \geq Rs. 20,000/- & its Penalties u/s 271D & 271E |
| 85) 79 | <i>Set off and Carry Forward of Loss in case of Closely held Company (Finance Act 2021)</i> |
| 86) 44C | Head office expenses allowed to branch in India |
| 87) 56(2) | Dividend on Shares & Units taxable under IFOS |
| 88) 57 | Interest deduction up to 20% of Gross Dividend on Shares/Units |
| 89) 194 | TDS on Dividend on Shares to Resident |
| 90) 194K | TDS on Dividend on Units to Resident |
| 91) 196A | TDS on Dividend on Units to Non Resident |
| 92) 2(22)(a) to (e) | Deemed Dividend |
| 93) 115BBD | Dividend received from foreign subsidiary of more than 26% holding by Indian Company |
| 94) 45(1) | General Charge of Capital Gains |
| 95) 2(14) | <i>Capital Asset (FA 2021 Amendment)</i> |
| 96) 2(47) | Transfer |
| 97) 1 st Proviso to Sec 48 & Rule 115A | NR (+) Shares / Debentures/Bonds (+) Indian Co (+) TTBR / TTSR |
| 98) 2(42A) | Short Term Capital Asset |
| 99) 55 | <i>COA (Self-generated Assets (+) Bonus (+) Right shares (+) Others) (Finance Act 2021)</i> |
| 100) 45(1A) | Insurance Claim Received |
| 101) 45(2) | Conversion of Capital Asset into Stock in Trade |
| 102) 28 | Conversion of Stock in Trade into Capital Asset |
| 103) 45(3) | CA transferred by Partner to Firm |
| 104) 45(4) | <i>CA transferred by Firm to Partner on Dissolution or otherwise (Finance Act 2021)</i> |
| 105) 9B | <i>Income on receipt of capital asset or SIT by Specified Person from Specified Entity (Finance Act 2021)</i> |
| 106) 45(5) | Compulsory Acquisition under any law |
| 107) 45(5A) | CG in case of Joint Development Agreement |
| 108) 10(10D) | <i>Unit Linked Insurance Plan (Finance Act 2021)</i> |
| 109) 45(1B) | <i>Capital Gains on ULIP (Finance Act 2021)</i> |
| 110) 50C | SDV in case of Immovable Property |
| 111) 50CA | FMV in case of Unlisted Shares |

List of Important Sections & Special Tax Rates

| | |
|-----------------------------------|---|
| 112) 2(42C) | Definition of Slump Sale (Finance Act 2021) |
| 113) 50B | Slump Sale (Finance Act 2021) |
| 114) 49(1) | Cost to Previous Owner |
| 115) 47 | Exempt Transfers [47(xiii), 47(xiiib), 47 (xiv)] |
| 116) 72A | C/F and Set off of losses and depreciation in case of amalgamation / succession / demerger |
| 117) 51 | Advance money forfeited v/s 56(2)(ix) (Before 01/04/2014) |
| 118) 50D | FMV is deemed to be FVC if not ascertainable |
| 119) 10(37) | Compulsory Acquisition of urban Agricultural Land |
| 120) 10(37A) | Compulsory Acquisition for Amaravati City by Andhra Pradesh Govt |
| 121) 112A & 111A | LTCG /STCG taxable at 10% & 15% (Finance Act 2021) |
| 122) 54 | RHP sold and RHP purchased / Construction. |
| 123) 54EC | Any LTCA (being L & B) sold and NHAI/RECL /Any Notified Bonds |
| 124) 54GB | Any LTCA RHP sold and invested in "Eligible company" (Finance Act 2021) |
| 125) 50 | Capital Gains on Block of Asset (Finance Act 2021) |
| 126) 2(19AA) | Definition of Demerger (Finance Act 2021) |
| 127) 44DB | Provisions of Merger of Cooperative Banks (Finance Act 2021) |
| 128) 43CA | Sale Consideration in case of transfer of Land & Building as Stock in Trade (Finance Act 2021) |
| 129) 2(29A) | Definition of "Liable to Tax" (Finance Act 2021) |
| 130) 115A | 4 Interest/Dividend (+) Royalty/FTS by NR / Foreign Company (Refer Chart of 10 Sections) |
| 131) 44DA | Royalty/ FTS of NR having PE in India |
| 132) 10(4D) | Income of Specified Fund (Finance Act 2021) |
| 133) 115BBA | NR + Not a Citizen Sportsmen/Sports Association/ Entertainer |
| 134) 10(48) / (48A) / (48B)/(48C) | Foreign Co (+) Crude Oil Income – Exempt Exemption to certain Income of Indian Strategic Petroleum Reserves (FA 2020) |
| 135) 10(4E)/(4F) | Incentives for Units located in IFSC (Finance Act 2021) |
| 136) 10(23FF) | CG of NR arising on transfer of share in a company resident in India by the resultant fund (Finance Act 2021) |
| 137) 44B v/s 172 | NR engaged in Shipping Business |
| 138) 44BBA | NR engaged in Operation of Aircraft |
| 139) 44BBB | Foreign Company engaged in Civil Construction etc as a Turnkey Project |
| 140) 44BB | NR engaged in providing P&M on hire, Services or Facilities for P/E/P of Mineral Oils |
| 141) 9 | Income deemed to Accrue or arise in India |
| 142) 9A | Offshore Funds of Eligible Investment Fund (FA 2021) |
| 143) 92 | Charging Section of TP |
| 144) 92A | Associated Enterprises |

List of Important Sections & Special Tax Rates

| | |
|------------------|--|
| 145) 92B | International Transactions |
| 146) 92BA | Specified Domestic Transaction |
| 147) 92C | Arm's length price |
| 148) 92CA | Reference to TPO |
| 149) 92D | Maintain certain Information and Documents |
| 150) 92E | Report of CA → Form 3CEB |
| 151) 92CC / CD | Advance pricing Agreement |
| 152) 92CE | Secondary Adjustment |
| 153) 94B | Limitation of Interest Payment |
| 154) 286 | Country by Country Reporting |
| 155) 90/90A | Bilateral Relief |
| 156) 91 | Unilateral Relief |
| 157) 192 | TDS on Salary (Resident & NR) (On Payment) |
| 158) 192A | TDS on PF (Resident & NR) (On Payment) |
| 159) 193 | TDS on Interest on Securities (R) (P/C) |
| 160) 194A | <i>TDS on Interest other than on securities (R)(P/C) (Finance Act 2021)</i> |
| 161) 194C | Contract (Resident) (P/C) |
| 162) 194H | Commission (Resident) (P/C) |
| 163) 194-I | Rent (Resident) (P/C) |
| 164) 194J | Professional fees (Resident) (P/C) |
| 165) 194 - IA | Immovable Property (Resident) (P/C) |
| 166) 194 – IB | TDS on rent of Personal Property (Resident) (P/C) |
| 167) 194-IC | TDS on Joint Development Agreement (Resident) (P/C) |
| 168) 194M | TDS on Professional Fees/Commission/ Contract not covered in sec 194C/H/J (Resident) (P/C) |
| 169) 194N | TDS on Cash Withdrawal from Bank/Coop Bank/Post Office (P) |
| 170) 194-O | TDS on E-Commerce Transactions (Resident) (P/C) |
| 171) 194P | <i>TDS in case of Specified Senior Citizen (Finance Act 2021)</i> |
| 172) 194Q | <i>TDS in case of payment for purchase of goods (Finance Act 2021)</i> |
| 173) 206C | TCS on Certain Goods |
| 174) 206C(1G) | TCS on Foreign Remittance & Tours |
| 175) 206C(1H) | TCS on Sellers having T/O> 10 Cr. |
| 176) 206AB | <i>TDS for Non-Filers of Income Tax Return (Finance Act 2021)</i> |
| 177) 206CCA | <i>TCS for Non-Filers of Income Tax Return (Finance Act 2021)</i> |
| 178) 234E / 271H | Penalty for Non filing of TDS Return |
| 179) 80JJAA | Deduction for employment |
| 180) 56(2)(x) | <i>Gifts (Finance Act 2021)</i> |
| 181) 10AA | Deduction for SEZ units |
| 182) 80 - IAC | <i>Deduction for Eligible Startups (Finance Act 2021)</i> |
| 183) 80 - IBA | <i>Deduction for Eligible Housing Projects (Finance Act 2021)</i> |
| 184) 80PA | Deduction for Producer Companies |
| 185) 80LA | <i>Deduction to IFSC/Banks in SEZ (Finance Act 2021)</i> |

List of Important Sections & Special Tax Rates

| | |
|--------------------|--|
| 186) 10(5) | <i>Exemption for LTC Scheme (Finance Act 2021)</i> |
| 187) 10(11)(12) | <i>Interest on Employee's Fund (Finance Act 2021)</i> |
| 188) 10(23FE) | <i>Income of certain foreign funds exempt (Finance Act 2021)</i> |
| 189) 10(48D)/(48E) | <i>Exemptions to certain Institution</i> |
| 190) 245MA | <i>Dispute Resolution Committee</i> |

Note: The list mentioned supra covers important sections relevant for exams. It does not cover all the sections which we have learned in class. In all we have learned more than 700 sections along with sub sections & clauses in class.

Special Tax Rates under Chapter XII/XIIA of Income Tax Act 1961:

| Sr No | Sec No | Particulars | Rate |
|-------|--------|--|--|
| 1 | 111A | Short Term Capital Gains | 15% |
| 2 | 112 | Long Term Capital Gains | 20/10% |
| 3 | 112A | Long Term Capital Gains in excess of Rs. 1,00,000 | 10% |
| 4 | 115A | Dividend Received by Foreign Company(F/C)/NR | 20% |
| 5 | 115A | Interest received by F/C or NR from Govt or Indian Concern on money borrowed in Foreign Currency | 20% |
| 6 | 115A | Interest received from Infrastructure Debt Fund | 5% |
| 7 | 115A | Interest received from Indian Company specified u/s 194LC | 5/4% |
| 8 | 115A | Interest of the nature & extent referred in sec 194LD | 5% |
| 9 | 115A | Royalty/FTS received by NR or F/C not having PE | 10% |
| 10 | 115AB | Income of an Overseas Financial Organisation on transfer of Units purchased in foreign currency being LTCG | 10% |
| 11 | 115AC | Income from Bonds/GDR etc purchased in Foreign Currency | 10% |
| 12 | 115AD | Income i.r.o securities received by FII/Specified Fund as specified by Govt: <ul style="list-style-type: none"> - STCG u/s 111A - Other STCG - LTCG - LTCG u/s 112A in excess of Rs. 1,00,000 - Interest referred u/s 194LD - <u>Other Incomes:</u> <ul style="list-style-type: none"> FII SF | 15% 30% 10% 10% 5% 20% 10% |
| 13 | 115BA | Income of certain manufacturing Domestic Companies | 25% |
| 14 | 115BAA | Income of certain Domestic Companies | 22% |
| 15 | 115BAB | Income of certain new Domestic manufacturing Companies | 15% |
| 16 | 115BAC | Alternative Tax Rates for Individual/HUF | 5-30% |
| 17 | 115BAD | Alternative Tax Rate for Resident Cooperative Society | 22% |
| 18 | 115BB | Winnings from Lotteries/Horse Race etc | 30% |
| 19 | 115BBA | Income of NR foreign citizen sportsman for participation in any game/sport in India or received by way of advertisement or for contribution of articles relating to any game or sport in India or income of NR sport association by way of guarantee money | 20% |
| 20 | 115BBA | Income of NR Foreign Citizen (being entertainer) for performance in India | 20% |
| 21 | 115BBC | Anonymous Donation | 30% |
| 22 | 115BBD | Dividend received by Income Company from a Specified Foreign Company | 15% |

List of Important Sections & Special Tax Rates

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| 23 | 115BBE | Income referred u/s 68,69,69A,69B,69C & 69D | 60% |
| 24 | 115BBF | Royalty w.r.t Patent developed & registered in India (received by resident assessee who is a patentee) | 10% |
| 25 | 115BBG | Income from transfer of Carbon Credit | 10% |
| 26 | 115E | Income of NRI under CH XIA: - Interest/Dividend - LTCG | 20% 10% |
| 27 | 115JB | MAT for Companies: - Book Profit of Company other than below Company - Book Profit of Company located in IFSC | 15% 9% |
| 28 | 115JC | AMT for Other than Companies: - ATI other than below mentioned - ATI of Unit located in IFSC | 18.5% 9% |
| 29 | 115TD | Accreted Income of Trust | 34.944% |
| 30 | 115UB | Business Income of AIF (I&II): - Where AIF is Domestic Company or Firm - Where AIF is a Foreign Company - Where AIF is any other Person | 30% 40% 42.744% |
