

INCOME TAX NOTES

Concept of Income Tax – Income tax is a taxable income including deemed income as per its provisions. Revenue receipts are taxable but capital receipts are not unless expressly provided in law. Where is a diversion of income by overriding title, there is no income accruing to such person. Same income cannot be taxed twice unless expressly permitted. One cannot make a profit from himself principle of mutuality. Illegality of income is not to be considered. Mere relief from expenditure is not an income. IT Act 1961 is a complete code in itself nothing can be received in, nothing can be read out. If something is defined under the act, its meaning has to be understood accordingly. When a word is not defined, its dictionary meaning may be used. Interpretation in favour of the assessee is to be taken if there is ambiguity or two view. Meaning of similar words used in other laws is not to be used.

The budget becomes the finance Act, after president approved. Legislative can make laws to increase a new burden or reduce an existing liability with prospective (hence forth) effect. It has the powers to make retrospective (with past effect) laws & changes also unless it is violative of constitution, unreasonable or not in public interest

- Law to be applied is that which is in force in the relevant assessment year unless otherwise stated.
- An amendment wef 1st April of financial year is applicable to the assessment year of that year itself
- An amendment wef after / 1st April of financial year would not be applicable for that assessment year but, from the next, or when specified.
- Assessment year of a reopened case should be done according to the law for that applicable assessment year.
- Deeming provisions are legal fictions & are to be strictly construed for the limited purpose for which it has been extended and not beyond that. There can be no fiction upon fiction. e.g. Presumptions unexplained cash credits, investments etc. by way of fictions created u/s 68,69 etc. cannot be extended to penalty proceedings for such additions
- IT ACT, contains -298 sections & 16 schedules. Rules are subordinate to the act. They are framed for proper administration. There are 125 rules. Circulars / notifications & classifications are issued by CBDT to deal with specific problems & to clarify doubts of the provisions. Notifications are binding on everyone. Circular are administrative guidelines & are binding on all officials of the IT dept. Judicial decisions are helpful in resolving dispute.
- Difference between exemptions & deduction – exemptions do not form part of GTI at all. There cannot be a deduction to an exemption. They cannot exceed total income. Incomes relating to the deductions form part GTI. They are first included & then deduction is allowed.

They can be less than or equal to or more than the amount of total income (weighted deduction).

- Nature of Capital & revenue receipt are determined by its character in the hands of the receiver & not of the payer. Receipts for substitution of a source of income is of capital nature, eg. Compensation received for termination of a business, unless expressly taxed. Annuities are revenue receipts, gifts are essentially capital receipts unless expressly taxed. Subsidy which is not reduced from the cost of the asset, is taxable as revenue receipt. Subsidy granted by govt. forming part of corpus of trust, shall not be part of income. Advance money received against capital assets and forfeited is taxed as income & not reduced from cost of that assets.
- Capital expenditure are relating to assets & of long term benefit.
- Method of accounting followed is not relevant under salaries & HP. Salaries are taxed on earlier of receipt or due. HP is taxed on accrued. Capital gains is taxable in year of accrual unless assets is transferred.
- Jurisdiction is the statutory authority of an officer for deciding or taking action. It cannot be waived or conferred by consent of the parties. Vices of jurisdiction can be challenged at any stage but may be opted to continue comply with the proceedings under protests.
- Time barring are periods of limitations fixed for completion of various proceedings the taxpayer.
- Authorized representative (AR) are person who can represent and appear before any authority in connection with any proceedings.
- Then include relative, regular employee, legal practitioner & CA, Income tax practitioner, Retired officer of IT.
- The office of Director General of Income Tax (DGIT) (Investigation) is exempted from RTI.
- Ombudsman is a designated authority independent of the regular jurisdiction of IT dept. He resolved complaints impartially & settles to improve quality of tax administration & to bring transparency. A complaint can be filed by an assessee if any authority rejects the complaint or does not give any reply within 01 mth or is not satisfied with the reply.
- Definitions in sec 2 apply at all places in the acts. Definitions are also available in different chapters/ sections which are to be used strictly in that context.
- Assessee is every person by whom any tax is payable & who is deemed to be an assessee and an assessee in default.
- Every assessment year is a separated and self-contained period of time. Income which has escaped assessment, in a particular year cannot be assessed to tax in any subsequent years.
- Previous year (PY) is the year for which the income is taxed. It is the financial year & common to all tax payers.
- Assessment year (AY) is the year following the PY during which the assessment is made or within such extended time.

- Dividend includes deemed dividend. Dividends are taxed in the year when declared or distributed or paid. Interim dividend is deemed to be income of the year in which it is unconditionally made available to members.
- Charge of Income Tax- S-4 is the charging section at the rates mentioned in the budget (Finance Act).
- Accelerated Assessment means charging of tax on income other than on the concerned previous year & during the Assessment year in case of supplying biz of NR, persons about to leave India, AOP/BOI likely to be dissolved, persons likely to trf ppty to avoid taxes. Income of discontinued biz.
- Scope of IT (Incidence of tax) S-5 determined by residence status and basis of charge (accrual or receipt basis), accrual means right to receive .
- Individual Resident is charged on his world income.
- Individual NOR –not ordinary resident is not charged on world income, except if it is from a business controlled in or a profession setup in India.
- Individual NR- is not charged on world income even if it is from a business controlled in or profession set up in India. He is charged only on his Indian Income received /deemed to receive/ accrued/arise/deemed to accrue or arise in India.

Residential status S-6- Stay in India ≥ 182 days or (≥ 365 days in preceeding 4 years and 60 days in current year; 60 days replaced by 182 days if a) he is an Indian citizen leaving India for employment abroad or to work as crew of an Indian ship b) he is an Indian citizen or PIO visiting India.

HUF/firm /AOP – Resident if control & management of its affairs is wholly or partly in India – NR if wholly outside India.

Company is resident if it is an Indian co. or if control & management is wholly in India. 'Control & management ' is reflected by POEM(place of effective management – where key management & commercial decisions are made)

RNR(only for individual & HUF) – if he is karta NR in g/co preceeding previous years or stayed in india for less than 730 in 7 preceeding previous year.

- If a person is resident for any source of income , he will be deemed to be the resident for all his source of income .
- Stay in a ship / boat moved within 12 nautical miles from coastline is also considered.
- Stay need not be continuous or at any one place. Date of departure and of arrival is to be considered.
- PIO (Person of indian origin) if either he or either his parents or any of his grand parents (maternal & paternal) were born in undivided india.

- Income deemed to accrue / arise in india S-9 income through or from any biz connection in india , property asset or source of income in india. Transfer of capital asset situated in india. Salaries for services rendered in india including leave, salary paid by GOI to an Indian citizen for services rendered outside india. Dividend paid by Indian co. outside india. Interest payable by GOI, interest payable by NR, where money borrowed is used for business / profession in india or for earning any income from source outside india. Royalty / FTS payable by Govt. by NR for services, rights, property utilised by NR in india , by resident except, for right , property utilised by resident outside india.
- Wef.5/7/19
- Any sum of money paid after 5/7/19 by resident to NR/ for co. is taxable in hands of NR/For. co. except if transfer is made by any relative or on occasion of marriage of NR, or under will /inheritance or from a regd. Trust , medical / educational institution , from any local authority.
- Certain activities not to constitute business connection in india. Ie. Fund manager in india, of off shore funds / eligible investment fund & these offshore & eligible invest fund are not resident.
- GTI is the aggregate of all 5 heads of income after taking the exemptions / deductions under each head. Then clubbing &c/f provision applied.

Rate of taxation– there are different rates of taxation for different categories & sub categories of persons. Different rates for different slabs of income & education cess (EC) & secondary & higher education cess (SHEC) is replaced by H & EC & (Health& education cess) .Tax is rounded to nearest 10 rupees.

- General category rate (other than sr. citizen) – threshold limit 250000.
 - Sr. citizen (above 60 years) –threshold limit Rs.300000
 - Super Sr. citizen (>80 years) threshold limit Rs. 500000
 - Firms/ LLP – no threshold limit – flat rate 30% HEC – 4%
 - Domestic co. – no threshold limit – flat rate 30% (25% if t/o < 400 crores)
 - Foreign co. – no threshold limit – flat rate 40% other than royalties (50%) & FTS – (50%)
- Surcharge is calculated on total tax amount on income above Rs.50 Lacs at minimum 10% of tax

S-115BBDA

- Tax is levied on dividends exceeding Rs.10lacs in a year received by tax payer @10% for Individuals/ HUF /AOP.
- Dividends above Rs.1000000 not taxable by S-12AA regd Trust/ 23(c) institutions.
- No deduction for any expenditure or allowance or set off of loss allowed in computing income from dividends.
- Above section not applicable to deemed dividend U/S 2(22(e))

- Royalty income of residents from patents developed & regd in India of patentee taxed @ 10% - no other expenditure/allowance allowed. Option for such rate to be exercised before due dates of filing return. Once option exercised has been continued for five assessment years, if changed in between then for subsequent 5 assessment years after such change, he cannot claim this concessional rate of 10%
- Income from transfer of carbon credits taxable @ 10% S-115BBE. No deduction for any expenditure/ allowance allowed.

CAPITAL GAINS A NR is taxable for capital Gains in India if he transfers a Capital asset in India.

3 types of transactions not taxable in case of NR

1) Transfer under a scheme of amalgamation of shares of an Indian Co. by the amalgamating For co (FCO) to the amalgamated For Co if atleast 25% (in number) of the share holder of the A'ting FCO continues as shareholder in the A'ted F Co and such a transfer does not attract capital gains tax in the country where A'ting FCO was incorporated.

Transfer under a demerger of shares of an India company by the demerged FCO to the resulting F co if greater than 75% in value of shareholders continue as shareholders in resulting F Company and such a transfer does not attract capital gains tax in the country in which the demerged FCO was incorporated

3) Any transfer of bonds or GDR of a public sector company purchased in forex, made outside India by a NR to another NR.

- Indexation of costs not allowed in certain cases to NR even if it is long term.
- Transfer of shares / Debentures of an Indian company by NR acquired in forex currency. (not applicable to mutual funds units)
- Transfer of shares bonds of a PSU or GDR or bonds of an Indian company (ICO) purchased by NR in for currency.
- Transfer of securities by FII's
- Transfer for exclusive assets (shares of ICO debenture by ICO which is not a private company, deposit wise / public company, CG securities & NSC VI & VII) by NRI.

S-45 (3) not to apply to international transactions (between R & NR or between NR & NR) for which S-92 to 92 F provides for determination of ALP in accordance with transfer of provisions.

S-45 (3) applies that in case of transfer of a capital assets by a person to a Firm/ AOP/ BOI (not being a company or Corporate society) if he becomes partner / member by way of a capital contribution or otherwise then the sale consideration is the amount recorded in the BOA of the Firm/ AOP/ BOI the market value is not to be considered. Since S- 45(3) is only a method of computation & is different from the general method of computing the capital gains u/s 48 it is limited in scope even though it did not differentiate between R & NR.

S-115F Exemption of LTCG to NRI on transfer of F.E. assets if he invests in another F.E. assets within 6 months from transfer & holds the new assets for 3 years.

-Choice to opt for above exemption to be exercised before filing ROI or he can opt to be taxed at normal provisions.

10(38) Exemption of LTCG on sale of shares or EOF units STT paid applies to both residents NR include FII's now amended up to Rs 1 lac capital gains in a year.

-Concessional rate for LTCG for all assesses includes NR, For. companies is 20% and for LTCG u/s 115 AB, AC, AD & E it is 10%. A surcharge is applicable for LTCG to all.

- Indexation can be claimed on LTCG from listed securities, mutual fund units, taxed at 20% or @ 10%. without indexation.

-10% rate also to NR who buy it share in for currency.

- Since bonds & debenture include Zero coupon bonds are not allowed to be Indexed, LTCG is @10% if they are listed.

Spl. Provision applicable to NR Indian who invests in F. E. assets and derives investment income , any other income other than dividends from F E assets , LTCG in respect thereof, Under Chapter XII A. – S - 115C to I. NRI should be a PIO, need not be a citizen after S- 115-D- no deduction allowed under any other provision in respect of any expenditure or allow W. R. T. 'Investment income' if spl. prov. opted , No VI A deductions, no 48(2) deduction.

-Treated as a separate stock of income, Investment income taxed at that 20% plus surcharge & LTCG @ 10% + S/c

-Concessional rate not to short term capital gains.

-NRI not if file ROI if having only 'investment income' or LTCG & TDS is deducted.

-NRI to continue to avail of Chapter XII-A in relation to Investment income ever after becoming resident if he furnishes declaration along with ROI for such subsequent year until trf. Or conversion of such F E assets into money.

-Option to avail of Chapter XII A can be made for any particular year.

-S – 115 JG Spl. Provision relative to conversion of a Indian branch of a Foreign bank into a subsidiary Indian Companies if accordance to scheme by RBI , then no Capital gains too or such conversion & provisions of s/o & c/f of losses, unab. dep shall apply.

TDS on payment to NR

S – 194E – every person to deduct TDS on payment/ credit of any income to NR sportsmen entertainer who is not a citizen of India or to a NR sports Association / Institution @ 20% plus S/c payment covered are towards income for participation in India in any game/ sports ; advertisement ,contribution, guarantee amount.

On other sums paid by all person even by one NR to another NR to NR/ For co. S – 195, any input (other than interest on securities) on any sum chargeable to I T other than salaries, to deduct at the rates in force + S/c.

- 'Adjustments' made to the amount payable to NR by book entries from the amounts due from the NR is treated as a payment made by 'any other mode' & TDS to be deducted, even through no actual payment made.

Deduction at lower rate not permissible without AO's Certificate Deductions under VIA
available to NR

80A

80AC Certain deduction are allowed unless ROI is filed (80 – IA / AB , IB, IC ,ID, IE.)

Allowed

80 –C, 80CCC, 80CCD, 80CCT, 80D, 80E, 80EE, 80G, 80GG, 80GGA, 80GGC, 80 IA, 80 JJA, 80LA, 80 TTA.

DTTA : are bilateral Double taxation Agreements to avoid levels of tax on the same income in both countries. On the Income for trade & investment decision of the tax payer. Affects a tax payer who is resident , in one country but has a source of income in another country. Both the countries may have the right to tax the tax payer under the 'residence rule' or 'source rule'.

Residence rule says that power to tax is with the country in which the tax payer resides source rule says that power to tax is with the country from where the income originates. DTAA seeks to lay down rules for taxation of incomes between the source country & the residence country. Rules are laid down for various categories of incomes. Each income category is dealt with under separate articles in the DTAA. Principle is that the same income should not be taxed twice. Two methods of relief 1) Bilateral Relief & Unilateral Relief. Bilateral Relief are agreements entered between 2 countries for avoidance of double taxation by exemption method where the income is exempted in one of the countries or by Tax Relief Method where the income is taxed in both countries with their respective laws, but the country of residence of the taxpayer allows him credit for the tax charged by the source country or combination of the two methods.

- Unilateral Relief provided by the home country even if no mutual agreement is entered between the 2 countries.
- S-90 & 91 of IT provides for DTAA. Provisions of Act applies only if they are more beneficial to the assessee over the DTAA(treaty law). But in many cases tax payers who are not residents of a contracting country are claiming benefits of DTAA ie. Third party residents are claiming unintended treaty benefits. S-90(4) is inserted that the NR can claim relief under the treaty if TRC(Tax Residency Certificate) is obtained by him from the country & furnished.
- A specific provision of Treaty will prevail & over ride over the general provisions of the domestic law.
- Models of Tax treaties are OECD & UN models.

S-91 Relief from tax if no DTAA is there & all conditions by taxpayers & that is he is resident in India in that year, the income A or A outside India, is not deemed to A or A in India, the income

is taxed in the for. country & taxpayer has paid tax in for. country. Then the tax so paid abroad shall be reduced from Indian tax payable by him.

- Taxation of business processing outsourcing units in India (IT enabled business process outsourcing unit). A NR entity may out source certain services to a resident Indian entity . If there is no business connection between the two the resident entity may not be PE of the NR. Then the resident entity will be assessed as a separate entity & the NR entity will not be liable to pay tax.
- If there is a business connection between the two, the resident would be treated as a PE of the NR entity then to the extent of the profits of the non resident entity to the extent attributable to the business of the PE is taxed in India. The NR entity & expenses paid to or the purchases.
- The sales /services made by the resident entity to the non resident entity (PE) Or the purchases would be determined at ALP. The expenses of the PE would be deductible including the H.O. expenses.
- Concept of PE business profit of a NR entity are taxed in the other country for which such profits originate only if the profits arise through PE in the originating country. Treaty's define PE & mostly follow the _____ definition of PE. ACT 5(1) &(2) .PE is a fixed place of business_____ which the business is wholly or partly carried on eg. Branches , office, workshops, warehouse , sale outlet , _____,oil well , quarry. Exceptions are site where only preliminary or ancillary activities are conducted. Generally POB should be for more than 6 months, some treaties provide for a year before which a PE to be established. Carry in amt a business through an independent agent not a PE.
- Income in india of NR is taxed under domestic laws only if covered under section 9 and taxed under treaty law only if there is a PE in india of the NR.
- Income outside india of resident is taxed
- if DTAA is there with that country where income originates and it is taxable under the treaty and under whichever provisions are favourable to the resident (as under domestic resident is always taxable for outside india incomes)
- If DTAA is not there, then S-91 – complete calculating normal tax total income compute avg. tax on foreign income – from total tax reduce tax paid on foreign income charged by the foreign country - pay bal. tax .
NR is not taxed in india on its foreign income.

INCOME TAX ACT. 1961- It Is A Central Tax on Income or Deemed Income – Loans ,Gifts, Capital Receipts Are Generally not Income & hence no Income Tax. Hence all receipts are not income. Illegal Income is also Taxable .

- Income Tax is Payable Separately for each Financial Year on the Balance Total Income After Claiming Eligible Deductions /Exemptions if it Exceed the basic Exemption limits at the rates Specified.
- Rebate/Surcharges & cess is Always Calculated the Income Tax Payable And Not in The Total Income.
- Advance Tax Paid During The Year Is Deducted for Income TAX Payable.
- Tax Deducted at Source (TDS)-By Other Persons Who Has Paid us That type of income during the year is Also Deducted From The Income Tax Payable.
- The Balance income tax is either Payable or Refundable.
- Generally all Incomes received / earned in India are taxed if the Person Stayed in India For More than 182 days.
- There are certain types of Incomes which are exempt from Income Tax u/s 10.
- There are 5 different Heads of Income which when totalled gives the Gross Total Income and after deductions / exemptions gives Net Total Income on which Tax is calculated , then Rebate is deducted, then surcharge & cess is calculated, then Advance Tax is deducted, then TDS is deducted & Balance is payable or refundable.

1st Head: Income from Salaries: It is taxed on 'Due' or receipt basis whichever is earlier. Salary includes Pension, Advance Salary.

- Gratuity is exempt upto Rs. 20 Lakhs.
- Leave Encashment during employment is taxable, after employment is exempt max Rs 3 Lakhs.
- Retrenchment Compensation is exempt max Rs 5 Lakhs, VRS after 10 yrs service/ 40 yrs age.
- Provident Fund dues exempt after 5 yrs of service.
- NPS (National Pension Scheme) exempt upto 60% of balance.
- Transport Allowance & Medical Reimbursement Allowances are taxable.
- All perquisites are taxable subject to limits and conditions.
- Standard deduction upto Rs 50000 can be reduced from Salary Income.
- Professional Tax deducted max Rs 2500 can be reduced from salary income.

2nd Head :Income from House Property

- Income from vacant plots of land is not taxable under this head but taxable under 'Income from Business' or 'Other Sources'.
- Income from Owner Self Occupied Residential or non residential house property is not taxable, unless rented out & more than 2 residential flats owned.
- Each co-owner is taxed on his share of income received.
- Municipal Taxes paid can be deducted from income.
- Standard Deduction of 30% of Income can be deducted.

- Interests Payable/ paid on borrowings for construction or buying House Property upto Rs 200000 per owner can be deducted from self occupied property.
- Interest payable/ paid on borrowings for purchase or constructing House Property any amounts can be deducted from Income from Rental Property.
- Interest Payable/ paid on borrowings for Repairs & Renewals is deductible upto Rs 30000.
- Arrears of rent is taxable in year of receipts.

3rd Head: Income from Business or Profession

- Persons carrying more than one business, profit of each business has to be found out separately and then totalled.
- The net profit is taxed and not the Gross receipts or gross Turnover.
- Compensation for Termination of any contract / agency is taxable.
- Non compete fee is taxable.
- Sums received under Key Man Insurance including Bonuses is taxable.
- Personal Expenditure not deductible.
- Penalty paid under any law for prohibited offences not deductible.
- Advertisements in any souvenir / brochure paid for a political party not allowed.
- Expenditure relating to CSR u/s 135 of companies act 2013 not allowed even if it is under legal obligation as it is not for the purpose of business.
- Expenditure on replacements of old machinery by new machinery is capital & not allowed.
- Scientific Research Expenditure allowed even if research is carried out by some other person on his behalf.
- Spectrum fee paid is allowed in equal installments over which the period of the right s.
- Preliminary expenses 1/5th deductible over 5 successive yrs.
- VRS Expenditure 1/5th deductible over 5 successive yrs.
- Bad debts written off is allowable, but Provision made for doubtful debts not deductible.
- Amounts recovered against Bad Debts earlier written off is Income.
- STT Allowed.
- For allowing Depreciation provided asset be owned and used for the business. EPAB & mobile phones are not computers or its peripherals and 60% depreciation not allowed.
- Depreciation u/s IT Acts allowed under WDV method under Block of Assets.
- Rate of Depreciation – Furniture & Fittings @ 10%, Buildings (non residential) 10%, Plant , Machinery & vehicles 15%, Computers, peripherals & software @ 40%, Intangible Assets 25%.
- Unabsorbed Depreciation carried forward indefinitely.
- Direct taxes paid not deductible.
- Tax of non residents paid is part of professional fees and deductible.
- Payments to relatives allowed if reasonable.

- Cash payments > Rs 10000 in a day to a person not deductible.
- Payments not exceeding Rs 10000 made on different days against one bill exceeding Rs10000 allowable.
- Payments (of several bills of different dates each less than Rs 10000), made on One day exceeding Rs10000, deductible, as each bills is treated as a different expenditure.
- Any marked to market loss other than actual loss not deductible.
- BOA to be maintained if Business/ profession income > Rs 250000 or turnover > Rs 25 Lakhs.
- Tax Audit if Business Turnover > Rs 1 crore, or if professional total receipt > Rs 50 Lakhs, or if person claims his net profit from business is lower than 8% of turnover or if specified professional his net profit is lower than 50% of Gross Receipts and his income exceeds the maximum threshold limits chargeable to tax.
- Tax Audit Report form 3CA/ 3CB & statements of particular in form 3CD.
- Presumptive Taxation for Business net profit not applicable to commission or brokerage income or to agency business.
- Once opted for presumptive taxation scheme business person & later opts out of the scheme, then for the next 5 yrs he cannot once again opt for back into the presumptive taxation scheme. But this restriction is not applicable to specified professionals opting for presumptive taxation scheme.
- No BOA needs to be maintained nor Tax Audit done for presumptive scheme.
- In case of partnership firm no deduction of remuneration & interest to partners is separately allowed.
- Companies & LLP's cannot opt for this presumptive scheme.
- Goods (not passengers) Transport operators can opt for deemed monthly income scheme per vehicle for all vehicles & not partly for some vehicles & not for others.
- Any tax, duty, or any sum which is provided in BOA but not paid before the date of filing of return is disallowed as expense.
- Any TDS which is not paid before date of filing of return the expenditure relating to that TDS is disallowed as deductible.

THE PROVISIONS OF INCOME TAX ACT ARE ONLY TO DETERMINE THE TOTAL INCOME OF THE ASSESSEE AND TO ALLOW HIM SUCH DEDUCTIONS & EXEMPTIONS OR TO DISALLOW SUCH EXPENSES AS PER ITS PROVISIONS. HENCE THE TOTAL INCOME DETERMINED UNDER THIS ACT WILL ALWAYS BE DIFFERENT FROM THE NET PROFIT IN THE P/L ACCOUNT DUE TO THESE ADJUSTMENTS. ACCORDINGLY NO ACCOUNTING ENTRY IS TO BE PASSED IN BOA FOR ANY ADJUSTMENTS BY WAY OF DISALLOWANCES/DEDUCTIONS/EXEMPTIONS MADE TO NET PROFIT. WHICH WILL ALWAYS REMAIN THE SAME.

4th Head: Income from Capital Gains taxes the profit/ Gain made from Sale/ transfer of a capital Asset.

- There should be a CAPITAL ASSET, Transfer should have taken place in the previous year, whether or not full consideration is received, and there should be a Gain/Loss.
- Capital Asset, does not include Stock in trade, personal ~~effectsexcluding~~ jewellery, Drawings, Paintings, Sculptures, Drawings, or work of art ; rural agriculture Land in India , Gold Bonds Specified.
- Transfer of movable Property is complete on delivery and on Immovable Property under the conveyance deed is register.
- Transfer includes Relinquishment of assets, extinguishments of rights, compulsory acquisition, conversion into stock in trade.
- Transfer does not include transfer under a Gifts or will or irrevocable Trust; Transfer by Holding companies to its wholly owned subsidiary, Transfer by conversion of Pvt Companies to LLP, succession of the proprietary concern by a company.
- Exempt transfer are of compulsory acquisition of urban agriculture land, buy back of shares by unlisted domestic company's, transfer of securities where STT is paid.
- Capital Gains tax shall be Exempt :

1. **Under section 54** for Individual & HUF transfer is of residential property , resident for more than 2 years, if another one residential house is purchased within 2 years in India or 1 year prior to transfer or construction of one residential house within 3 years of transfer and new residential house should not be transferred within 3 years of transfer (If amount of capital gains made is ≤ 2 years then one residential house are mentioned above can be replaced by two residential houses)

2. **Under section 54 B** for Individual/ HUF transfer of Agriculture Land , similarly in Section 54 above where new residential house should be received as new agriculture land. (Bracket benefit above 2 crore is not available here)

3. **Under section 54 EC** for Any Assessee, only for transfer of land & building if within 6 months for transfer, Capital gains must be invested up to 50lacs in specified long term asset, which should be kept for 5 years from its acquisition. No loans to be taken between against this investment or exemptions will be lost.

4. **Under section 54 EE** for ANY Assessee, only long term loans assets transfer, if within 6 months the gains are invested upto Rs 50 Lakhs in specified long term assets which are units of specified fund issued before 1.4.2019 (NHAI/RECL/Bonds) and held for 5 years. No Loans to be taken against this investment or exemption will be lost.

5. Under section 54 F for Individual/ HUF any long term assets transfer other than residential House (same conditions in S-54 only additional condition is that the Assessee should not own more than one residential house on date of transfer (Bracket benefits in Under Secessions 54 not available)

6. Under section 54 EB for Individual/ HUF transfer of residential property or plot of land if not consideration should be subscribed in Equity share of an Eligible company before date of filing of return and the eligible companies' investment in new assets within 1 year from subscription of its share. Eligible company should be incorporated before date of filing return, should be manufacturing or IT development company should be MSME , assessee should have > 25% of voting power, turnover < 25 crore , hold certificate of 'Eligible business'. New Assets means new plant, machinery and not , second hand , not used in office premises or residential place, nor office appliances , nor computers, nor computer software, nor vehicle . But in case of eligible startup being technology driven new assets shall include computer & softwares. New asset not to be transferred within 5 years (3 years for computers and softwares)

- The Capital Gains not utilised for purchase/ construction of new assets should be deposited before due date of filing of returns in Capital Gains Accounts scheme and the balance unutilized in this A/C shall be deemed to be the cost of the new assets.
- Allotment of Flats purchased during construction is treated as construction of house.
- Booking rights/Rights to purchase or obtain title to property is also capital assets.
- In case of compulsory acquisition, time limit is from date of receipts of compensation.
- Long term period is >12 mths for listed shares and securities and mutual funds and >2 mths for unlisted shares & land and building & 36 mths for other capital assets.
- Equity oriented funds are these funds where more than 65% is invested in equities.
- FIFO method to determine date / period of holding demat shares.
- Expenses of capital nature for acquiring property included in cost of acquisition.
- Cost of the previous owner is taken if asset is acquired under gifts/will/inheritance/successions.
- Cost as on 1/4/2001 can be taken if assessee himself acquired the assets prior to 1/4/2001 or he acquired the assets by gifts/ will etc.
- Gains on transfer of capital assets where depreciation has been claimed & allowed are treated as short term Gains. But deduction U/S 54 EC & u/s 54EE can be claimed.
- Advance received on registration during transfer and forfeited due to some reason and finally under transfer takes place, then the advance received can be reduced from cost of acquisition of the assets unless earlier offered as income under section 56(2).
- Cost of acquisition and cost of improvements can be indexed also for long term assets & not for short term assets transfer.

- Cost of self generated assets like goodwill, trademark, brand name , manufacturing rights, Right to carry on business tenancy rights have nil cost of acquisition and Nil cost of improvement . Only Tenancy rights have actual cost of improvement.
- Short Term Capital Gains (STCG) are taxed @15% flat rate.
- Long Term Capital Gains (LTCG) are taxed @ 20% flat rate without indexation &10% without indexation.
- No deduction U/S VI A is available to STCG.
- LTCG more than 1 lac Rupees is taxed @10% without indexations if it is of transfer of listed Equity shares/ EO fund ,subject to STT.
- Threshold limits deduction available to STCG & LTCG.
- S 50(C) deems to consider the stamp duty valuationsas the full value of consideration in case of transfer of Immovable property.
- With effect from 5/7/2019 all buy back of shares transactions are subject to tax.
- Non residents (NRI) can not avail of benefits of indexation.
- LTCG by NRI on transfer of Share in Indian Companies is exempt only if the net consideration within 6 months is invested in shares in Indian co's or deposit in Indian Public Ltd Company or Central Government securities or NSC's.
- Slump sale transfer of a business undertaking without, assigning values to each individual assets are taxable as LTCG if held for more than 36 months or otherwise taxable as STCG. No indexation is available.
- Insurance claim/ compensation received on damages or destruction to capital asset due to natural calamities, riots, fire, energy action is taxable, but insurance claim received in case of damage/ destruction of raw material/stocks to the extent it exceeds the book values is trading receipts and not taxable capital gains but as profits of business.
- Capital Gains under Developers Agreement between the land owner & the developer .If under the Developer Agreement only the right of entry by way of a licence is granted to the developer to discharge his obligation and Possession & control title is transfer afterward on completion of the project then in hands of land owner, capital gains arises when possession is given or where construction is completed. If at initial stage itself of Developers Agreement possession & control of land with title and sale consideration is also agreed upon except physical delivery, then it would be transfer of capital assets on date of agreement & capital gains would arise in that year itself.

In case of the developer the entire activity is a business activity and **profits from business**.

Income from other source – What is not chargeable under the other 4 head of income and not exempt from tax is taxable here e.g. Pension limit on deep discount bonds, Deemed Income, Dividends & Deemed Dividends, Income from lotteries, Races, Card

Games, Games Shows, TV competition shares, Prizes, Rent from hire of M/C, Receipts of Key Man policy, certain gifts, share premium, Advance Money forfeited, Employee Termination compensation received, Income from Sub letting, Income from Royalty, Rent from plot of land. Assistance received from Government family pension subject to standard deduction lower of 1/3 or Rs 15000, interest on tax refunds, on personal loans, on bank deposit.

- No slab rate benefits for winnings from lottery etc – Flat 30% subject to TDS.
- No deduction for any expenses not u/s chapter VI A.
- If no system of accounting is followed income here are taxable when due for payments basis.
- Bank commission paid for realizing the income, Interest on borrowings for investments to earn this income, deductible.
- Any Expenditure incurred for earning exempts incomes is disallowed.
- Deduction are current repairs to such assets deductible from rent from such assets, insurance premium paid, depreciations as per same rates, unabsorbed depreciation carry forward.
- Key man policy if assigned to key man before maturity there 10(10)D exemption not available.
- Gifts from non relatives received in a year in total more than Rs 50000, whole amount is taxable here and not only the excess.
- Gifts for non relatives of immovable or movable property during the year where stamp duty value exceeds Rs 50000 received with or without adequate consideration; whole of FMV or FMV consideration paid. The excess over Rs 50000 is taxed.
- Certain transactions are not taxed like on occasion of marriage, under a will, by inheritance from registered university, hospital, education institution, medical institution, registered charitable trust, from an individual by a trust created solely for the benefits of relative of the individual.
- Gifts to spouse or son's wife, clubbing provision U/S 64 attracted.
- Loss in case of Bonus and Dividend stripping transactions is ignored in the hands of the transferor for set off.
- Interest on Bond washing transaction is taxable in hands of transferor.
- Companies are competent to make & receive gifts if authorized by MOA/ AOA.
- Premium on shares received by a company not taxable for eligible startup (angel tax).
- Unexplained money/unsatisfactorily explained cash credits & investments/expenditures/Hundi/Borrowings & repayment in cash deemed income u/s 68 taxed here. No deductions allowed. No set off of loss also allowed. Taxed at flat rate 30%.

Clubbing of Income- Deemed income, need to be strictly construed. Cannot be double taxation. Income includes loss and if deemed, then loss also to be clubbed. TDS allowed to transferor. Tax can be recovered from either or both Transferor/ transferee.

- Income to be clubbed before allowing deduction u/s VI A.
- Clubbing provisions compulsory even if it results in benefit to tax payer.
- Clubbing provisions does not apply to 'Income from House Property' as transferor is deemed to be owner.
- Transfer before marriage or after divorce, no clubbing provisions as relationship is not there.
- Interest free loan given to spouse who invests & earns interest, provision as loan is not transferred of an asset.
- Clubbing attracted of Form of the asset changes.
- Income of minor child clubbed till he becomes major.

Set off & c/f of losses- Set off within the same year, c/f to subsequent years. Losses in same year can be set off against, any other head of income in same assessment year & c/f for set off against same head (intra head) in next year. Except in case of set off (Intra head).

- Long term Capital loss only be set off against LTC Gains.
- Speculation loss against Speculation Profit.
- Loss from Race their business against profits from same business.
- Loss from transfer of securities/ Units if purchased 3 months prior to record date & sold within 9 months after record date- loss not allowed to be or c/f.
- Bonus stripping in case of units as above.
- Loss from an exempt sources cannot be s/off as income is not taxable.
- No loss can be s/off against winning from lotteries / same etc.
- Non speculation business loss can be s/off against income from speculation business also.
- Short term capital loss can be s/off against any capital Gain.
- Loss of an individual can be s/off against clubbing income.
- No option to the assess not the assesses not to s/off loss under same head.

Exception to inter head set off same year.

- Speculation Business.
- Loss under Capital Gains
- Business profit loss cannot be s/off against Salaries.
- House property loss more than 2 lacs cannot be s/off against other heads.
- Cannot set off only a part of the loss and c/f the balance.
- Loss in Joint venture with respect to a temporary partnership can be s/off against each individual income.

Carried Forward.

- H.P. losses c/f 8AY's & same head s/off only. Return can be filed after due date no disallowance. Ownership of property not necessary in later years.
- Business losses c/f 8AY's & same head setoff only. Return must be filed within due date. Business may not be continued in later years.
- Sequence of s/off- First current years depreciation, then scientific research & family planning expenditure, then B/F business losses then unabsorbed depreciation, then capital expenditure, family planning, development allowance, investment allowance.
- Loss from Illegal speculation business cannot be c/f from s/off later.
- Loss from specified business (hotel, hospital, warehousing, cold chain facility, etc) can be s/off infinitely against same income return need not be filed within due date. Business need not be continued.
- Unabsorbed depreciation can be s/off against any other head.
- Short term capital loss C/F 8 years setoff same head. Carry forward only if return to be filed before due date.
- L.T.C loss C/F 8 years setoff same head. Carry forward only if return to be filed before due date.
- Indexation capital losses can be s/off against non indexation L.T.C loss.
- General Principal – person who actually incurred the loss and who is setting off & c/f the loss must be the same, except in certain cases in case of business reorganizations.
- In succession by inheritance, business loss of deceased C/F & s/off in heirs heads.
- Set off allowed even if not claimed.

Deduction & Rebate: Chapter VI A deductions from Gross total income (GTI) after setting off unabsorbed losses. Deductions cannot exceed GTI.

- Deduction in respect of certain Income not allowed under return is furnished within the due date. Deductions cannot lead to Refund.

Deductions relative to certain Payments.

- **80C:**- Investments Deposits trade for Individual HUF –LIP, EPF, PPF, children (2) tuition fees, Term deposit more than 5 years principal loan repayment for purchase of Residential property, NSC, Mutual funds more than 3 years. Total limits Rs150000 subject to 80CCE.
- Insurance policy premium for 2 years to be paid.
- Children tuition fees paid to University, College, and School in India.
- Loans repay for residential property – property to be held for 5 years.
- NSC.

- **80 D-** Medical Insurance premium – Individual & HUF limit Rs 25000 inclusive of preventive checkup Rs 5000. If any parent is senior citizen limit Rs 50000. For very senior citizen Medical expenditure deduction upto Rs.30000 provided no insurance is paid or balance is then allowed.
- **80 E** Interests on higher Education loan- Individual- loans paid to banks, charitable Institutions- allowed for Maximum 8 year's Higher education is after 12th-no maximum limits- courses outside India covered- Higher education can be of self, spouse, children, or any students of whom person is legal guardian.
- **80 EE** Interest on housing for purchase of residential property- Individual- Maximum Rs 50000- Loan Maximum 35 lacs & Value of property upto Rs 50 lacs. Does not own any other house. Loan from banks/ housing finance companies. Deduction is for each co owner. Person getting HRA also eligible.
- **80 EEA** Interest on loan for certain residential housing property- Individual not availing 80EE- limits Rs 150000 loans upto 45 lacs, value of property upto 45 lacs. Not owner of any other house. Loans from banks & Hsg Fin Co.
- **80 EEB** For individuals purchase of Electric Vehicle for individual wef by 20/21 maximum Rs 150000 loans from financial institution/Bank/NBFC sanction of loans between 1.4.2019 to 31.3.2023. No further the deduction under any other section.
- **80 G** assesses Donation made- limit is lower of 10% of adjusted GTI (minus LTCG ,STCG, minus all VI A deductions except this) or Under typing amount.
 - Donations in kind not eligible.
 - Payments above Rs 2000 to be made not in cash.
 - Donations to foreign trust no deduction.
 - Certain donation 100% allowed, other 50%
- **80 GG** Rent paid- Individual other than employee receiving HRA Deduction lower of Rs 5000 p.m or 25% of Total Income (TI) or Excess of Rent paid over 10% of TI.
 - Accommodations should not be owned by him or family members.
 - Payments to register political Parties / Electoral Trusts.
- **80 GGB** Payment by Indian Company

- **80GGC** Payment by any other person no limit - payment other than by cash.

Deduction in respect of Income

- **80IA-** Any Assessee - for infrastructure Co's in the business of development roads, ports, Telecom services, Industrial Park, SEZ, Power generation, network laying of power line Substantial Renovations, modernizations of power line / Revival of power plant.
 - Company not formed by splitting/reconstruction of existing business - Second hand machinery used to extent of 20% of Total machinery, Imported second hand machinery used.
 - Audit reports form 10CCB, ROI file by due date, No deduction if works contracts business.
 - Development roads included bridge Railway, Highway project include housing, water supply & treatment irrigation, Sanitation & sewerage, solid waste management.
 - By Indian companies, should be an agreement with Government/ local authorities.
 - Commence business between 31.3.17
 - Deduction is 100% of profit for 10 consecutive AY.
 - Parts include airports, Inland waterways, navigation channel.
 - Telecom includes paging, satellite, trucking, Broad band, Internet 100% Deduction for first 5 years & 30% for next 5 years.
 - All other infrastructure businesses deduction is 100% of NP for any 10 AY's in a block of 15 years from commencement of such facility.
- **80 IAC** Co/LLP business being eligible start up engaged in eligible specified business, Incorporated between 1/4/16 to 31/3/2021, turnover less than 25 Crores, holds certificate from Board of certification. Eligible business is engaged in Innovation, development Improvements of Products, process, services with high potential for employments or wealth generation. Deduction is 100% of wip for 3 consecutive years in a block of 7 years from incorporation.
- **80 IB** Any assessee in business of building a housing project ,maintaining hospitals, Refining of mineral oil,cold chain facility for agricultural produce, processing & transportation of fruits, vegetable, grains, process & transport of meat & its products. Being a SSI or located in backward area or engaged in above activities.
 - General Deduction 100% of Net Profit -1st 5 years & 25% for next 5 years

- **80 IBA**- Any assessee in development & building its projects carpet area less than 60sqmtrs in metro cities in & 90mtrs other place, start up due value less than 45 lacs - 100% of Profit.
- **80IB** any assessee business of hotel above 2 star or convention center (for conference etc) Business to commence before 2010.
- **80 JJA** any assessee where self in himself In business of collecting & Processing / Treating biodegradable waste for power generating, producing biogas , pesticides, organic manure. 100% 1st 10 years.
- **80JJAA**Any tax audit assessee for employment of new workmen, Audit report form 10 DA include casual worker, contract labor, working < 300 days/ year. Deduction is 30% of the additional employment cost incurred for 3 AY's. Salary to be paid otherwise than by cash. Additional worker salary should be < 25000 per month& working for more than 240 days in PY.
- **80 QQB**- Resident Individual-TAC/ joint authors receiving Royalty for assignment for any interest/ copy right of any Book, literary, artistic or scientific- Deduction If lump sum consideration Rs 3 lacs, otherwise 15% of sale of books, lower upto Rs 3 lacs or actual book does not include commentaries , guides, magazines, journal, school texts books, etc.
- **80 RRB** - resident Individual Royalty from Patents registered in own name -Deduction upto Rs 3lacs or actual (lower)
- **80TTA**Interest of saving account(Invt in time deposits) in bank PO , Co-op society- individual & HUF, other than senior citizen- Deduction upto 10000 or actual(lower)
- **80TTB** –Interest in SB a/c –for senior citizen-upto Rs 50000 or actual (lower of)
- **80U** -resident Individual having own Disability - expenditure incurred ordinary- disability upto Rs 7500 serve Rs 125000 -medical certificate obtained. ROI to be field.

REBATEu/s **87A**- resident Individual whose total lower income <= 5 lacs –lower of Rs 12500 or amount of tax.

TDS-It is Income Tax deducted & paid by the PAYER of the income S-192 on salaries at normal slab rates- By employer, to be deducted at time of payments of salary if annual total income exceeds basic exemption. Deductible if services rendered in India, even though employer is non residential or salary paid outside India.

192A– Premature withdrawal of EPF. Balance in excess of Rs 50000 @10%

193- TDS on Interest, unsecurities (Government bonds, Gold Bonds, Saving Bond any listed securities in Demat form Deduction if interest exceeds Rs 10,000 in a year @ 10% at time of credit or payments.

194-or Dividends by Indian company @10% on distribution or payments if more than Rs 2500 in a year. No TDS on deemed dividends u/s 2(22)

194A- Not applicable to payer who is Individual or HUF) unless it is under tax Audit) or Interest, other than Interest on securities- paid by Individual company/ HUF or tax audit, Assessee @ 10% on credit or payment (earlier)- No TDS if paid by bank, Co-operative Credit society or P.O if investment is < Rs 40000p.a or Rs50000 if paid to senior citizen or any other case if it exceeds Rs 5000 by other then above mentioned payer. No TDS if interest is paid/ payable to a partner by the firm, to a co-operative society (other than by a co-operative bank to its members) to a saving accounts holder.

- TDS Applicable on recurring deposit, TDS calculation will be made entity wise, not branch wise.
- Cover all payers except those who are Individual & HUF's not under Tax Audit, Covers all LLP Trusts, AOP, BOI, company firm.

194B-Income from lotteries, card & any other game individual lucky dip draws by any person to any person @ 30% on payment unless payments less than Rs 10000.

194BB- from horse Race winning above Rs10000 - 30%

194C- on payments to resident contractors for carrying out any work under a contractor subcontract including supply of labor. Work includes advertising, production of program, transport of goods & persons, catering, manufacturing & production as per customers specification by using material purchased from such customer.

- Not applicable to individual or HUF who is not a tax Audit Assessee.
- Rate @ 1% if payee is Individual / HUF otherwise 2%, at time of credit or payment.
- No TDS or single payment less than 30000 or total yearly payments less than Rs 100000or goods transports owning less than equal to 10 vehicles.

- No TDS if payment made to Individual or HUF for personal purpose unless the payments are excess of Rs 50 lac written off 1/9/2019 S 194-M.
- If payments cross RS 75000 in a year then TDS on earlier payments to be made also.
- No TDS in case of franchisee arrangements as it is for sale.
- No TDS on gas transportation charges as it is sale.
- No TDS on services to customer by hotel like housekeeping, beauty salon, car rental, health club as it is not carrying on any work.
- Payment to transports providing pickup & drop to employee is TDS u/s 194C and not 194I

- **194DA**- Amount including Bonus paid to resident under Life Insurance Policy not covered under 10(10D) TDS @5% wef 1/9/19 on income part, (surplus less premium) liable on payment if exceeds Rs 1lac.

- **194H**oncommission, Brokerage, Deduction not on Individual/HUF unless under tax audit @ 5% if single or aggregate payment, exceeds Rs15000.

-Does not apply to professional charges paid.

-Does not apply to Bank Charges.

-Can be in relation to any asset article or thing (other than securities)

194-IRent paid for use of land building, plant, machinery, equipment, furniture fittings whether owned or not by payee. Payer other than Individual/ HUF which not tax audit.

-TDS @ 2% if plant, machinery, equipment @10% , if furniture & fitting or land building

-on yearly payment less than Rs 2,40,000 p.a

-Space taken on rent & then sublet for putting up a hoarding is 194I

-Payments for hotel accommodation taken on regular basis is 194I.

-TDS also on advance rent, warehousing charges, nonrefundable deposits.

-TDS deducted but not deposited by tenant cannot be recovered from land lord.

194IA or consideration received by any person for transfer on land /building @1% if consideration is less than 50lacs. No TAN to be obtained by deducted. Consideration includes club membership fees, partnership fees, maintenance, advance fees etc.

194IBon rent exceeding Rs 50000 received by Individual/HUF to be deducted @5% at time of credit/of last month's rent of the previous year. No TAN needed of deductor and such deduction shall not exceed the last months rent.

194J on fees for professional/technical services paid otherwise by an Individual/HUF liable to tax audit @10% if single or aggregate payment exceeds Rs30000p.a (not applicable if paid to director of company)

-Applicable to any Remuneration/Fees/Commission paid to director & non complete fees or fees for notes having intellectual property and Royalty fees paid reference.

-Applicable to not field professionals including sports person, umpire, referees, commentators, coaches, trainers

, event management, anchors, sports columnist in relation to sport activities applicable to company secretary, Info technology professional, authorized representatives, film artists (actor, cameramen, director, lyricist, storywriter, dress designer).

-Technical services means rendering of managerial, technical or consultancy services.

- Limit of Rs 30000 applicable separately to Professional, Technical, Royalty & other liable heads.

194M -Any payments of the nature refunds to 194C or 194H & 194J by Individual/ HUF (including those not under taxaudit) TDS @5% if total yearly payments exceeds Rs50 lac p.a. even if payments is for personal purposes of the recipient.

194N-on cash withdrawals in excess of Rs 1cr in a year wef 1/9/2019 from one or more accounts, TDS @2% by banking company, co-op credit society post office, at time of payments. TDS is on all amounts paid from start of the year once the total payment crosses Rs1crore at any point during the year.

195 -Payment to non residents any sum (except Interest, salaries, Dividends) for NR, foreign company now foreign company is resident if its POEM (Place of Effective Management) i.e where key management & decision take place is in India.

-TDS payment to Government by the 7th of next month.

- Return in form 26Q residents other than TDS on salaries & form 24Q for S192 salaries.

-Late fee Rs 200/- per day of delay, cannot exceed amount of TDS

-Interest @1% per month if TDS not deducted & 1.5% if deducted not paid.

-No cess applied on TDS but surcharge applicable.

TCS(Tax collection at source) seller shall collect TCS from residential buyers at time of receipts or motor vehicles sold exceeding value of 10lacs @1%

- No cess but surcharge applicable.

STT (Securities Transaction Tax) is levied on value of taxable securities transaction and collected from the persons executing this transactions as under.

-Purchase or sale of Equity shares on delivery through a recognized stock exchange @0.1% of value by both purchaser & sellers. No STT on purchase of Equity oriented Fund .

- STT or sale of EOF by delivery through recognized stock exchange @ 0.1% on Purchaser if otherwise than by delivery STT @ 0.025 % on seller, STT on options premium @0.017% or seller, or futures at traded price @ 0.01% or seller.

-STT paid is allowable deduction from business income.

CTT (Commodities Transaction Tax) is levied taxable transactions of commodities derivatives (contract for delivery of goods or for differences which derives its value from prices/ indices of the underlying goods/ related services/weather similar events.

-value of the taxable commodities is the price at which the derivatives is traded.

- CTT @ 0.01% payable on seller& is allowed deduction from business income

-DDT u/s 115O. (Dividend Distribution Tax) is the tax a company has to pay or distribution of dividend declared deemed distributed by it and the same is exempt income in hands of shareholders.

-not applicable to foreign company.

-Not applicable if a specified domestic company (SDC is a company where a business trust holds its entire nominal Equity capital) pays dividend to a business trust after its acquisition of equity shares in such company.

- Not applicable if domestic company receives dividend for domestic subsidiary company has already paid DDT received on such dividend.

Deemed Dividend u/s 2(22)e includes an payments by other than company where public is substantially interested by way of loan or advance to shareholders holding > 10% of voting power or to a concern where such shareholders holding substantial interest to the extent of companies accumulated profit, unless it is a business/ financial company or loan given for purchase of its own shares.

Deemed Dividend (DD) is liable for DDT & exempt in shareholders.

-rate of DDT is deemed dividend is to be paid within 14 days of distribution/ payments and on Dividend is 20.55%

- Dividend received from a foreign company by residents is taxable.

MAT (Minimum Alternate Tax) is applicable to companies where the Income tax payable by them on their Total income as computed under the IT Act is less than 18.5% of their book profit- not applicable to foreign company if it doesn't have PE in India.

- Book profit means N/P as per P/L account subject to certain adjustments :-

If a companies N/P is not as per Ind AS, and as per part 1 sec III of COA 13-To be increased by -if the full items are debited to its P/L accounts

-Income tax paid / provided.

- Transfer to any Reserve.
- Provision for liabilities other than ascertained liabilities.
- Provision for losses.
- Dividends paid/ proposed.
- Expenditure relatable to any Exempt Income.
- Expenditure relatable to any Income of charitable return.
- Amounts of Deferred tax provision.
- Amount for diminution of any assets.
- Amount for depreciation.

If the following items are creditors to P/L accounts then to be reduced by

- withdrawals from Reserve or Provision
- Exempt income.
- Depreciation.
- Lower of b/f losses or unabsorbed Depreciation.
- If company has followed Ind AS in preparing its P/L then further adjustments.
- Increased by all amounts credited to OCI (other comprehensive Income) under the head 'Item that will not be classified to P/L'.
- Decreased by all amounts debited to OCI under the 'Item that will not be classified to P/L'.
- Loss not to include depreciation.
- MAT credit lapses if Private Company / unlisted company converted to LLP.
- No interest is payable on MAT credit.
- Mat credit is allowed as s/off b where tax becomes payable on TI computed under the normal provision of the act. However tax credits is restricted to tax the income and MAT in the year of s/off. Thus a minimum tax @18.5% of the book profit to be paid in end year.
- MAT credit can be availed in 15 AY's
- MAT credit to be reduced from tax payable while calculating Interest u/s 234A, 234B & 234C.
- Reports from CA in form 29B register computation of Book Profits.
- AMT (Alternative Minimum Tax) every person other than company in certain specified situations where IT payable as computed is less than AMT on adjusted income.
- ATM is 18.5% on such adjusted total income (ATI).

AMT is applicable where the person (other than Individual / HUF/ AOP/BOI) has claimed VIA deduction other than 80P. If ATI do not exceeds Rs20lacs no AMT in cases of (individual /HUF/AOP/BOI) or where no such deduction is claimed.

CDT (Consideration Distribution Tax) in buy back of shares by listed company even where no tax is payable by company,

CDT @23.30% within 14 days from paying of consideration to shareholder- no credits for CDT paid neither to company nor shareholder.

Taxation of Business Trust (BT)-115 UA Income of business trust at MMR (Max Marginal Rate) except income u/s 11A & u/s 112. Interest Income of business trust from a SPV (Special Purpose Vehicle) is exempt- dividend income from SDC exempt SPV means on Indian company in which the business trust holds controlling interest.

-Income Exempted of business trust taxable in hands of unit holder & TDS to be deducted.

Non Residents (NR) liability to pay tax in India does not depend upon nationality or domicile of a person. It depends on residential status. Global income of NR is not taxed. Only whatever received accrue or arises or is deemed so.

IN India is taxed If RNOR same principle and also income accruing or arising OUTSIDE India but should be from a business controlled In India

- for NR Royalty Interest & FTS (fees for technical services shall be deemed in India ever if he does not have a residence or business connection or rendering services in India.

-Business connection income business activities carried by a person on behalf of NR & who HABITUALLY has authority to conclude contract plays & leading role in concluding contract or conclude contract in name of NR. Contract are in respect of transfer/ rights in property owned by NR or of services provided by NR. Business connect includes 'significant Economic presence' whether or not NR has residence or business or service in India.

-NRI can be opted for taxation under special provision chapter XII- A (S-115) wrt income from specified Assets or Foreign Excel asset. Then no VI-A deduction no indexation permissible or NRI can opt for normal permission of Act by giving a declaration in his ROI.

-A.O can determine ALP in course of assessment if in his opinion any information/document not kept & maintained as required / information/ data used are not reliable or incorrect/assesses failed to finish info/doc.

-Deduction u/s 10A, AA, B or under VI A not allowed against the enhanced Income by A.O.

- After total Income determined by A.O of an assessee no corresponding recomputation of TI of the other affected AE is to be made.

-Reference TPO (Transfer Pricing Office) by A.O if he considers expedient and takes prior approval of CIT and where aggregate value of International transaction > Rs 5 Crores it should be picked for scrutiny & preference to TPO to be made in respect of each individual of transaction. TPO can if he finds determine ALP of other transaction not reported.

- A.O bounds by TPO's order.

APA (Advance Pricing Agreement) made by CBDT offer Central Government approval in respect to International transaction to determine the ALP which shall be valid for mentioned period not more than 5 consecutive PY's and is binding on CIT.

Secondary Adjustments (SA) 92 CE to bring TP provision in line with OECD guidelines and international best practices provides that's assesses to carry out secondary adjustment where the primary adjustments (PA) is made to T.P on his own in his ROI or by A.O where PA'S

accepted by assesses or where PA is determined by APA or PA made as per safe harbour rules or as a result of resolution of an assessment.

SA means adjustments in BOA of assesses and its AP to reflect that the actual allocation of profits between them are consistent with the T.P determined as a result of PA thus removing the imbalance between the cash ac's & actual profit of the assesses. If a result of PA there is increase in T.I or reduction in loss of the assessee then the excess money if not repatriated to India within the prescribed time shall be deemed to be an advance made by the assesses to such AE and interest in such advance is carried out if the amounts of AP made in any previous year is less than 1 Cr.

- The excess money can be repatriated from any of the AP's of the assesses which is NR.

- WEF 1/9/2019 where excess money has not been repatriated the assessee at his option may pay additional the tax @18% on such excess money. No refund of tax on such excess money. No secondary adjustments if additional tax is paid.

DTAA Double Tax Avoidance Agreement -to avoid same income arising to any person from being taxed twice one in his home country and other by the host country where he operates DTAA is there. India has DTAA with 88 countries where agreed relates of taxation & jurisdiction on certain types of income are specified.

- Assessee can opt to be taxed under India I.T Act or under DTAA provisions whichever are more beneficial but GAAR countries to be applicable.

- In case of conflict DTAA would prevail over the Acts.

Transfer Pricing (TP) S-92B in transactions between unrelated business entities are decided by market forces of free economy. But similar transaction is between related parties the pricing would affect taxation aspects.

- TP provision do not apply if they have an effect of reducing the loss or increasing the taxable income.

- Interest transaction is between 2 or more associated persons where either or both are NR's. Transaction is purchase/sale/lease of tangible/intangible property, provision of services, (including financial services), lending or borrowing money or any transaction having a bearing on profit, income, loss or assets or any agreement or arrangement for allocation\ apportionment of any contribution cost or expense with benefit/ service/facilities provided by one or more such enterprise.

- Deeming to be an international transaction only if there exist a prior agreement between them.

- Premium on share issue is on A/C of capital Account transaction & not income & not liable to TP adjustment.

- **SDT**(Specified Domestic Transaction) 92 BA only if aggregate of such specified transaction is Rs 20Cr & they are not International transaction.

- The following transaction Expenditure to persons specified u/s 40 A (2) (b) (relative)-S-80A transaction Transfer of goods/ services 80IA(8), business transaction 80IA(P), transactions referred to in VI A or 10AA to which provisions of 80 IA(8) or (10) applies.

- **Associated Person (AP)** 92 A means an enterprise which participates in the control management/capital of the other directed or there intermediaries.

- **ALP** (Arms Length Price) a price which is applied to unassociated persons in uncontrolled conditions.

-Any income from International transaction SDT shall be computed at ALP.

-The costs\expenses between AP'S to be at ALP.

-ALP to be computed by certain method. If different prices arrived then arithmetical mean taken.If variation between ALP & actual price is <3% then actual transaction taken to be ALP.

-Sale of foreign currency more than Rs. 10 lacs – Authorized person.

-Purchase or sale of any immovable property > Rs. 30 lacs – Registrar.

-Receipt of cash by any person for any goods or services>= Rs 2lacs- Tax Audit assessee

-Cash deposited in demonetization period(9-11-2016 to 30.01.2017) in current account totaling to more than Rs.12.50 lacs - Banks

-Cash in demonetization period(9-11-2016 to 30.01.2017) in saving account totaling to more than Rs.2.50 lacs - Banks

Assessment Procedure

-Notice of intimation u/s 143(1) CPC processing to be sent to the assessee after one year from the end of financial year in which ROI is filed.

-No addition of income appearing in Form 26 AS by the way of adjustments to be done by CPC in processing u/s 143(1).

-Sums payable mentioned in 143(1) intimation deemed to be a Notice of Demand.

-No processing of return within one year from the end of F.Y in which ROI is filed where a scrutiny notice u/s 143(2) is issued but it shall be processed before issue of order u/s 143(3)

-AO can ask for statements for maximum of 3 years prior to the P.Y.

-Copy of Scrutiny limited to verification only to those areas selected by CASS on the basis of AIR data or CIB information or from non reco wise 26 AS.

-Special Audit only if it is in the interest of revenue to get it done after prior approval of Chief CIT or CIT , only where case is pending in an assessment or reassessment.

-Time period of 180 days to provide special report.

- 143(3) notice only after ROI is filed (to be served within 6 months from end of F.Y in which ROI was filed.)
- No reasons to be recorded for selecting scrutiny case guidelines for selection of scrutiny case need not to be disclosed.
- Berth judge (ex parte) assistant S-144 A.O to record reasons for the same and to estimate income in logical manner based on some material. AO cannot assess income below the returned income or loss higher than returned loss.
- S-147 – reopening of assessment – no reopening after expiry of 4 years from end of relevant assessment year unless there is failure to file ROI or disclose material facts for the assessment.
- Reasons to be recorded before issuing notice u/s 148
- Reopening with 6 years if income escaped assessment is \geq Rs. 1 lacs .
- Reopening with 10 years if income expected assessment is from assets outside India .
- Person who entered in International transaction to keep information & documents for 8 yrs from end of AY.

Safe Harbor Rules (SHR) 92 means circumstances in which the department shall accept the T.P declared by assessee since a large no of such transactions are subjects to adjustments giving rise to considerable disputes.

- Applicable to eligible International transaction of provision of software development services, IT enabled services ,knowledge process, outsourcing services, advance of intra group loans provision of corporation guarantee, provision of R&D services in relation to software or generic pharma drugs, manufacturing & export of core & noncore auto components (90% as OEM)by eligible assesses a person who has exercised a valid option from applying for safe harbor rules and is exposed in providing software development services & above services to a foreign related principal, and undertaken above eligible transaction.
- The TP declared in respect to the above transaction shall be accepted.
- But 92D 292t secondary adjustments shall apply irrespective of opting for SHR.
- The Operating Profit Margin declared by eligible assesses from the above eligible International transaction is 20% or more for software development is 25% for IT enabled services & knowledge process, the interest rate declared for intercorporate loans where loans <50 Crores is 150 bps above SBI base rate and 300bps above for >50 cr loans commission fee for providing corporate guarantee is \geq 2% ,provision for contract R.D wrt software; operating profit >30%, wrt pharma drugs >29%, wrt core auto components >12%, wrt non core auto comp >8.5%.
- Assessee to furnish option in form 3CEFA specifying the period before due date of ROI.
- If no option exercised or option held to be invalid AO to determine ALP as per sec 92C/CA.
- No SHR if AP is located in notified country or in a not tax or low tax country Max taxis (<15%tax)

AAR (Authority for Advance Rulings) mostly for NR to know the tax implications or their operations or proposed transactions in India under IT act.

- Filing fee Rs 10000 application in 4 copies can be withdrawn within 30 days.
- AAR to forward to CIT to furnish records. AAR may allow or reject (after providing opportunity) with reasons.
- Application not allowed if matter is pending in Appeal court or in values determination of FMV of any property or relates to a transaction/issue to avoid tax.
- AAR to be decided within 6 months of receipts.
- Once ROI filed application cannot be made. Appellant shall not decide on a matter which is pending before AAR. Decision is binding on application & CIT his subordinates.

DRP (Dispute Resolution Panel) only for assessee where AO proposes to make additions or reduced loss in response to TPD order or for a foreign company. DRP consist of 3 CIT.

- AO to send draft of proposed order to assessee. Assessee within 30 days file acceptance or file objections with DRP & AO in F35A.
- DRP can confirm, reduce, or enhance the variations in the draft order.
- DRP can consider any other matter out of the assts proceeding relating to the draft order whether or not the assessee has raised the issue.
- DRP cannot set aside or remand the case for further enquiry by AO
- Assessee can file appeal before ITAT against DRP's order

Return Of Income (ROI) All assessees to file ROI if Total Income (TI) exceeds the exemption limit BEFORE deduction u/s VI A or 10(38) or all 54 companies & firm to file compulsory ROI even if nil.

- Compulsory filing ROI for person depositing in all current A/C in Bank/Cooperative Bank aggregate more than 1 Cr or spent more than Rs2 lac for self/other person on foreign travel.
 - Compulsory ROI for university, college, institutions u/s 35 Business trust, Investment fund even if below exemption limit.
 - No need to file T.A Income is only from 115 A (1) (a) or (b) & TDS is deducted.
- General due date of filing ROI 31st July company, audit, assess, working partner, others not covered 30th Sep
- T.P case -30th Nov.
- ROI compulsory before due date to c/f loss by assessee having Business/Profit, Capital Gains, Specified business not needed for c/f unabsorbed depreciation, house property loss s/off during current year.
 - Revised return can be filed for c/f of losses which was not claimed in original ROI provided original ROI was filed before due date.

- **Belated ROI**- ROI not filed by due date can be filed earlier or before end of A.Y or before completion of assets order (not notice of Demand).
- Revised ROI** Original or belated ROI can be revised within above time limit.

PAN application compulsory for-

- Person whose turnover >5 Lacs in a year
- Charitable trust.
- Any person liable to pay tax/ duty under any law(GST) whether or not IT is payable.
- Any person receiving any amount of TDS.
- Any person entering into specified transaction.
- Any person other than individual entering into any financial transaction > Rs.2,50,000 in a year.
- Quoting of PAN compulsory for (excluding NR)- Penalty Rs.10,000 each default.
- Sale or purchase of vehicle other than 2 Wheeler.
- Opening of Bank a/c except time deposit, issuing Debit/ Credit card;
- opening of DEMAT account, payment (including cash)>Rs 50,000 at one time to hotel/ restaurant, cash payment relating to foreign travel(Excluding Bangladesh, Bhutan, Maldives, Nepal, Pakistan or Sri Lanka or Haj Samdi travel or China Kailash Mansarovar exceeding Rs.50,000 at one time towards fare, to travel agent, to reporters, or authorized dealer.
- Mutual fund purchase of units/ of company bonds, debentures/ RBI Bonds/ Mutual funds exceeding Rs.50,000.
- Deposits > Rs. 50,000 cash in a day in Bank.
- Purchase of bank draft, P.O for bank in cash totaling Rs.>=50,000 on one day.
- Time deposit in a bank, P.O or NBFC more than Rs.50,000 or totaling to more than Rs. 5 Lacs in a year.
- Making one or more prepayment exceeding Rs.50,000.
- Life insurance premium totaling to more than Rs.50,000 in a year.
- Sale or purchase of unlisted shares in a company > Rs.1,00,000/-
- Sale or purchase of immovable property valued more than Rs. 10,00,000/-
- Sale or purchase of goods more than 2,00,000/-.
- Illegal to have more than one PAN or TAN . Branches/ Divisions of entity can have separate TAN.

- Specified transaction** (to be reported) for which specified persons (banks/post office/Companies/Credit card companies/Tax Audit assessee /Mutual Fund/NBFC) have to furnish SFTRA(Statement of Financial Transaction or Reportable Accounts) as under of person.
- Purchase of bank draft /PO/ in cash in a year > Rs.10,00,000/- in a year
 - Cash deposit or withdrawal in or from one or more Current account> 50 lacs - Bank.
 - Cash deposit or withdrawal in or from one or more Saving account > 10 lacs- Bank .

- Deposit (other than Time deposit) one or more time > Rs 10 Lacs in a year.(Could be in loan Account) .
- credit card bills paid in cash in a year totaling to > Rs. 2,00,000/- or paid other than in cash bills totaling to more than Rs. 10 Lacs in a year- Cr Card Co.
- Purchase of bonds / Debentures/Shares/Buy Back/ Mutual Funds of >=Rs. 10 Lacs in a year.
- After notice u/s 148 is issued, Assessee (A) to file response & ROI within prescribed time, then AO to supply the reasons recorded for issuing within 30 days of filing such return, once assessee receives the reasons, within 60 days he can raise objections to it . A.O to dispute the objections within 4 months of receipts of objection . These time limit apply only if 'A' file within time limit & raises objection within the time limit.
- Change of opinion is no reason to believe.
- Once notice u/s 143(2) is issued , then notice u/s 148 cannot be issued and A.O to complete assessment u/s 143(3).
- On reassessment u/s 147, original assessment disallowance & additions for which no appeal/revision/rectifications continues.
- Time limit for completing assessment S-153
- Regular assessment order for AY-18-19 before 18 months from end of AY.
- Regular assessment order for AY-19-20 before 18 months from end of AY.
- Order of Income escaping assessment – before 12 months for end of Financial year where notice u/s 148 is served after 01.04.2019.
- Fresh Assessment when assessment is set aside or cancelled by tribunal within 9 months from end of financial year in which order is received by CIT. If set aside or cancelled by Chief CIT then 12 months.
- For all assessments if reference is made u/s 92CA(1), additional time of 12 mths added.
- Effect to an order u/s 50,54,60,62,63,64 – by AO, within 3 mths from end of month order is received by CIT, If AO requires verification of any issue by way of submission of document by assessee time is increased to 12 mths.

Protective Assessments

To safeguard interest of the revenue- when there is a doubt regarding the ownership of an income. Then income is assessed substantively in that assessee who is strongly believed to be the real recipient. And if there is another person who is likely recipient, due to abundant, caution a protective assessment is also made on him. But there cannot be realization of taxes so assessed in a protective assessment .Appellate authorities cannot pass protective orders. Once appellate authorities confirms the substantive assessment, the protective assessments should be cancelled by rectification order u/s 154. But, if the substantive assessment gets cancelled, then the protective assessment becomes the substantive assessment and tax can be demanded.

New guidelines for compounding of application received after 17.6.2019 compounding is not a matter of right done a satisfaction of eligible conditions, conduct of the person native & magnitude of the offence & facts & circumstances.

Prosecution initiated under IPC cannot be compounded but can be withdrawn under CRPC offences are classified into 2 parts. Categories A- Failure to pay deduct tax/deliver returns or statements/allow inspection/269SS/269T and category 'B' offers wilfull attempts to evade taxes/ payments of taxes/ failure to produce accounts document/ falsifying BOA or documents. -No application can be made after 12months from end of month in which pro section complaint has been filed in court.

-Outstanding tax, Interest, relating to the offence to be paid before making application any demand found O/S to be paid within 30days of its intimation by departments.

-Person understands to pay the compounding charges determined.

-Person undertakes to pay withdraw appears filed relating to the offence.

-Following offences generally not compounded:

-Category 'A' offers on more than 3 occasions.

-Category 'B' offers other than the first offence.

-Offences as for which he was convicted by court under IT tax laws.

-If person is main accused & proved that he has enabled others to launder, bogus invoice, accommodation entries, etc.If he has committed anti national/terrorist activities. If his application for plea bargaining is pending in court.

-Offence of undisclosed foreign Bank ac's/ assets.

-Offence under Benami Transaction Act Prohibition/Black money Act.

-Offence considered by Pr CIT etc as not fit for compounding.

-Multiple applications filed for one or more than one A.Y's in one instance all these applies treated as one occasion.

- or report for Board or petition of application may relax above restriction by committee.

-Time relaxation for application filed beyond 12 months but before 24 months provided delay is beyond the application control.Compounding charges @1.25 times.

-Offence including compounding charges more than Rs10lacs to be passed on prior approval of a committee.

-On receipt of application for compounding a report to be obtained from A.O application to be disposed within 6 months. Compounding fees to be paid within 1 month extended to 3 months. Beyond 3months extension with committees approval up to 12 months seized during search cannot be adjusted against advance tax payment.

Cash seized during search cannot be adjusted against advance tax payments.

-No interest on refund if amount of refund is less than 10% of tax determined u/s 143CD or on regular assets.

Penalty – If penalty is not justified then no prosecution is justified.

- Penalty proceeding are separate & independent, proceedings from assets proceedings.
- No penalty proceedings if an assessments is set aside.
- It is not automatic needs proper initiation, hearing opportunity needs to be given. Should be a speaking order. Penalty referred 273B (271 to 273) cannot be imposed if assessee proves that there was reasonable cause for such failure.
- Principle CIT/CIT can u/s 273A reduce or waive penalty or stay or compound in certain cases.
- Exclusions from Under reported Income- 270 A (2)
- If bonafide explanation in respect of the income is given by an assessee to A.O/CIT/CIT(A)/Pr CIT
- If accounts are complete and correct to the satisfaction of AO/ Pr CIT & income is estimated.
- If all material facts are discussed in relation to additions/disallowances made.

Immunity from Penalty u/s 70 A if applied to AO is made within 1 month from end of month order is received to grant immunity if taxation is paid & no appeal is passed.

Undisclosed Income means any income of the represented Specified Previous year by any valuables, entry, transaction found in course of search not recorded in books or documents maintained or not disclosed

closed prior to search, or entry of false expenses in bank, which would not be found without the search. Specified P.Y means P.Y ending before the date of search and the P.Y in which search was conducted.

Prosecution means imprisonment of the accused Presumption by court of culpable mental state means quality state of mind mala fide intention purposeful or withful wrong doing.

- Presumption rebuttal by accused. Means re a an essential ingredient, & prerequisite for prosecution.
- No prosecution if reasonable cause is proved. Penalty & prosecution are separate proceeding.
- No time limit or limitation period for initiation of prosecution proceedings.

Remedies against Assets order of AO

- Rectification u/s 154 before same A.O
- Appeal or revision is before a higher authority than the order passing authority.
- Against order u/s 263 appeal lies before Tribunal.
- Appeal against A.O order first appeal before CIT (A). Against CIT (A) order both or either assessee or depts. Can file appeal to Tribunal.
- Revision order u/s 264 is final for assessee and dept No further appeal only writ petition can be filed.
- Stay of demand before A.O additionally filed along with appeal/revision.

- Revocation of provisionally attached property if assessee furnishes Bank Guarantee from a scheduled Bank of an amount \geq market value of property attached or A.O is satisfied not lower guarantee amount is sufficient to protect the revenue.
- Order of revocation within 15 days of receipt of guarantee.

Levy of Interest- Interest is automatic & mandatory No hearing opportunity is required. Interest payable to calculated at simple interest even for a part of the month (a day). But interest receivable by assessee for excess tax paid not to be given for part of the month. Interest paid is not allowable deduction but interest received is taxable. Interest can be waived.

- Interest charged varies from 1% to 1.5% p.m but interest; payable to assess is @ 0.5%
- Interest is charged on tax determined in assets less advance tax, TDS, TCS, Relief u/s 89, 90, MAT/Amount Credit, Self Assts Tax.
- Interest shall be increased or decreased according to tax subsequently determined on rectification/appeal revision/courts order.
- Interest not to be charged if taxes paid before filing ROI or delay is due to strike in departments or if books were in custody with department or if no specific mention is there in A.O.
- Interest 234 B for advance tax defaults levied also on presumptive scheme assess self assts tax paid not to be reduced from assessed tax, unless self assts tax is paid before passing of order of A.O.
- Interest u/s 234B liable only for those who are liable to pay advance tax.
- Self assets tax paid next work day, the past day being on holiday no interest for that month.
- No interest where short fall of advance tax is due to capital gains or income of lottery etc/ unanticipated income and a assessee pays in balance installments or by 31st march.
- Power of CIT(A) are in continuation to that of A.O .He can direct the A.O to make further enquiry. He cannot set aside the A.O. He can enhance but sufficient opportunity to be given. Filing of appeal fees Max Rs 1000 for Total Income Assessed by A.O more than 2lacs.If matter is not linked to I.T, fees Rs 250/- but advisable to pay Rs1000/-
- Electronic filing mandatory File maximum evidence before A.O during asst. Reserves the right to add or delete or amend any grounds of appeal. No provision to withdraw appeal once filed. CIT(A) cannot make assessment. He cannot direct a new source of income which is not considered by A.O writ petition before H.C not possible unless first appeal is filed.
- ITAT (Tribunal) appeals** – It is the highest FACT Finding authority appealable orders by assessee against order passed by CIT(A) regarding 154 rectification 270(A) Mis/order reporting 271 concealments 271AJ, 272A Against orders passed by CIT 12AA cancellation/ Refusing trust/Inst regulation 80G- 263 (Revision prejudicial to Revenue) 270A
Against order passed by A.O -143(3) Summary Assets 147,153A, C, 154, 143(3)
- By Dept CIT may direct AO to file appeal if he objects to orders passed by CIT(A)

ITAT Bench Min 2 members spl bench more than 2 member by (single member bench) if assessed income is upto Rs 50 lac. Total 55 bench in 27 cities, 10 zones. Jurisdiction of Tribunal is determined by location of office of AO only & not by POR or POR of assesses.

Appeal filing fees Assessed total income less than 1 Lac Rs500, not more than 2lac Rs1500 more than Rs2lac 1% of assessed income or Rs10000 (lower) for appl for stay of demand or other matter Rs 500 no fees if appeal by Dept for memo of cross objections by Assessee/ Dept, Appeal against DRP order

- In case of loss appeal fee are Rs500

- Time limit for filing appeal is 60 days of communication of order appealed against.

- Additional ground of appeal by way of separate Petition not with original appeal should be filed in covering letter with plea to admit addition evidence.

- On receipt of notice appeal has been filed aggrieved party may file. Memo of cross objections (Co) in form 36 A within 30 days of receipts of notice. No filing fees audit compounding charges @2% pm If paid beyond one month upto 3 months & @3% for beyond 3 month (if extended).

- Compounding order passed within 1 months on payment of compounding charges.

- Compounding charges include compounding fee, prosecution estimated Exps @10% if compounding fee minimum Rs25000 and litigation expense including counsel fee.

- For TDS default 276B/BB compounding fee is 2%p.m of the tax in default where the assessee has suo moto filed compounding application before the offence is brought his notice by department compounding fee not to exceed the TDS amount & Interest u/s 201 (A) together if default is less than Rs1lac Compounding fee is 3% pm for first occasion not covered in above para. Compounding fee is 5% pm for subsequent occasion.

- For willful attempt to evade payments of any tax /interest/penalty-compounding fee is 3% pm for the default period.

- For failure to furnish ROI Income if net tax payable more than 25lac comp fee is Rs4000 per day, if less than 25lacs, fee is Rs2000 per day but if diff of tax payable pd is less than Rs1lac minimum comp fee Rs10000.

- No compliance of notice u/s 142(1) as above.

Appeal Right of appeal is a statutory right available only if law provided for it liberal construction as remedial in nature.

- First appeal before CIT (A) by assesses u/s 264 A-251 ,second appeal before tribunal (ITAT) by assesses or Pr CIT/CIT u/s 252-255 appeal to H.C by Assessors or Pr chief CIT260 A 260 B appeal to S.C assesses or pr chief CIT 261-262.

- Appealable under Processing ROI 143(1) assets under 143(3), 144 147,153A rectification 154/155 Penalty orders 201, 221, 271, 272, 275 Against Misc order.

- Non appealable order u/s 144BA.

- Appeal to be filed within 30days for date of receipt of notice of demand can be condoned sufficient cause .Tax due or returned Income to be paid prior to filing.
- No Admission of additional evidence before CIT(A) which was not produced before AO unless all 3 conditions fulfilled 1)AO has refused to admit evidence/Appellant was presented by sufficient cause presenting the evidence /AO has not given sufficient opportunity to appellant to produce evidence. 2) Before admitting addition evidence AO to be give sufficient opportunity to examine its rebate it 3) CIT (A) to record reason for admission of addition evidence.CIT (A) can ask assessee to produce any other evidence for deciding the issue.
- CIT (A) to decide with 1 year (not mandatory) from end of P.Y in which appeal was filed .
- ITAT may decide an appeal within 4 years from end of FY of filling .
- Filling fees for application to rectify mistake apparent either by AO assessee is Rs. 50/- order to be passed within 6 months.
- Order for stay of demand not exceeds 180days & appeal to be disposed within this period. Period of stay extended to 365 days if delay not, due to assessee.
- Direct stay application to tribud possible.
- Tribunal can set aside AOS orders. It can rectify its own order but, cannot review or rehear a case.
- **APPEAL TO H.C** if H.C is satisfied amt substantial question of law is involved & not question of facts. Time limit within 120 days from receipt of order delay condoned sufficient cause. HC will formulate the question of law involved CPC & H.C rule apply sub so question of law not defined but includes if it affects substantial rights of parties, if it is of general public importance , if issue not decided by S.C. if there is a discussion of alternative view.
- **Appeal to S.C.** by appeal against H.C. judgement if H.C. certifies it to be a fit case for appeal SLP- spl leave petition if H.C. does not certify it to be a fit case , the aggrieved party can make application to S.C. under act 136 of certification.
- **To avoid multiplicity** – appeal by dept when identical question of law is pending before S.C. earlier assessee had the option to submit a claim before A.O. / appellate authorities to reef proceeding in abeyance are & apply the decision of h.c./S.C when such order is issued in its over case for previous year but there was no such provision for depts., now when dept is in appeal on same question for previous year. Which is not decided, it can not , file appeal.
- No appeals** to be filed by dept, unless the tax effect exceeds to below limits.
- Before tribunal Rs 20lac , before H.C.- Rs.50lacs, S.C.- 1 Crore tax effect means difference between assessed tax and then returned tax. Tax will not include interest, unless the interest

,transfer is in dispute , then the amount of interest is the tax effect , if returned loss is reduced or assessed a income then tax effect would be the not paid tax a disputed addition.

Rectification of mistake apparent from record- s 154- should not, be a debatable profit of law .should be obvious mistake & no need for agreements or explanations – against orders passed by any authority or intimation U/S 143(1) – can be rectified on its own by concerned authority or on application made by assessee. – no form prescribed & no filing fees. Written rectification order to be passed – reasonable opportunity to be given if it results to increase demand or reducing refund a successor officer can rectify mistake of his predecessor officer. Not necessary that an appeal should be filed to give effect to the rectification. 6 months time to pass order.

Revision by cit of two types – S- 263- to safeguard interest of dept. on order prejudicial to revenue & S-264, TO safeguard the assessee on AO's order.

S-263- dept cannot appeal against order A.o. hence CIT can revises if AO's order is erroneous and against revenue both condition necessary . He can call and examine the AO'S records. No reason just because CIT can take another view or matter is debatable or if there is no loss to revenue. Prejudicial to revenue if income is underassessed / assessed at a lower rate, losses are over assessed. Excess deductions / allowances /reliefs allowed, order is passed without , inquires / verification / not in accordance with circular ,direction / instruction of CBDT or not , according to H.C. or S.C. order /if there is respective amendment inflow , mistake apparent from records.

Doctrine of Merge – Order of an inferior authority gets merged & loses its identity on passing of a superior authorities order.

If CIT(A) order is passed , no notice u/s 263 possible. Revision order can enhance , modify ,cancel & direct a fresh assets. Provision for revision to be strictly construed. Minor mission or mistake in A.O. cannot, be basis for setting a side or AO's order.

- Time limit – 2 years from end of financial year.
- Opportunity to be given to assessee to be heard.
- Appeal to tribunal against revision U/S 263. If tribunal sets a side the 263 order passed AO. Cannot , continue with the proceedings.

1) S-264- incase of any other order of AO. (other than 263 order). CIT or assessee on application for revision. CIT cannot revise on it own are order made more than 1 year previously. CIT cannot pass order prejudicial to assessee. But he can decline to interfere. Application for revision before 1 year.

From communication of order fee of RS.500.Delay condoned for sufficient cause CIT cannot raise if assessee has not waived his right of appeal or time to file appeal has not expired. Timit limit for passing order is 1 year from end of for.

- Order u/s 263 cannot revised u/s264 .But order u/s264 can be revised u/s263.
- No appeal before ITAT possible against us 264 order –only writ petition to HC or SLP to SC.
- No form prescribed for making application for revision.
- Express night to file appeal where time limit to file appeal to CIT(A) or ITAT has not elapsed
- If appeal earlier filed before CIT(A),Proof of withdrawal of appeal to be given.

Collection/ Stay of recovery & demand notice of demand to be issued for payment of tax within 30days of service. AO may on application by assessee before due date allow extension of time or installment to repay subject to conditions.

Stay : Petition to be moved to authority who raised the demand. Move the application in time attract proof of filling appeal, rectification highlights relief given by CIT(A) in the past , financial stringencies

Recovery : if taxes from the assessee –no sale of immovable property attached towards recovery of tax penalty to be made after 7 years for end of FY in which order become final. Extended by 3 years by board.

Assessee in default if tax is not paid within 30days of serving notice of demand .Penalty u/s221(1) levied coersive measures can betaken not levied from AO date & not from appellate order date coersive be taken measure are authority TRO to recover demand by recovering from employer, attaching movable / immovable property/garnishee order recovering from 3rd party ,opportunity a receiver for managing assesses property ,assets & detention.

Refund S-237-245 by person who has paid excess tax given on processing the ROI U/S 143(1). ROI need to be filed. No interest, if refund is <10% of total tax determined. Ex. 0.5% p.m. Refund can be setoff against, tax due for him after providing intimation to him.

Settlement , commission S-245-ITSC- is quasi judicial authority . has 4 benches orders passed are final. Powers to give immunity for penalty & prosecution confidentiality , like mediation. No Prev. settlement application is filed & allowed .Application can be made during course of assessment. Required to disclose additional income & pay tax & interest, before filling application , to solve disputes in search & seizure cases, offer incase of own search to pay additional tax> Rs.50lac(Rs.10lac in non searched cases or search of other related persons)

No withdrawal of application, can be rejected after having opportunity within 14 days, otherwise deemed to be admitted. Applicants can file another application if rejected. ITSC will call reporting from commissioner with 30 days cannot within 15 days offer this order to be passed for admitting or rejecting the application be challenged by both sides. Now only once in a lifetime application can be made, but still another application can be made indirectly through an entity owned by assessee, though not directly by him. Can be approached for other AYs as well even if notice are not issued. Limit of minimum additional tax is total of additional tax for all years. If application is so filed. Interest not to be considered while calculating the limit of additional tax. Such interest is to be paid. In addition to no asst orders should have been passed and time to pass it should not have lapsed. Once application is valid, the confidential part, of the application is shared with CIT & his report called within 45 days or 90 days if further enquiry needed CIT report shared with applicant, to provide rejoinder. Then having opportunity provided to both sides income relating settlement order passed within 18 months of filing application. Tax to be paid within 35 days of ITSC order, that ex. 1.25% pm.

Abatement of proceedings – matter gets restored back to AO. If applying is rejected/ declared invalid / financial order not passed within 18 months/ terms of settlement, not provided in financial order. No refund of addition tax & interest paid but AO shall give credit of such some paid.

ICDS

Income computation & disclosure statement – introduced to bring uniformity in the application of accounting principle while computing income & to minimize the application tax related disputes.

- Applicable to assessee following mercantile systems of accounting & chargeable under the head PGBP & IOS statement applicable to all assesses except individuals/HUF who are not under tax audits.
- **ICDS 1/AS1** – accounting policies – treatment & disclosures governed by substance & not by legal form – mark to market loss or expected loss to be recognized. Policies to be changed when there are refundable causes for such change. Concept of materiality in selection of policies not recognized by I.T. law – to disclose if the significant accounting policies, deviation & material impact, & if assumptions of going concern consistency & accrued are not followed.
- **ICDS 2/AS2** – Valuation of inventories – not applicable to WIP under construction contract including directly related service contract, WIP dealt by other ICDS share, debenture & financial instrument held as stock in trade. valuation of if inventory same as in previous year closing inventory, & other – loan of cost or NRV. In case of dissolution of partnership /AOP/BOI whether or not biz is discontinued, inventory to be valued of NRV on date of dissolution.

Storage cost & selling costs not to be included in valuation, trade discount, rebate to be excluded. Duties & taxes will be included in cost of inventories. FIFO or Weighted average method cost, basis.

- **ICDS 3/AS 7 – Construction contract** – contract may be for a single assets or multiple assets closely interacted & interdepartmental classified as fixed price contract or cost plus. Contract revenue to be recognized whenever there is reasonable certainty of ultimate collection. Retention money treated of contract revenue 43CB. Should be based on % of competition method. During early stage less upto 25% of completion stage where outcome cannot be reliably estimated, contract revenue recognized to the extent of costs incurred. The % of completion method shall be determined by the proportion of contracts cost incurred for work performed upto the reporting date basis both estimated total contract costs. Disclosures – amount of contract revenue recognized as revenue, methods used to determine stage of completion. for each contract, the costs incurred recognized profit, advanced, retentions.
 - **ICDS 4/AS 9 – Revenue recognition**- sale of goods, services, interest, royalties & dividends, revenue is the gross inflow of cash received facility in ordinary course in course of sale of goods, services, use of other person resources yield daily interest, royalties or dividend. In agency relationship, revenue is commission. Revenue from sale of goods recognized when people transfer to buyer, all significant, risks & rewards of ownership transfer, seller has no effective control of goods. Revenue recognized when reasonable certainty of its ultimate collection. Revenue from services recognized only on % of completion method s 43CB. Revenue from interest on time basis, royalties- as per terms of agreement, dividend as per IT act, of disclosures – sale of goods – amt not recognized due to uncertainty & nature of uncertainty. Sale of goods – amount not, recognized method used, costs income recognized profit, advances deed, retentions.
 - **ICDS 5/AS10- Tangible fixed assets** are land, building, plant & machinery, furniture held for providing or providing goods & services & not for sale in normal course of big stand by equipment, servicing equip to be computerized machinery shares to be charged to revenue when consumed if spare are for a specific fixed as act & issues is irregular it, shall be capitalized. Expenditure on startup commissioning of project test runs, experimental production form part of cost of F.A. additions and extentions to existing F.A. form part cost of FA.
- Expenditure after plant begins commercial production is revenue expenditure
- Fixed assets acquired In exchange for another asset, shares, other security, then fair value of FA so acquired is its cost.

-If several assets are purchased for a consolidated price, consideration to be to various assets on fair basis.

-IT. Law does not recognize revaluation of assets. Retirement & disposal of assets are as per IT law. depⁿ as per IT. Law. Disclosure- description/ block of assets.

- **ICDS 6 / AS11** Effects of change in forex rates applicable to treatment of transactions in FX & non monetary items, translating the FS. Of foreign operations treatment FX transactions in nature of forward exchange contracts. ICDS does not allow marked to market loss in case of for exchange derivative contract held for trading or speculation s 43AA

- Foreign currency transactions are those which denominated in/ required settlement in for currency, borrowing or lending denominated in FC, acquired or disposes assets or incurs or settle liabilities in FC.

- Initial recognition – recorded in INR, by applying avg rate week/month or actual rate at, transaction date if it fluctuates widely. Monetary items are those items to be paid in fixed or determinable amount of money.

- Conversion at yr end- All fx monetary items shall be converted into NR by applying the clg rate. Non monetary transactions converted into NR at the exch rate at dt of transaction.

- Exchange differences on settlement or conversion of monetary items at last, day recognized as income or expense in that year. For non monetary items not to be recog. as such.

FS of foreign operations(FO)-Classified as integral FO or non integral FO. Non Integral if activities of that foreign operations are carried out with significant degree of autonomy from the activities of person controlling it or, transactions with controller are not of high proportion, or not much financed by controller; or FO's sales are mainly in other than INR, or must expenses are paid in that local currency.

- FS of an integral FO shall be translated –as if it is transactions of the person (controller) himself.

- FS of non integral FO translated – Assets & liab both monetary & non monetary translated at closing rate. Income & expenses at rates as at transaction date. Exch differences recog as incomes/expenses that yr.

- Change in classification (Integral or non integral)- translation procedures applicable from date of change. Once classified to be consistently followed unless change in way it is financial or it operates in relation to that person.

Forward exch contract-If contract is to establish the amount of reporting currency required or available at the settlement dt& not intended for trading or speculation- Premium/ discounts at inception of contract to be amortised as exp/inc over life of contract. Exch diff&profit/loss on cancellation- recog as inc/exp in prev yr.

- If contract is to hedge the for. curr risk of a firm commitments or a highly probable forecast transaction & not intended for trading or speculation- recog of premium /discounts, exch diff, pr/ loss on cancellation is at time of settlement.

- **ICDS 7/AS 12: Govt Grants**: not applicable in case of other type of govt assistance or govt participation in ownership
 - Recog. when reasonable assurance that person will comply with conditions attached , grant shall be recd.
 - Taxed as deemed income in yr of receipts provided not taxed in earlier year.

Treatment – Grants relating to a depreciable FA – deducted from cost or from WDV of block. Grant to a nondepreciable asset on fulfillment of condition recognized as income over the same period over which the cost of meeting such obligations is charged. Grant which cannot be directly related to the asset acquired is deducted from cost, of assets concerned or from wdv of block.

Grants received as compensation for expense or losses incurred in a previous year recognized as income in year of receipt – grant received for immediate financial support to the person – income in year of receipt. Grants in form of non monetary assets – accounted at acquisition cost,

Other grants- recognized as income over the periods to match with the related costs they intend to compensate.

Refund paid on govt. grants – grant relating to depreciable FA – recorded by increasing cost or WDV of block .

By the amt refundable.Other grants except in form of non monetary assets – first applied against any unamortized deferred credit remaining in respect of govt. grant, the bal charged to PL a/c

Disclosures – nature & extent of govt. grants recognized during previous year by way of deductions for FA & by way of income in previous year. Nature & extent of govt. grants not recognized above & reasons thereof .

- **ICDS 8/ AS13 Securities** (Held as stock in trade)- not applicable to security held by person in insurance biz, securities held by mutual fund, venture capital fund, bank financial institution.

- A security acquired recognized at actual cost including brokerage fees taxes. cess. Security acquired in exchange for other sec. asset, FV of sec/ asset so acquired shall be its cost.

- Where unpaid interest is included in cost, it is to be deducted from cost when received later.

- Valuation at cost, or NRV (lower) at year ended, valuation by comparing each category of sec (shares debt, convertible sec., other) & not by each individual sec.

- Inventory of sec. not listed, not quoted actual cost. Sec. held by banks/FI-at RBI guideline.

- Where cost cannot be ascertained, FIFO to be used

- **ICDS 9 – AS16 – Borrowing cost**, - borrowing costs directly attributable to the acquisition, construction, production of a qualifying assets, to be capitalized to that assets.

Qualifying assets- tangible land & building, plant & machinery, furniture

Intangible – know how, patents, copyrights, trademarks, licenses, franchises or other biz & commercial rights of similar nature. Inventories that require period of 12 month or more to bring them to a saleable condition.

- Borrowing cost are interest etc. in connection with borrowing of funds & include commitment charge, authorized discount work /premium/ ancillary, finance charges under fin. Leases Exchange differences not to be included in borrowing cost.

Capitalization of cost – if specific borrowing for a particular assets – actual borrowing costs during the period to be capitalized on date of borrowing.

- If general borrowing - Proportionate borrowing cost wrt. Cost of qualifying assets to the cost of total assets to be capitalized on date funds were utilised.

- Income from temporary investment of borrowing fund cannot be reduced from borrowing costs eligible for capitalization.

- Capitalization upto date over asset is first put to use & for inventory when preparation of inventory for sale is completed.

Disclosure – accounting policy adopted & amt of cost capitalized in previous year.

- **ICDS 10 – AS29 Provisions, Contingent liability & Contingent asset**- not applicable to those relating to financial instrument, executory contracts, contracts with policy holders in insurance

business, depreciation, impairments, of assets & doubtful debts which are adjustments to carrying amount of assets.

- Provisions are liability which can be measured by substantial degree of estimation
- Recognized if there is a present obligation due to a past event, it is reasonably certain that, an outflow of resources will be needed to settle it, and if a reasonable estimate can be made of the obligation.
- Best estimate is made at year end review at, end of each year & adjust to reflect the best estimate. Reverse if no longer reasonably certain that outflow of resources would be required to settle it. Use it, only for the expenditure for which the provision was originally recognized.
- Contingent liabilities means a possible obligation that arise from past events, the existence will be confirmed only by the occurrence / non occurrence of one or more uncertain future events not in the persons control. No recognition of Contingent liabilities.

Contingent asset – same as in contingent liabilities replace the word “ obligation” with the word” asset”

– they are assessed continually and recognized when reasonably certain that inflow will arise & income is recognized in that year. Best estimate of value at year end – review at each year and adjust – reversal if no longer reasonably certain inflow will arise.

Reimbursements – where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognized when it is reasonably certain not it will be received.

The amt recognized shall not exceed the amt of provision.

If person is not liable to pay in case the third party fails to pay, no provision shall be made.

Disclosure – brief description & amt provided, amt reversed – (if any item under ICDS is measured & recognized, then it is to be disclosed with quantification)

Equalization levy (EL) on the consideration received/ receivable by a N R not having PE in india– taxation of digital transactions exempted upto 1 lac. Equalization levy is 6% of consideration for specified services from a NR by a resident person carrying on Biz/prof. or by a NR having PE in India.

Such tax to be deducted from payment to NR by the payer

- Specified service means on line advertisement or for its purpose, digital space,
- Levy if payer (recipient of such service) is carrying business/ provision in India.

- Survey/Requisition, Search & seizure –Purpose of survey u/ 133 by dept is to go out and gather info & evidence about concealment of income which is not provided by assessee. Survey is very limited & with less powers as compared to search . Survey can be converted into search.
- Survey can be carried out by Pr CIT /GT/Add /Jt. CIT- By AO with prior approval of above CIT's
 - by Pr Director IT,DIT& Additional & Jt, DIT (no prior approval) by Dy/Assts DIT with prior approval.
- Place of survey at place of business including A/C office, branch, godown etc. Residence only if assessee states that he keeps his BOA / cash/Stock etc there.
- IT authority can enter place of survey within their jurisdictional limit of such authority. If place not within jurisdictions limit then authorization from respective authority needed.
- Commencement of survey at business place during working hours can be continued beyond working hours. If at any other place then only after sunrise & before sunset.
- Power of survey -Inspect BOA /DOCs, place ID marks, make extract, take copies, impound documents & materials after recording reasons, verify, take inventory of cash, stock, valuables, record statements, of any person present.
- CANNOT seize cash, stock, valuable & Retention beyond 15 days of impounded material without prior approval of Pr CIT/CCIT/Pr DG. Cannot conduct personal inspection of any person, or break open any door/lock, or seal any premises.
- Where identity of survey officers, get receipt, for BOA, docs etc impounded.
- No prior notice needed for survey.
- Survey converted into search if during survey operation, any info comes to the dept which leads to a reasonable belief that conditions for issuing action u/s 132 (1) exists.
- Survey is possible even to enquire about TDS.
- Survey in connection with any function- 133A(5) to detect use of unaccounted money in any function/ ceremony/ event like marriage, birthday, new yrs parties, film premiers.
- Survey only after said function is over- To seek info about expenditure incurred to record statements, of the assessee or any person.
- Such surveys conducted by Investigation wing of dept & supervised by DIT (Inv).

- Survey at Premises of third party not unless for limited purposes. Cannot enter CA's office unless assessee states that records are kept at CA office.
- Door to Door survey – S- 133B to identify new assesses & to detect tax evasion.
- Conducted within jurisdiction of officer over assessee's place of business during working hours. To require any person which involved in carrying/helping out the business to furnish info in form 45D. Cannot seize or impound.

Power to call info – S -133 by AO/Additional/Jt/ CIT ,DCIT (a) ,CIT (A) only if a proceeding is pending by Pr.DG IT or higher. Type of information that may be called for : name & address of partners & their shares/ of the karta & member of HUF / of trustee /guardian / agent/

- From any assessee u/s 133(4)- information may be called of the name address to whom payments & particulars of payment made in average previous year wrt. Rent , interest ,commission , brokerage , royalty, any annuity other than salary .
- From dealer / broker/ agent of stock /commercial exchange – to whom payment made & received.
- From any person, including a bank (nationalized /co-operate/ pvt.bank /co.op.society)-133(6)- info & statement of accounts & affairs.
- Requisition – S – 132A – if BOA/ docs , money when due to info with the requisitioning officer he has reason to believe that any person to whom summons or notice u/s 142(1) is issued has failed to produce the same and the above has been taken into custody under any law.
- Requisition with prior approval by AO. , upto dy /asst CIT.
- Reason to believe not to be disclosed to any person /authority or ITAT
- Tax payer treated as subject, to a search U/S 132 if BOA/document / assets are delivered to requisitioning officer.

Search and seizure S&S –u/s 132 search means thorough inspection of building, place, vehicle, vessel or air craft of the person. Seizure means taking possession of BOA, doc money , business , jewellery , valuable article found as a result of search.

- Conducted if the authority on info. In his possession, has reason to believe that any person possesses undisclosed income or property, failed to produce BOA, document etc. in response to summons u/S131(1) or 142(1) notice or will not, produce BOA, docs/etc summons/notice is issued.
- Reasons to believe & suspect ,shall not be disclosed to any person /authority/inward wise retroscopic effect.

- S&S to be conducted in rarest of rare cases , where minimum expected disclosures is of Rs. 1 crore ,High reputed professional not to be searched.
- S&S is an invasion of risks, privacy & freedom of taxpayer
- Can be authorized by additional/ Jt. CIT / director only if empowered by CBDT , be authorized to or Pr CIT ,CIT & upwards – ITO & above can be authorized to conduct search.
- Risk of several party – to enter & search the places mentioned in the warrant .
- To break open where keys are not provided – take personal search of any existing , incoming or outgoing person – place id marks , take extract ,be provided with facilities if docs. In electronic form , to take inventory whether seized or not , to seized electronic data – to make constructive seizure it.
- Physical seizure is not possible of any valuables , to have assistance of any police officer or central govt. officer, to examine or oath which may be used as evidence against the tax payer.
- Statement U/S 132(4) can be recorded any time during the continuance of search.
- Right of person searched – to see the warrant, & check if it is selected & signed but cannot have a copy of it – to verify identify of each member, to have personal search of each member before & after to require presence of 2 witness resident of the locality (pandes)- to allow searching of a woman by another woman , to call a medical practitioner – to permit children to go to school after checking their bags,
- To have meals at regular time – to demand presence of authorized representative at time of search – to remain present during the search or permit attend person to attend the search – to record statements on oath – to note the proceedings ,question & answer recorded in a stock – to object to any irregularities in conduct of search & to record such objections in writing – to ensure seizure list mentions places from where the assets/docs were found.- To inspect the seals placed. – to place own seals on packets – to remain present with witness when seals are broker – to object if BOA/docs/ assets are brought from other to the place being searched. To have a copy of the panchnama (a detailed document on the search action) with Annexures – to inspect depts. record – to have copy of any statement that , is used against him.
- Presumption – that any BOA/docs/money / billion etc. found during search belongs to such person, that their content are true , signature belongs to such person
- Provisional attachment upto 6 month of property during search or within 60 days for reasons recorded after prior approved of pr. DG.
- Authorised representation (CA/ consultant/advocate) can be present , but cannot obstruct , or interfere in the proceedings – he cannot suggest answers or prompts.
- Seized Boa / docs retained upto 30 days from date of assessment order u/s 153 A unless reasons recorded & prior approved of CIT & above further max 30 days retention & to be informed to assessee
- Authorized officer having no jurisdiction cannot retain BOA beyond 60 days should hand them over to concerned AO.

-Items which can be seized are BOA , cash , jewellery , valuable , FD'S share certificates NSC, hundies , Promissory notes, title deeds.

Cannot be seized are immovable assets, stock & trade , items disclosed in returns. Items appearing in books of A/C, cash which can be explained in wealth tax return, gold upto 500gm for married women, 250 gm unmarried & 100gm per male member of the family. Jewellery as per status of the family as it appears to the investigating officer.

Surplus of the disclosed assets seized or requisitioned is to be released within 120 days from date of last authorization for search was executed.

Person can make application to AO for release within 30 days from month end of seizure & nature & source of its acquisition is satisfactory explained to AO.

Surrender of income AO. may levy penalty US 271 AAB of

- a) sum @ 30% of the undisclosed income of the specified previous year if the assessee in the course of search in a stat. U/S 132(4) admits the disclosed income & specifics the manner in which derived & substantiates the manner & before the specified date , pays tax with interest , there on and furnished ROI For the specified previous year declaring such undisclosed income.
- b) @60% of undisc. income of specified P.Y. other wise
- c) For years other than the specified P.Y. – penalty under normal provision S-270A

-Note the search party has come to collect evidence & info , they cannot deliver judgement.

-Inspect the search warrant that, its relates to you & your premises. That it & correctly is completely Filled up. If material defect do not allow ingress verify identify of every member .make personal search before & after completion. Call 2 witness. Object if search party does not accept them ,sign the search warrant. Be assertive in explaining facts, you can call your key staff person for assistance , counsel, doctor.

-In the statement on oath use it, as an opportunity to explain items found if old matter & previous years. Explain the nature of assets & request to furnish details later after checking records. Have rest before giving statement. Note down the questions & answers given in the statement. Surrender undisc. Income in statement to avoid penalty. Check the details given in the panchnama & annexures before signing .Have a backup of data if seized. Tally & verify each items seized with annexure & not seized with annexures. Take a copy of panchnama & annexures. Be friendly with the officers as they will prepare the appraisal report in their office .Make applications to have copy of seized materials.

-HUF 's (Hindu Undivided family)- not defined in Inc Tx understood for hindu law . treated as a separate entity & assessed separately from its members. Hindu includes Buddhists ,jain& Sikhs. Ancestral property is the common hotel property & HUF property ,family consists of sons lineally descended from a common ancestor with their wives & unmarried daughters. A single person (male or female) cannot form HUF. After death of last male member, HUF may consist of female members only.

- Coparcenary is different from HUF. Coparcenary commences with a common ancestor & after his death may consists of brothers, sister, uncles, cousins, nephews etc within 4 degrees HUF to is a natural phenomenon come into existence after a person gets married, a new HUF comes into existence. Even if there is no ancestral property there can be an HUF. The common hotchpot can be filled by gift from an outsider but cannot be filled by blending an individual property into it as clubbing provisions –S- 64 would be attracted. Birth of a son is not necessary to form an HUF. Eldest male member is the Karta generally or next elder male & so forth. Or cannot be a Karta. If no male member female member cannot be called Karta although she can perform the functions of a Manager. Karta can be a partner in a firm in dual capacity as his individual & as a Karta of HUF capacity. Person becomes a member of HUF by birth or by adoption or by marriage. Membership ceases on death. A member has no definite share in HUF property but has as undivided interest in it member share increase by deaths and reduces by birth in the HUF. Karta or any member can bequeath his share under will. HUF can extend loans with or without interests to member.
- -HUF effective tool to reduce tax Enjoy Basis exemption limit 80C limit Investment made out of HUF Fund taxed in HUF. Remuneration paid to Karta is allowable expenditure if genuine , reasonable & for the business of HUF.
- -Partial partition not recognized for I.T only total partial done Partition of HUF takes place where property is divided. Two assessments made in HUF in year of partition one till date& one after date till P.Y ends.

Partnership Firm registered under partnership Act is not a legal entity but is recognized as a unit of assessment in IT. One partnership firm cannot be a partner in another firm as partner in a partnership firm has to be "person". Karta can become a partner in representative capacity of HUF.HUF directly cannot become a partner no distinction in IT between Regd or unregd Firm. Share of profit of partner is not taxed in individual partners hands.

- A firm which is not regd under India Partnership Act cannot file a suit in any court against third party to enforce a contract and no partner of such firm can file a suit in any court against the firm or any partner to enforce a right out of partnership.
- Interest to partners not pertains to a period prior to the partnership deed. ROI equal to less than 12% p.a. simple interest. Excess is not deductible expenses.
- Remuneration to working partner actively engaged in business affairs should be authorized in deed not pertains to a period prior to deed. Excess paid over limits specified not deductible.
- Maximum no of partners is 200.

Any interest /remuneration so disallowed in firms assrs not to be added to partners in total income. Only the allowed part is taxable in partners hands.

- Under Indian Partnership Acts in the absence of a deed , all parties will divide profits & losses equally, firms will pay int @6% on loan from partners. No salary to be paid to any partner. No interest to be paid on partners capital.
- Since minor cannot share the losses it is to be specified how the share of his loss will be borne by other major partners.
- Unexplained credits in capital a/c of the partners, additions cannot be made in hands of firm.
- No basic exemption to a firm taxed at flat rate of 30%.
- Salary to partner not to be shown under "Income from Salaries".
- Share of loss amount the partnership firm cannot be setoff by partner against his any business income.

LLP(Limited Liability Partnership)- is a hybrid form giving benefits of Ltd Liab & ease & flexibility of a partnership. It has perpetual succession & continues in existence irrespective of change in partners. Liability is ltd to their contribution. It is a distinct entity and artificial person. All provisions in IT applicable to normal partnership firms are applicable to LLP. It is regd. With ROC.Name approval mandatory.No upper limit of number of members. Every partner is agent of LLP but not of other partners unlike in partnership- every partner is agent of other partners also .Domestic company / LLP or foreign co./LLP can be partner of LLP unlike in partnership firm. But karta as representative capacity of HUF cannot be partner in LLP.

- At least 2 designated partners who are individuals& one of them a resident .
- Every DP to obtain DPIN/DIN.
- Audit of LLP if t/o exceeds Rs 40 lacs in a FY or contribution exceeds Rs 25 lacs.
- 44AD- Presumptive tax rate not applicable to LLP as it is a corporate entity.
- On liquidation of LLP every person who was partner of LLP in that PY is not due to his gross neglect, breach of duty in relation to the affairs of LLP.

AOP/BOI- Does not include a company/ co-op society- a minor can be a member of AOP. AOP can have members who are companies, firms, joint families, as they are persons.

AOP should have income producing activity.

BOI- means a group of individuals who carry on some activity to earn income. Hence company's, firms cannot be members of BOI as they are not individuals

- Individual shares of members are AOP /BOI are unknown if such shares are unknown at time of its formation or anytime app.

- While taking total income of individual member, to consider if it exceeds max threshold limit, his share in total income of AOP/BOI shall be ignored.

- Where rate of tax as per individual is taken to tax income of AOP/BOI then slab rate of individual is applied & special rate in case of capital gains etc are also applicable

- Taxation of share of member in AOP/BOI

- If AOP /BOI is taxed at MMR- the share of member not to be included in his total income.

- If AOP/BOI taxed at individual rates- share of member to be included in his income but, rebate u/s 86 to be given

- If no tax is chargeable on AOP/BOI – Share of member shall be fully taxed & no rebate given.

- If no tax is chargeable on AOP/BOI 0- share of members shall be fully taxed & no rebate given.

- Losses of AOP/BOI cannot be C/F in hands of members.

Taxation of charity S-11 to 13 a charitable or religious institution may be a trust, society sec.s.co, an endowment of property for worship of deity. Trust is an individual for it. No Exemption allowed to oral or PVT. Trusts. Exemption allowed to public trust or combined trust, (pub cum. Pvt.)

- charitable purpose primary 6 general category with no. special restrictions object relief of poor, education, yoga, medical, relief, preservation of environment monumentation of artist / historic interest – secondary category with severe restriction is for advertisement of any other objects of (a) general public utility by incidentally carrying on commercial activity

- Society /trusts including yoga in the general category can conduct incidental biz activities without fin limit and conduct in unrelated biz activity if yoga is in general category otherwise in normal case u/s 2(15) states that the biz activities should be related to the objectives if the organization is engaged in advancement of any other objects of general public utility

- If the organization is engaged in any of the six general category objects then the biz activities need not be related to it and can be without any financial limit.

If the org is engaged in advancement of- (secondary objective), then any business activity in nature of trade,commerce, service or in relation to these shall not be for a charitable unless such biz activity is undertaken in the course of actually carrying out of such advancement of any objects of general public activity(i.e. the biz activity is related to the advancement of object.) and the total from such biz activity during the previous year. Do not , exceed 20% of the total receipt of the institution of the previous year. Earlier blanket , limit was Rs.25 lac. in place of 20% so now larger organization can now take advantage of having incidental biz activities.

-Charitable purpose is definition is inclusive and if beneficial to a section of public is also a charitable object .

Relief of poor includes wide range of objects for welfare of economically & socially backward or ready and includes orphans, senior citizens ,old age homes, women , children, small & marginal farmers

-**General public utility** includes & segment of for public.

-**Incidentally carrying on commercial activities** – the biz to be incidental to the attainment of the objectives of the entity and separate BOA to be kept for the business.

-Either the benefit of specific provision U/S 11 or general exemption U/S 10 is available & not both .

-Specifically notified fund ,educational institution ,trust, university, hospital , medical institute, U/S 10(23)(C) would get exemption here only & not under general exempt u/s -11

-An institution may have income from voluntary contrib/donations ,capital gains from business undertaking held under the institution from its core activity- e.g educational etc., income from property , interest from deposit , securities & investments.

-Biz expenditure and capital expenditure is called “application of income” by the institution it includes donation to another institution.

-Either depreciation on assets can be claimed as application or purchase cost of assets – not both

-**Certain disallowances** to be made in determining “application of income”- disallowance

- U/S 40(a)(ia) – 30% of sums payable to resident in case of default.
- U/S 40 A (3) – cash payment > Rs.10000 to a person in a day
- U/S 40 A(3A) deemed income in the subsequent year where payments for any liability is made exceeding Rs.10000 to a person in case to a person in a day (although the expense booked in previous year)

-Investment in immovable property is application of income

-The excess expenditure incurred in previous year can be adjusted in current years income to determine application of income.

-Net consideration invested in bank deposit is eligible for exemption and is treated as investment in another capital assets

- Income tax liability is treated as application.
- Grants received from govts are not income to be taken for application.
- Institution has to apply\spend 85% of its income toward its objects- Balance 15% can be unspent and not liable to tax.
- An income if received in subsequent year, can be applied in year of receipt or in subsequent year –S-11 (IB)
- Accumulation of income is allowed u/s 11 (2)
- Institution must get regd u/s 12AA with CIT within 1 yr if its creation.
- ROI & form 10 to be filed before due date of ROI filing & ROI to be filed before its due date.
- Corpus** (capital) donations received by a trust is exempted from income tax and not treated as application of income (sold).
- Indexation available for determining capital gains on transferred asset . Effect of utilization of consideration for acquiring another capital assets. On the capital gains to be included in total income depend on whether whole of the net consideration is utilized or part of it is utilized and whether the capital assets sold was wholly or partly used for charitable purpose. If partly utilized then lower of capital gains or amount utilized minus cost of transferred assets.
- Capital Gains is also income derived from property held & if gain is not/ partly utilized for purchased another capital/assets but utilized in the normal expense of the Trust, then that is also exempt and prior of accumulation also applicable.
- Out of accumulated income duration paid to another 12AA or 20(23) (C) institutions not allowed as application of income except in case of dissolution/ winding up of an institutions A.O can permit.
- Corpus donations not treated as application of income.
- Option of accumulation to be exercised in statement in form 10 stating the purpose and period (not exceeding 5yrs) of accumulation
- The money so accumulated or set apart is invested or deposited in the modes specified in s-11(5).
- Accumulation in cases where it is not possible to spend entire income in same years as it may be for a long term or capital intensive project school buildingetc.
- Purpose of accumulation can be for the objects of the trust, specific purpose not needed.

Merger, Amalgamation , Demerger- Business reorganization

Amalgamation- It is a tax neutral subject to fulfilling conditions. Also called Merger. Blending of one or more undertakings into an Existing undertaking or merging of one or more undertaking into one new undertaking.

- All assets & liabilities A&L of amalgamation co's become A&L of amalgamated co.
- Shareholders(incl pref shareholders) holding $\geq 75\%$ of value of shares become shareholders of amalgamated co.

- Inter co assets & liab are eliminated &
- Dissolution of the transferor co's without following the process of winding up.

Appointed date is the transfer date from which the amalgamation is effective.

Effective date- Date when amalgamation is actually takes place after all relevant statutory approvals have been obtained.

For tax purposes the appointed date is the effective date of amalgamation & not when the last approval is received.

Depreciation- WDV of the block acquired by amalgamated co is same as of the a/cting co.

-Unabsorbed Depreciation of the assets transferred is to be reduced while calculating WDV in a/ted co.

-Unabsorbed Depreciation cannot be c/f in hands of a/ting co. as its loses its existence and hence to be added to WDV of block in a/ted co.

-No depreciation or goodwill arising on amalgamation.

A/ted co. can claim accruing biz losses (not being loss from speculation biz) & unabsorbed depreciation of a/cting co. provided the a/cting co. is an Industrial Undertaking, ship, hotel, banking co, pub. Sector airlines. Industrial undertaking is a co. in mfg, processing of goods , computer software, electricity, power, telecomm services, broadband, internet, mining, construction of ships, aircraft or rail systems. A/ting co should be in biz for 3 yrs since such loss/ depreciation is unabsorbed and a/ted co. to hold for \geq 5yrs such assets acquired & continues its biz for 5yrs. A/ted co. to achieve 50% production capacity within 4yrs from amalgamating& maintains level till 5 yrs. If _____ violated , loss / unabsorbed depreciation claimed treated as its income.

-Fresh 8yrs period of c/f of losses of accounting co. in hands of a/ted co.

- Preliminary exps of a/cting co. deducted for the bal. period in a/ted co.

-Unpaid liab of a/cting co. deductible when paid by a/ted co.

-Exemption of trf of capital assets to an Indian a/ted co. for capital gains.

-Exemption of trf of shares of Indian a/ting co. to foreign a/ted co. If 25% of shareholders.

-Continues but of shareholders receive consider other than shares then capital gains.

-Credit for advance tax & TDS of the a/cting co. is available to the a/ted co. as all assets & liab are trf.

-MAT credit is with ref to the legal entity & no prov to attribute MAT credit to A/ted co.

-No deemed dividend u/s 2 (22)© in hands of a/ting co. shareholders as it is not in liquidation but in amalgamation.

Demerger S-2(IQAA)- is opposite of amalgamation . It is a corporate divestment of undertakings result in units/division of a company becoming independent companies.

-There must be trf of an undertaking or division or a unit of one undertaking from one company to another.

-The consideration is allotment of shares only, otherwise not demerger.

-All ppty & liab. Trf at, Bank values & not at revalued amts; unless the resulting co. records the value in accordance with IND AS.

-New co. issues shares to shareholders of demerged co. on proportionate basis, unless the demerger is between subsidiary & holding co.

-75% of shareholders of demerged co continue to be shareholders of the resulting co.

-Demerger purpose could be for rationalization, specialization, management focus, operational efficiency, inviting strategic/fin. Investor.

Depreciation on the residual assets continued in hands of demerged co.

-Depreciation apportioned no. of days used by the co's.

-B/f losses and unabsorbed depreciation if not fully of the demerged unit so transferred shall be apportioned between both the companies in the ratio of assets retained by the demerged co. and the assets transferred to the resulting co.

-The accumulated losses of the demerged co. can be setoff and c/f only for the balance unexpired portion of the total available period of 8 yrs.

-CIT can condone delay in filing of application in form 10.

-Donation to another institution with specification that the donee uses it toward its corpus is application of income.

-If accumulation is for specified purpose, the A.O on application can permit such income to be used for other purposes if it conforms to its objects and due to reasons beyond the institution controls.

-A business undertaking held in trust for charitable purposes- income is fully exempt- separate BOA to be maintained for the business.

-Income from sale of tickets for a charity should souvenir advertisement, and conducting entertainment is not business income.

-Printing press endowed to a trust & its income was to be spent on its objects so u/s 11 (2) printing press become property of the trust and income applied to charitable purpose was exempt.

-Permissible modes of Investments by Trust- in government savings certificates & SSS, post office SB, Bank A/Cs, UTI units, securities by CG/SG, debenture whose principle & interest is guaranteed by government, deposits of PSU's. Boards of Financial Corporation engaged in industrial Development of Public Company providing housing finance for Residential purposes, for urban infrastructure, deposits with IDBI in mutual Fund units under 10(23D), in immovable property excluding Plant & machinery

Not permissible investment in shares of other than Government company in any concern where in persons have substantial interest greater than 5% of the capital of that concern -13(1) (d)- only the income from that on permissible mode of investment is liable to be taxed but there is no denial of exemption u/s 11 on total income of the trusts.

- CIT may cancel registration if an activities are carried unit to include its income due to operation of S 13 (1) or trust has not complied with requirements of any law & order is not disputed & attained finality.
- Appeal to ITAT against order of CIT cancelling registration.
- Audit of A/C of trust of income exceeds maximum there hold limits
- Exemption u/s 11 is denied u/s 13 if entire income is invested in non permissible mode.
- Where an institution runs an educational or medical institute/ hospital or service provided to interested person u/s 13 (i) c (i) (ii) to that extent is deemed to be income of that institution & not exempted. Other income is not denied exemption.
- Institution for private religious purposes or for benefit for particular religious community centre (except for scheduled/ Backward and classes tribe) will not get exemption.
- Anonymous Donations US 115 BBC no exemption

- No exemption if ROI not, furnished before due date in 139(1)
- Income of a trust, For a PVT. , Family deity to which the public has no access is taxable.
- Trust , which is partly charitable and partly religions in nature , even it is for a particular religious community is not covered by S-13(1)(b and does not loose exemption as 13(1)(b) denies exemption which is only for a particular religions community.
- Use of property or application of income in favour of interested persons, exemption U/S 11 Denied
- Income or property deemed to be used for an interested person, if 13(2)
 - a) if is lent to interested person without adequate security , interest
 - b) It is made available for use unreasonable without adequate security rent or cmpensation
 - c) Salary, allowance paid in unreasonable excess for service by such persons.
 - d) Services rendered by trust to such persons without adequate compensation
 - e) Investments made in the concerns of such persons & excess consideration paid
 - f) Share securities , property, trust sold to such person for inadequate consideration
 - g) Any income property above Rs. 1000 diverted to interested person.
 - h) Investment in any concern in which such person has substaintial interest >than 20% of power/profit) unless such investment is lessthan 5% of the capital of date concern.

Interested Person means its author, founder, any person whose total contribution >Rs 50000 in date previous year ,a member of HUF , any trustee or manager, any relative of such founder , person member , trustee or manager any concern in which any of the above person have substantial interest

Anonymous Donations is a voluntary contribution subject to tax S-13(7) R.W.115 BBC – if the investment does not maintain records of the identify /name , address of owner , not applicable to wholly religious institution.

While calculating amount of income to be applied for application,

Anonymous Donations to be reduced from total contribution, corpus donation also to be reduced from total voluntary contribution .

Taxable part of Anonymous Donations is calculated after reducing the basic deduction from it which is the higher of 5% of total voluntary contribution (excluding the total anonymous donation) but including concept donations and amounts accumulated during the year , and Rs.100000, on this figure 30% tax is levied . This is the taxable part of the anonymous donations which is to be reduced from total voluntary contribution above for the purpose of arriving at, total income before application of income .

- Trust to file ROI before due date of its transaction before S-11/12, exceeds the threshold limit or when it intends to accumulate upto 85% of its income.
- Normally trust which is not exempt U/s 11/12 is taxed at slab rates & AOP, but will be charged at MMR (Max. marginal rate) if its income is Utilised for benefit of interested persons u/s13(3) or its funds are invested in modes other than those specified U/S 11(5) and it has received any amount of anonymous donations.
- Anonymous donations are not taxed (a) if it is a wholly religious trust or (b) a partly charitable trust & partly religious trust unless in (b) there is a specific direction that such anonymous donation is for university, educational trust , hospital , medical inst etc. run by such institution in which case anonymous donation are taxed (S-115BBC)

FCRA. Foreign control regulation Act. – monitored by ministry of home affairs & not the ministry of finance or IT dept. of the foreign contribution received religious & charitable inst in India.

- For contribution means donation, delivery of article currency for high security from any foreign source . But contributions from world bank , IMF, UN, & other notified agencies excluded.
- Inst to make application in FC-IA for registration with min of home affairs, obtain prior permission for accepting of for contributions, submit yearly auditors certificate with financial statements
- Tax on conversion of inst / Trust – S-115 TD in case of certain inst trusts as tax at MMR on accreted income in certain cases
- Conversion into any form not eligible for registration U/S 12AA
- Merger with any entity not eligible for registration U/S 12AA

- It failed to transfer all its assets on its dissolution to any entity regd U/S 12AA /20(23)(C) within 12 months from months from month end of dissolution
- Accreted income is the aggregate of FMV of total assets less total liabilities as on specified date.
- Excluded assets acquired by trust out of agriculture income & from date of creation till date of registration –U/S 12AA if it has not got exemption U/S 11/12 in that period
- Deemed conversion into any form not eligible for registration if registration granted was cancelled & no fresh regulation was applied for new objects or this fresh registration was also cancelled.
- Such additional tax to be paid within 14 days from cancellation of 12AA registration was also cancelled is received.
- No credit can be taken for such tax paid & such tax is leviable each even if it has no other income chargeable to tax. Simple interest @ 1% p.m. levied.

Exempt Income S-10 which are not to be included in TI they are expressly excluded , subject to conditions laid down. Expenditure relating to exempts income not deductible s-14A. Even if there is no exempt income in that year, expenditure relating to it, cannot be reduced against other non-exempt income.

10(1) Agriculture income for basic operations & subsequent operations on land ,includes income for sale of seeds ,growing flowers ,rent from land used for grazing of cattle required for agriculture activities, from growing of bamboo ,from rent, from land used for agriculture operations, from farmhouse, building, from saplings/seedlings grown in nursery.

- Does not include income from livestock breeding, poultry farming, fisheries, dairy farming.
- Rent from building exempt if building is in immediate vicinity of agriculture land , owned & occupied by cultivator or receiver of rent and used as dwelling house , storehouse , should be assessed to land revenue.
- Income from transfer of such land excluded.
- 10(2) – HUF income apportioned in individual members hands exempt.
- 10(2A)-Share of profits of partner in partnership/LLP firm. Profit does not mean interest or remuneration. Exempt even if firm pays no tax due to deductions/exemptions availed.
- 10(4) – Interest on NRE A/C – if NR or permitted by RBI to maintain NRE a/c if resident. All joint holders also exempt.
- 10(5) Travel concession to salaried assesseees – actual expenses incurred.
- 10(6) – remuneration of foreign nationals – short stay remuneration S-10(6) (vi) to a foreign national as an employee of a foreign enterprise for services rendered in India – if the foreign enterprise is not engaged in biz activity in India , employee's stay in India =< 90days& the remuneration is not deductible from employers income chargeable to tax in India.

S – 10(6)VIII)- Salary received by NR for services rendered in connection with his employment or for ship provided stay of NR =< 90 days in India .

S-10(6)xi- Employees of a foreign govt receiving salary in connection wise their training in govt. office or PSU.

10(7) – allowances/perks paid to govt. employees outside India to Indian citizen for services rendered outside India. But basic salary is taxable.

10(8) remuneration from foreign govt. under co.op.technical assistance program in accordance with an agreement with CG for services rendered in India.

10(8A) Remuneration /fee to a NR consultant , out of fund available to an international organization under a technical assets grant agreement between the agency & CG & approved by prescribed authority for services rendered in India.

10(8B) – In correction to 10(8A) – Remuneration to an employee of the consultant referred in 10(8A) from the consultant provided the contract of service is prior approved by prescribed authority.

10(9) – in connection with 10(8)8A & 28B – remuneration / fee received by any member of the family of the individual referred in above clauses accompanying him to India.

10(10)- death cum retirements gratuity –by salaried employee.

10(10A) –Pension – commuted value–by salaried employee.

10(10AA) – Leave encashment

10(10B) – Retrenchment compensation

10(10C)- Voluntary retirement

10(11) – PPF proceeds

10(11A) – Sukanya samriddhi A/c scheme – including the interest accrued withdrawals.

10(12) – Recognized .P.F.

10(12A)- NPS – 60% of amt payable

10(13A) – HRA

10(13) – superannuation fund

10(10BC) – Compensation for disaster received from Govt. or local authority.

10(10CC) – tax on perk borne by employer , not provided by way of monetary payments.

10(10D) – sums received under life insurance policy including Bonus. Excluding received under keyman insurance policy, including assignment of policy to keyman but excludes sum received on death or sums received under an insurance policy issued after 1/04/2013 if the premium payable exceeds 10% of actual capital sum assured or if policy issued between 01/04/2003 & 31/03/2012 exceeds 20% of actual capital sum assured . Actual capital sum assured is the Minimum amount assured excluding the amount of premium returned & bonus etc.

10(15) – interests, premium, bonus received on certain specified securities incase of all assessee from notified bonds / sec. from gold deposits, Bond scheme depo. Certificates under

gold monetisation scheme by individual/HUF from 7% capital investment bonds, relief bonds ;bonds by local authority.

By NR/RNOR –on NRI bonds , from an international financial services center , provided bonds are purchased in FX, Interest & principal on maturity are non repatriable not have encashed them prematurity on interest from scheduled bank provided interest is payable on deposits in for currency approved by RBI.

10(16) educational scholarship to individuals granted to meet the cost of education

10(17) allowances to MPS/MLA'S – Daily & constituency allowances .

10(17A) – award / reward to all assesseees in cash /kind , in public interest non govt./ body approved by it.

10(18)- pension to gallantry award winner.

10(19) fly pension to army personnel (including armed force& for paramilitary force when death in course of operational duties.

10(20)- income of local authority – panchayat, municipality , municipal committee ,distribution board / cantonment board – all heads of income & under PGBP of from supply of commodity /service of water or electricity anywhere and if supply of any other commodity /service then it should be within its jurisdiction area

10(21) –research association– notified.

10(22B) – Specified news agency

10(23A) – Professional Associations & institutions established in India , approved by CG but not exempt head are house property ,interest & dividends from investments & income from rendering specific services.

10(23AA) – Armed force fund

10(23AAA) – Employees welfare fund notified by board.

10(23AAB) – Income of LIC fund for pension scheme receiving contribution by any person for receiving pensions approved by IRDA – exemption to LIC& not to individual pensions

10(23B) – Khadi or village industries institution – by trusts/Society – an income from khadi product approved by commission.

10(23C) – National funds, Educational institutions ,Hospitals – all income exempt approved & notified.

10(23FB) – Any venture capital co./ fund regd under SEBI other than investment fund set up to raise fund for investment in venture capital undertaking

10(23FBA) – Investment fund – referred U/S 115UB non PGBP income exempt (infrastructure investment trust / real estate investment trust)

10(23FC) – Business Trusts – interest , income from SPV or dividend U/S 115O exempt , but taxable in hand of unit holders when distributed after TDS @ 10%(5% if NR)

10(23FCA) – REIT (Real estate investment Trust) – any rental income is exempted, but on distribution to unit holders taxable & TDS @10%

10(24A) – Trade union – exempt is H.P income & losses

10(26BB) – Corporation for a minority community estd by govt. for promoting their interest

10(32) – minor's income if clubbed – upto Rs 1500 per child.

10(34) – dividends from domestic co's – all assessee - <Rs. 10 lac in a year

10(34A) – income upon buy back of shares to all assesses – but company (even unlisted) buying it has to pay tax.

LTCG on transfer of securities- all assesses- transfer of equity shares

10(38) EO fund/biz trust unit , STT paid . EOF – 65% in equity of domestic cos.

-No exemption after 1/4/2018

10(40) – grant from holding co. – exemption to subsidiary co. holding co. engaged in generation & transmission / distribution of power.

10(43)-Loans under reverse mortgage – to senior citizen – received lumpsum or installments.

10AA – New undertaking in SEZ – all assessees PGBP - from exports, should be entrepreneur (approval letter) – has to choose initially if requires exemption U/S 35 AD or 10AA – 1st 5 years -100% profits , next 5 years – 50% profits exempted , next 5 years – 50% of profits transfer to Special Reserve.

Concept of Income Tax – Income tax is a taxable income including deemed income as per its provisions. Revenue receipts are taxable but capital receipts are not unless expressly provided in law. Where is a diversion of income by overriding title, there is no income accruing to such person . Same income cannot be taxed twice unless expressly permitted. One cannot make a profit from himself principle of mutuality . Illegality of income is not to be considered. Mere relief from expenditure is not an income. IT Act 1961 is a complete code in itself nothing can be received in, nothing can be read out. If something is defined under the act, its meaning has to be understood accordingly. When a word is not defined, its dictionary meaning may be used. Interpretation in favour of the assessee is to be taken if there is ambiguity or two view. Meaning of similar words used in other laws is not to be used.

The budgets becomes the finance Act, after president approved .Legislative can make laws to increase a new burden or reduce an existing liability with prospective (hence forth) effect. It has the powers to make retrospective (with past effect) laws & changes also unless it is violative of constitution, unreasonable or not in public interest

- Law to be applied is that which is in force in the relevant assessment year unless otherwise stated.
- An amendment wef 1st April of financial year is applicable to the assessment year of that year itself

- An amendment wef after / 1st April of financial year would not be applicable for that assessment year but , from the next , or when specified.
- Assessment year of a reopened case should be done according to the law for that applicable assessment year.
- Deeming provisions are legal fictions & are to be strictly construed for the limited purpose for which it has been extended and not beyond that. There can be no fiction upon fictitious eg. Presumptions unexplained cash credits, investments etc. by way of fictions created u/s 68,69 etc. cannot be extended to penalty proceedings for such additions
- IT ACT, contains -298 sections & 16 schedules .Rules are subordinate to the act. They are framed for proper administration. There are 125 rules .Circulars / notifications & classifications are issued by CBDT to deal with specific problems & to clarify doubts of the provisions. Notifications are binding on everyone. Circular are administrative guidelines & are binding on all officials of the IT dept. Judicial decisions are helpful in resolving dispute.
- Difference between exemptions & deduction – exemptions do not form part of GTI at all. There cannot be a deduction to an exemption. They cannot exceed total income .Incomes relating to the deductions form part GTI. They are first included & then deduction is allowed. They can be less than or equal to or more than the amount of total income (weighted deduction).
- Nature of Capital & revenue receipt are determined by its character in the hands of the receiver & not of the payer. Receipts for substitution of a source of income is of capital nature , eg. Compensation received for termination of a business, unless expressly taxed . Annuities are revenue receipts, gifts are essentially capital receipts unless expressly taxed .Subsidy which is not reduced from the cost of the asset, is taxable as revenue receipt .Subsidy granted by govt. forming part of corpus of trust, shall not be part of income. Advance money received against capital assets and forfeited is taxed as income & not reduced from cost of that assets.
- Capital expenditure are relating to assets & of long term benefit .
- Method of accounting followed is not relevant under salaries & HP. Salaries are taxed on earlier of receipt or due. HP is taxed on accrued. Capital gains is taxable in year of accrual unless assets is transferred .
- Jurisdiction is the statutory authority of an officer for deciding or taking action .It cannot be waived or conferred by consent of the parties. Vices of jurisdiction can be challenged at any stage but may be opted to continues comply wise the proceedings under protests.
- Time barring are periods of limitations fixed for completion of various proceeding the taxpayer.
- Authorized representative (AR) are person who can represent and appear before any authority in connection with any proceedings.

- Then include relative, regular employee, legal practitioner & CA, Income tax practitioner, Retired officer of IT.
- The office of Director General of Income Tax (DGIT) (Investigation) is exempted from RTI.
- Ombudsman is a designated authority independent of the regular jurisdiction of IT dept. He resolved complaints impartially & settles to improve quality of tax administration & to bring transparency. A complaint can be filed by an assessee if any authority rejects the complaint or does not give any reply within 01 mth or is not satisfied with the reply.
- Definitions in sec 2 apply at all places in the acts. Definitions are also available in different chapters/ sections which are to be used strictly in that context.
- Assessee is every person by whom any tax is payable & who is deemed to be an assessee and an assessee in default.
- Every assessment year is a separated and self-contained period of time. Income which has escaped assessment, in a particular year cannot be assessed to tax in any subsequent years.
- Previous year (PY) is the year for which the income is taxed. It is the financial year & common to all tax payers.
- Assessment year(AY) is the year following the PY during which the assessment is made or within such extended time.
- Dividend includes deemed dividend. Dividends are taxed in the year when declared or distributed or paid. Interim dividend is deemed to be income of the year in which it is unconditionally made available to members.
- Charge of Income Tax- S-4 is the charging section at the rates mentioned in the budget (Finance Act).
- Accelerated Assessment means charging of tax on income other than on the concerned previous year & during the Assessment year in case of supplying biz of NR, persons about to leave India, AOP/BOI likely to be dissolved , persons likely to trf ppty to avoid taxes. Income of discontinued biz.
- Scope of IT(Incidence of tax) S-5 determined by residence status and basis of charge (accrual or receipt basis), accrual means right to receive .
- Individual Resident is charged on his world income.
- Individual NOR –not ordinary resident is not charged on world income, except if it is from a business controlled in or a profession setup in India.
- Individual NR- is not charged on world income even if it is from a business controlled in or profession set up in India. He is charged only on his Indian Income received /deemed to receive/ accrued/arise/deemed to accrue or arise in India.

Residential status S-6- Stay in India ≥ 182 days or (≥ 365 days in preceeding 4 years and 60 days in current year; 60 days replaced by 182 days if a) he is an Indian citizen leaving India for

employment abroad or to work as crew of an Indian ship b) he is an Indian citizen or PIO visiting India.

HUF/firm /AOP – Resident if control & management of its affairs is wholly or partly in India – NR if wholly outside India.

Company is resident if it is an Indian co. or if control & management is wholly in India. 'Control & management' is reflected by POEM(place of effective management – where key management & commercial decisions are made)

RNOR(only for individual & HUF) – if he is karta NR in g/co preceeding previous years or stayed in india for less than 730 in 7 preceeding previous year.

- If a person is resident for any source of income , he will be deemed to be the resident for all his source of income .
- Stay in a ship / boat moved within 12 nautical miles from coastline is also considered.
- Stay need not be continuous or at any one place. Date of departure and of arrival is to be considered.
- PIO (Person of Indian origin) if either he or either his parents or any of his grand parents (maternal & paternal) were born in undivided India.
- Income deemed to accrue / arise in India S-9 income through or from any biz connection in India , property asset or source of income in India. Transfer of capital asset situated in India. Salaries for services rendered in India including leave, salary paid by GOI to an Indian citizen for services rendered outside India. Dividend paid by Indian co. outside India. Interest payable by GOI, interest payable by NR, where money borrowed is used for business / profession in India or for earning any income from source outside India. Royalty / FTS payable by Govt. by NR for services, rights, property utilised by NR in India , by resident except, for right , property utilised by resident outside India.
- Wef.5/7/19
- Any sum of money paid after 5/7/19 by resident to NR/ for co. is taxable in hands of NR/For. co. except if transfer is made by any relative or on occasion of marriage of NR, or under will /inheritance or from a regd. Trust , medical / educational institution , from any local authority.
- Certain activities not to constitute business connection in India. Ie. Fund manager in India, of off shore funds / eligible investment fund & these offshore & eligible invest fund are not resident.
- GTI is the aggregate of all 5 heads of income after taking the exemptions / deductions under each head. Then clubbing &c/f provision applied.

Rate of taxation– there are different rates of taxation for different categories & sub categories of persons. Different rates for different slabs of income & education cess (EC) & secondary &

higher education cess (SHEC) is replaced by H & EC & (Health& education cess) .Tax is rounded to nearest 10 rupees.

- General category rate (other than sr. citizen) – threshold limit 250000.
 - Sr. citizen (above 60 years) –threshold limit Rs.300000
 - Super Sr. citizen (>80 years) threshold limit Rs. 500000
 - Firms/ LLP – no threshold limit – flat rate 30% HEC – 4%
 - Domestic co. – no threshold limit – flat rate 30% (25% if t/o < 400 crores)
 - Foreign co. – no threshold limit – flat rate 40% other than royalties (50%) & FTS – (50%)
- Surcharge is calculated on total tax amount on income above Rs.50 Lacs at minimum 10% of tax

S-115BBDA

- Tax is levied on dividends exceeding Rs.10lacs in a year received by tax payer @10% for Individuals/ HUF /AOP.
- Dividends above Rs.1000000 not taxable by S-12AA regd Trust/ 23(c) institutions.
- No deduction for any expenditure or allowance or set off of loss allowed in computing income from dividends.
- Above section not applicable to deemed dividend U/S 2(22(e))
- Royalty income of residents from patents developed & regd in India of patentee taxed @ 10% - no other expenditure/allowance allowed. Option for such rate to be exercised before due dates of filling return. Once option exercised has be continued for five asst year, if changed in between then for subsequent 5 assessment year after such change , he cannot claim this concessional rate of 10%
- Income from transfer of carbon credits taxable @ 10% S-115BBE. No deduction for any expenditure/ allowance allowed.

-A range of price variation should be fixed and only adjustment to be made if the difference between transaction price & ALP determined is out of that range.

-CUP(comparable uncontrolled price) – price with an independent entity treated as ALP & is substituted with the transaction price. Adjustments are made for differences most , reliable & highly objective.

-RPM (Resale price method) – As certain the price that would be obtained if the same goods / services is resold to an independent enterprises . This is the resale price& to this the resale price margin of the seller & selling & distribution expenses is deducted. It assumes that the goods are send without naming any further value additions.

-CPM – cost place method .Cost of the supplier are determined , markup of supplier is added. Method applied to transfer of semi finished goods to related parties.

- **PSM** (Profit split method) – it determines the division of profits which the enterprises would have expected to realize from the transaction . Firstly identify the profits to be split between related parties. Then split the profit on independent transaction basis. Here both the related parties are evaluated, so less reliance on external data useful where there are no comparables. But difficult to get info from its foreign co's.

- **TNMM** (Transactional Net Margin Method)

1. Compute the N/P margin of the transaction enter by AE in relation to the costs incurred or sales or assets employed or any other relevant base.
2. Find the N/P margin of similar uncontrolled transaction.
3. Then adjust the N/P in 2 for differences ALP is the transaction value adjusted N/P margin.

- **Applying ALP to intangible assets/ property (IP)**- Intangibles are trade intangibles , marketing intangible assets intangible property is transferred by sale or by a royalty under a licensing agreement intangible property transfer may be included in a package price for goods . Generally CUP or resale price method is used to determine ALP of intangibles. RSM is used if the AE sublease the IP to third party.

- **Applying ALP to intra-group services** – issue are whether services have been provided by one member of an MNC group to other members of that group & how to find out ALP for those services . The services /activity provided should provide economic or commercial value to the other group members to enhance their commercial position. An independent enterprise would be willing to pay for such services then only it can be considered as intra group services under ALP.

INTERNATION / NON RESIDENT TAXATION :

-Taxability of an amt depends on its nature, place of receipts/ accrual, point of time of accrual or receipts & taxpayers by or on behalf of assessee residential status (R, RNOR, NR)

-Leaving India for employment does not mean that he should be unemployed in India before leaving employment outside India also includes self employment official tours outside India are not employment.

-**Control & management** means central (where hand & brain is located) control management & not to carry on day to day activities by employees agents etc. place of control may be different from where the biz is run or where the regd office is located. Control means where vital decisions, policies of biz are made.

-Status of karta determine the status of HUF .Every Indian co. is resident irrespective of where its control or management lies. Every foreign co. is non resident unless its control & management (POEM) lie wholly in India . Mere facts that parent co. exercises shareholders

influence on its subsidiaries does not make the subsidiaries deemed residents of the state where the parent co. resides.

- Resident always taxable on world income whether income is brought or recd in India or not.

- NOR (is only for individual and HUF) is only not taxed if income accruing or arising to him outside India unless it is from a business controlled or professional set up in India.

- NR is not taxed for any income outside India in all cases

- None of above if individual & HUF (R, NOR & NR) are taxed if income is earned & received outside India but later on remitted to India. But if person is not, individuals & HUF then above is taxed in case of residents.

- Only individuals & HUF can be NOR, no other 'person' can.

- Receipt of income refers to the first occasion when recipient gets the money under his control. Further remittance or transmission of that amount from one place or person to another does not, constitute receipts.

- 'Accrue' refers to the right to receive, whereas 'due', refers to the right to enforce payment of the income e.g interest accrues on day to day basis during the period, but becomes due only after that on specified dates.

- Income once taxed accrual basis, cannot again be taxed on receipt basis

S-9- Income deemed to accrue or arise in India are taxed for all (R, NOR, NR) even though these incomes actually accrue or arise outside India. This section codifies the 'source' rule of taxation and supports the source country's right to tax the gains derived from offshore transactions where the value is attributable to the underlying assets lying in the source country & is recognized internationally)

The following 7 categories of incomes deemed to accrue or arise (AOA) India are

- any income AOA to an assessee in any place outside India directly or indirectly.

- Through or from any biz connection in India, any property in India, any asset or source in India.

- Through the transfer of a capital asset situated in India. It covers incomes from a source in India. 'Through' means & includes 'by means of' 'in consequence of' or 'by reason of'.

- expl. 5 to S-9 inserted to clarify that on asset or a capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be / have been situated in India if the share or interest derives, directly or indirectly its value substantially from the assets located in India.

- Salary is deemed to accrue / arise in India if it, is earned in India, irrespective of where it is payable / paid.

- Salaries paid by govt. of India to a citizen for services outside India, excepts the allowances / perks paid outside India are not deemed to AOA.

- Dividends paid by Indian co. outside India.

- Interest

-Royalty

-FTS(fees for technical services)

-Business connection includes biz activity carried through person acting on behalf of NR , having authority to conclude contracts& not merely to purchasing of goods. Includes person who maintains stock of goods &delivers then includes person who secures orders for NR.

-No biz connect if NR conducts business through a broker, general commission agent who conducts business independently & is not, employed by NR.

-Only so much of income that is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

-Business activity should be continuous & not a stray transaction should be real & intimate & should contribute to the profits of the NR. Man, material or machinery should be used in India to constitute business activity.

-Property in India include movable , immovable ,tangible or intangible in India

-Capital asset include movable , immovable ,tangible or intangible situated in India irrespective of whenever the documents is registered or where payment is made.

Incomes which are notDeemed to accrue or arise in India Expl. to S-9 (1) i)

- 1) In case of a business in respects of which all the operations are not carried out in India- income deemed on attributable basis to only that part of the income which is derived from the India operations.
- 2) Purchase of goods in India for Export – no income deemed to AOR.
- 3) Collection of news & views in India for transmission out of India no income deemed to a NR in the business of News Agency, publishing news paper, mags, journals.
- 4) Shooting of Cinematographic films in India by NR who is not a citizen of India or by a firm who does not have a partner who is a citizen or Resident in India or by a Co who does not have shareholder who is a citizen or who is Resident in India.
- 5) Salary paid for services rendered in Indiais deemed to A & A
- 6) All dividends from an Indian Co. deemed to A & A.
- 7) Deemed to A&A if interest paid or by any resident Government or by any resident except when the resident uses it for the purpose of using in a business or prof carried by the resident outside India or for earning any income by the resident from a source outside India or interest paid by one NR to another in respect of any debt incurred or money borrowed for a biz/ prof carried by him in India. If interest is paid for other than business or profession purpose then not deemed eg one NR pays another NR interest the loan which is used to buy shares of an Indian Co ,the interest payable to the recipients NR is not deemed to A&A.
- 8) Royalty paid for transfer of any right or use of any property or info or for utilization of any services similarly to interest paid above is A&A i.e. If paid by government or by a resident excepts for using in a business/ proff carried outside India or for earning any income from a

source outside India or if paid by a NR only if it utilized for a business/prof carried out in India or for earning an income from a source in India.

- 9) Royalty is wide enough to cover industrial royalties and copyrights royalties and also rights to use computer software irrespective of the medium used for transfer and includes consideration for imparting any information concerning technical, commercial scientific knowledge, experience or skill. Payment in lump sum covered.
- 10) Royalty excludes any consideration which would be income chargeable under capital gains.
- 11) Royalty includes consideration for transfer of rights including grant of licenses for any copyright, literary, artistic or scientific work including film or video types for use in connection with T.V or radio broadcast, but not including consideration for sale, distribution or exhibition of cinematography films.

Royalty includes rendering of any services in connection with the activities mentioned above.

- Hence if the consideration falls in def of Royalty TDS u/s 194 J & 195 is applicable.
- Royalty includes transfer of right in any 'process' & process includes transmission by satellite (including uplink, conversion, amplification, downlinking of any signals, by cable, up to fiber or similar technology).
- Whether or not location of such right, property or information is In India or possession or control of such right, property or information is with the payer or is directly used by the payer.

FTS (Fees for Technical Services) deemed to A & A if the same 3 conditions which are the same as Royalty i.e. If paid by government or paid by residents except or paid by NR only if are met.

- FTS means any consideration (including lumpsum) for rendering any managerial, Technical or consultancy services (including providing of technical or other personnel)
- Does not include consideration for any construction assembly, mining or like projects undertaken or consideration taxable under head salaries.
- Interest/Royalty/ FTS deemed to A & A irrespective of any territorial nexus of the NR i.e. whether not he has POR or POB in India or whether he has rendered services in India as long as the services were utilized in India by the payer it is taxed.
- In shorts Interest / Royalty/ FTS is deemed to A & A if paid by resident to a NR then the resident must use the borrowing/ or services connected to the Royalty/ FTS paid) it in connection to a business or profession carried by the resident IN INDIA or the resident should use it to earn income from any source In INDIA
- If above is paid by a NR it is deemed to A & A also in similar cases as above.
- So the utilization by the payer of the Interest/ Royalty/ FTS is only to be considered if it is IN INDIA then the NR is taxed under this deeming A & A provision.

- S-44 C ceiling on H.O to paid claimed by Branches of NR in India applicable to those NR's who carry on business in India through their branches. H.O expenses includes all general & administrative Expenses incurred outside India by the foreign company in so far as it relates to the branches business in India. Limit is least of (a) 5% of Adjusted total Income or in case of loss of the average adjusted Total Income (of previous 3 years) or (b) the amount of so much of the H.O Expenditure as is attributable to the business / profession in India. Adjusted total income is income before set off of business loss / unabs. depreciation/ Capital gain loss/ Spec loss / Investment allow.
- S-44C not applicable if provision in DTAA prohibits such restrictions.
- Reinvestment of technical expense paid by H.O to a third party allowed without 44C limit but provision of TDS applicable.
- S-44DA Spl provision & method of computing income from Royalties & FTS arising out of agreements made by NR with India company or governments after 1/4/2003 where such NR carries out business/ professions in India through a PE or fixed place of business and the contract is connected with such PE or fixed place. Actual Expense incurred wholly & exclusively for such PE or fixed place of business in India & reimbursement of actual expense to H.O or its offices are allowed provided mandatory audit is conducted.
- Presumption taxation u/s 44BB in case of NR engaged in business of mineral oil exploration operation of aircrafts, civil constructions done in connection to power project income @ 5% of amount received/ deemed to be received.

CAPITAL GAINS A NR is taxable for capital Gains in India if he transfers a Capital asset in India.

3 types of transactions not taxable in case of NR

2) Transfer under a scheme of amalgamation of shares of an Indian Co. by the amalgamating For co (FCO) to the amalgamated For Co if atleast 25% (in number) of the share holder of the A'ting FCO continues as shareholder in the A'ted F Co and such a transfer does not attract capital gains tax in the country where A'ting FCO was incorporated.

Transfer under a demerger of shares of an India company by the demerged FCO to the resulting F co if greater than 75% in value of shareholders continue as shareholders in resulting F Company and such a transfer does not attract capital gains tax in the country in which the demerged FCO was incorporated

4) Any transfer of bonds or GDR of a public sector company purchased in forex, made outside India by a NR to another NR.

- Indexation of costs not allowed in certain cases to NR even if it is long term.
- Transfer of shares / Debentures of an Indian company by NR acquired in forex currency. (not applicable to mutual funds units)
- Transfer of shares bonds of a PSU or GDR or bonds of an Indian company (ICO) purchased by NR in for currency.

- Transfer of securities by FII's
- Transfer for exclusive assets (shares of ICO debenture by ICO which is not a private company, deposit wise / public company, CG securities & NSC VI & VII) by NRI.

S-45 (3) not to apply to international transactions (between R & NR or between NR & NR) for which S-92 to 92 F provides for determination of ALP in accordance with transfer of provisions.

S-45 (3) applies that in case of transfer of a capital assets by a person to a Firm/ AOP/ BOI (not being a company or Corporate society) if he becomes partner / member by way of a capital contribution or otherwise then the sale consideration is the amount recorded in the BOA of the Firm/ AOP/ BOI the market value is not to be considered. Since S- 45(3) is only a method of computation & is different from the general method of computing the capital gains u/s 48 it is limited in scope even though it did not differentiate between R & NR.

S-115F Exemption of LTCG to NRI on transfer of F.E. assets if he invests in another F.E. assets within 6 months from transfer & holds the new assets for 3 years.

-Choice to opt for above exemption to be exercised before filing ROI or he can opt to be taxed at normal provisions.

10(38) Exemption of LTCG on sale of shares or EOF units STT paid applies to both residents NR include FII's now amended up to Rs 1 lac capital gains in a year.

-Concessional rate for LTCG for all assesses includes NR, For. companies is 20% and for LTCG u/s 115 AB, AC, AD & E it is 10%. A surcharge is applicable for LTCG to all.

- Indexation can be claimed on LTCG from listed securities, mutual fund units, taxed at 20% or @ 10%. without indexation.

-10% rate also to NR who buy it share in for currency.

- Since bonds & debenture include Zero coupon bonds are not allowed to be Indexed, LTCG is @10% if they are listed.

Spl. Provision applicable to NR Indian who invests in F. E. assets and derives investment income , any other income other than dividends from F E assets , LTCG in respect thereof,

Under Chapter XII A. – S - 115C to I. NRI should be a PIO, need not be a citizen after S- 115-

D- no deduction allowed under any other provision in respect of any expenditure or allow W.

R. T. 'Investment income' if spl. prov. opted , No VI A deductions, no 48(2) deduction.

-Treated as a separate stock of income, Investment income taxed at that 20% plus surcharge & LTCG @ 10% + S/c

-Concessional rate not to short term capital gains.

-NRI not if file ROI if having only 'investment income' or LTCG & TDS is deducted.

-NRI to continue to avail of Chapter XII-A in relation to Investment income ever after becoming resident if he furnishes declaration along with ROI for such subsequent year until trf. Or conversion of such F E assets into money.

-Option to avail of Chapter XII A can be made for any particular year.

- S – 115 JG Spl. Provision relative to conversion of a Indian branch of a Foreign bank into a subsidiary Indian Companies if accordance to scheme by RBI , then no Capital gains too or such conversion & provisions of s/o & c/f of losses, unab. dep shall apply.

TDS on payment to NR

S – 194E – every person to deduct TDS on payment/ credit of any income to NR sportsmen entertainer who is not a citizen of India or to a NR sports Association / Institution @ 20% plus S/c payment covered are towards income for participation in India in any game/ sports ; advertisement ,contribution, guarantee amount.

On other sums paid by all person even by one NR to another NR to NR/ For co. S – 195, any input (other than interest on securities) on any sum chargeable to I T other than salaries, to deduct at the rates in force + S/c.

- ‘Adjustments’ made to the amount payable to NR by book entries from the amounts due from the NR is treated as a payment made by ‘any other mode’& TDS to be deducted, even through no actual payment made.

Deduction at lower rate not permissible without AO’s Certificate Deductions under VIA available to NR

80A

80AC Certain deduction are allowed unless ROI is filed (80 – IA / AB , IB, IC ,ID, IE.)

Allowed

80 –C, 80CCC, 80CCD, 80CCT, 80D, 80E, 80EE, 80G, 80GG, 80GGA, 80GGC, 80 IA, 80 JJA, 80LA, 80 TTA.

DTTA : are bilateral Double taxation Agreements to avoid levels of tax on the same income in both countries. On the Income for trade & investment decision of the tax payer. Affects a tax payer who is resident , in one country but has a source of income in another country. Both the countries may have the right to tax the tax payer under the ‘residence rule’ or ‘source rule’. Residence rule says that power to tax is with the country in which the tax payer resides source rule says that power to tax is with the country from where the income originates. DTAA seeks to lay down rules for taxation of incomes between the source country & the residence country. Rules are laid down for various categories of incomes. Each income category is dealt with under separate articles in the DTAA. Principle is that the same income should not be taxed twice. Two methods of relief 1) Bilateral Relief & Unilateral Relief. Bilateral Relief are agreements entered between 2 countries for avoidance of double taxation by exemption method where the income is exempted in one of the countries or by Tax Relief Method where the income is taxed in both countries with their respective laws, but the

country of residence of the taxpayer allows him credit for the tax charged by the source country or combination of the two methods.

- Unilateral Relief provided by the home country even if no mutual agreement is entered between the 2 countries.

- S-90 & 91 of IT provides for DTAA. Provisions of Act applies only if they are more beneficial to the assessee over the DTAA(treaty law). But in many cases tax payers who are not residents of a contracting country are claiming benefits of DTAA ie. Third party residents are claiming unintended treaty benefits. S-90(4) is inserted that the NR can claim relief under the treaty if TRC(Tax Residency Certificate) is obtained by him from the country & furnished.

- A specific provision of Treaty will prevail & over ride over the general provisions of the domestic law.

- Models of Tax treaties are OECD & UN models.

S-91 Relief from tax if no DTAA is there & all conditions by taxpayers & that is he is resident in India in that year, the income A or A outside India, is not deemed to A or A in India, the income is taxed in the for. country& taxpayer has paid tax in for. country. Then the tax so paid abroad shall be reduced from Indian tax payable by him.

- Taxation of business processing outsourcing units in India (IT enabled business process outsourcing unit). A NR entity may out source certain services to a resident Indian entity . If there is no business connection between the two the resident entity may not be PE of the NR. Then the resident entity will be assessed as a separate entity & the NR entity will not be liable to pay tax.

- If there is a business connection between the two, the resident would be treated as a PE of the NR entity then to the extent of the profits of the non resident entity to the extent attributable to the business of the PE is taxed in India. The NR entity & expenses paid to or the purchases.

- The sales /services made by the resident entity to the non resident entity (PE) Or the purchases would be determined at ALP. The expenses of the PE would be deductible including the H.O. expenses.

- Concept of PE business profit of a NR entity are taxed in the other country for which such profits originate only if the profits arise through PE in the originating country. Treaty's define PE & mostly follow the _____definition of PE. ACT 5(1) &(2) .PE is a fixed place of business_____ which the business is wholly or partly carried on eg. Branches , office, workshops, warehouse , sale outlet ,_____,oil well , quarry. Exceptions are site where only preliminary or ancillary activities are conducted. Generally POB should be for more than 6 months, some treaties provide for a year before which a PE to be established. Carry in amt a business through an independent agent not a PE.

- Income in India of NR is taxed under domestic laws only if covered under section 9 and taxed under treaty law only if there is a PE in India of the NR.
- Income outside India of resident is taxed
- if DTAA is there with that country where income originates and it is taxable under the treaty and under whichever provisions are favourable to the resident (as under domestic resident is always taxable for outside India incomes)
- If DTAA is not there, then S-91 – complete calculating normal tax total income compute avg. tax on foreign income – from total tax reduce tax paid on foreign income charged by the foreign country - pay bal. tax .
- NR is not taxed in India **on its foreign income.**

PAN application compulsory for-

- Person whose turnover >5 Lacs in a year
- Charitable trust.
- Any person liable to pay tax/ duty under any law(GST) whether or not IT is payable.
- Any person receiving any amount of TDS.
- Any person entering into specified transaction.
- Any person other than individual entering into any financial transaction > Rs.2,50,000 in a year.
- Quoting of PAN compulsory for (excluding NR)- Penalty Rs.10,000 each default.
- Sale or purchase of vehicle other than 2 Wheeler.
- Opening of Bank a/c except time deposit, issuing Debit/ Credit card;
- opening of DEMAT account, payment (including cash)>Rs 50,000 at one time to hotel/ restaurant, cash payment relating to foreign travel(Excluding Bangladesh, Bhutan, Maldives, Nepal, Pakistan or Sri Lanka or Haj Samdi travel or China Kailash Mansarovar exceeding Rs.50,000 at one time towards fare, to travel agent, to reporters, or authorized dealer.
- Mutual fund purchase of units/ of company bonds, debentures/ RBI Bonds/ Mutual funds exceeding Rs.50,000.
- Deposits > Rs. 50,000 cash in a day in Bank.
- Purchase of bank draft, P.O for bank in cash totaling Rs.>=50,000 on one day.
- Time deposit in a bank, P.O or NBFC more than Rs.50,000 or totaling to more than Rs. 5 Lacs in a year.
- Making one or more prepayment exceeding Rs.50,000.
- Life insurance premium totaling to more than Rs.50,000 in a year.
- Sale or purchase of unlisted shares in a company > Rs.1,00,000/-
- Sale or purchase of immovable property valued more than Rs. 10,00,000/-
- Sale or purchase of goods more than 2,00,000/-.
- Illegal to have more than one PAN or TAN . Branches/ Divisions of entity can have separate TAN.

Specified transaction (to be reported) for which specified persons (banks/post office/Companies/Credit card companies/Tax Audit assessee /Mutual Fund/NBFC) have to furnish SFTRA(Statement of Financial Transaction or Reportable Accounts) as under of person.

- Purchase of bank draft /PO/ in cash in a year > Rs.10,00,000/- in a year
- Cash deposit or withdrawal in or from one or more Current account > 50 lacs - Bank.
- Cash deposit or withdrawal in or from one or more Saving account > 10 lacs- Bank .
- Deposit (other than Time deposit) one or more time > Rs 10 Lacs in a year.(Could be in loan Account) .
- credit card bills paid in cash in a year totaling to > Rs. 2,00,000/- or paid other than in cash bills totaling to more than Rs. 10 Lacs in a year- Cr Card Co.
- Purchase of bonds / Debentures/Shares/Buy Back/ Mutual Funds of >=Rs. 10 Lacs in a year.

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- Sale of foreign currency more than Rs. 10 lacs – Authorized person.
- Purchase or sale of any immovable property > Rs. 30 lacs – Registrar.
- Receipt of cash by any person for any goods or services >= Rs 2lacs- Tax Audit assessee
- Cash deposited in demonetization period(9-11-2016 to 30.01.2017) in current account totaling to more than Rs.12.50 lacs - Banks
- Cash in demonetization period(9-11-2016 to 30.01.2017) in saving account totaling to more than Rs.2.50 lacs - Banks

Assessment Procedure

- Notice of intimation u/s 143(1) CPC processing to be sent to the assessee after one year from the end of financial year in which ROI is filed.
- No addition of income appearing in Form 26 AS by the way of adjustments to be done by CPC in processing u/s 143(1).
- Sums payable mentioned in 143(1) intimation deemed to be a Notice of Demand.
- No processing of return within one year from the end of F.Y in which ROI is filed where a scrutiny notice u/s 143(2) is issued but it shall be processed before issue of order u/s 143(3)
- AO can ask for statements for maximum of 3 years prior to the P.Y.
- Copy of Scrutiny limited to verification only to those areas selected by CASS on the basis of AIR data or CIB information or from non reco wise 26 AS.
- Special Audit only if it is in the interest of revenue to get it done after prior approval of Chief CIT or CIT , only where case is pending in an assessment or reassessment.
- Time period of 180 days to provide special report.
- 143(3) notice only after ROI is filed (to be served within 6 months from end of F.Y in which ROI was filed.)
- No reasons to be recorded for selecting scrutiny case guidelines for selection of scrutiny case need not to be disclosed.
- Berth judge (ex parte) assistant S-144 A.O to record reasons for the same and to estimate income in logical manner based on some material. AO cannot assess income below the returned income or loss higher than returned loss.

- S-147 – reopening of assessment – no reopening after expiry of 4 years from end of relevant assessment year unless there is failure to file ROI or disclose material facts for the assessment.
- Reasons to be recorded before issuing notice u/s 148
- Reopening with 6 years if income escaped assessment is \geq Rs. 1 lacs .
- Reopening with 10 years if income expected assessment is from assets outside India .

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- After notice u/s 148 is issued, Assessee (A) to file response & ROI within prescribed time, then AO to supply the reasons recorded for issuing within 30 days of filing such return, once assessee receives the reasons, within 60 days he can raise objections to it . A.O to dispute the objections within 4 months of receipt of objection . These time limit apply only if 'A' file within time limit & raises objection within the time limit.
- Change of opinion is no reason to believe.
- Once notice u/s 143(2) is issued , then notice u/s 148 cannot be issued and A.O to complete assessment u/s 143(3).
- On reassessment u/s 147, original assessment disallowance & additions for which no appeal/revision/rectifications continues.
- Time limit for completing assessment S-153
- Regular assessment order for AY-18-19 before 18 months from end of AY.
- Regular assessment order for AY-19-20 before 18 months from end of AY.
- Order of Income escaping assessment – before 12 months for end of Financial year where notice u/s 148 is served after 01.04.2019.
- Fresh Assessment when assessment is set aside or cancelled by tribunal within 9 months from end of financial year in which order is received by CIT. If set aside or cancelled by Chief CIT then 12 months.
- For all assessments if reference is made u/s 92CA(1), additional time of 12 mths added.
- Effect to an order u/s 50,54,60,62,63,64 – by AO, within 3 mths from end of month order is received by CIT, If AO requires verification of any issue by way of submission of document by assessee time is increased to 12 mths.

Protective Assessments

To safeguard interest of the revenue- when there is a doubt regarding the ownership of an income. Then income is assessed substantively in that assessee who is strongly believed to be the real recipient. And if there is another person who is likely recipient, due to abundant, caution a protective assessment is also made on him. But there cannot be realization of taxes so assessed in a protective assessment .Appellate authorities cannot pass protective orders. Once appellate authorities confirms the substantive assessment, the protective assessments should be cancelled by rectification order u/s 154. But, if the substantive assessment gets cancelled, then the protective assessment becomes the substantive assessment and tax can be demanded.

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