

**AMENDMENTS MADE BY THE FINANCE ACT, 2015
&
RELEVANT NOTIFICATIONS & CIRCULARS FOR JUNE 2016 EXAM**

SL NO **CHAPTERS**

1 Rates of Tax for Individuals (Men/women)

	TAX
Upto ₹ 2,50,000	Nil
Next ₹2,50,000 i.e. ₹2,50,001 to ₹5,00,000	@ 10%
Next ₹5,00,000 i.e. ₹5,00,001 to ₹10,00,000	@ 20%
Above ₹10,00,000	@ 30%

Senior Citizen: However for resident individual who is at any time during the Previous Year is-

- i) 60 years or more but less than 80 years of age- Income shall be exempted upto **₹3,00,000**. Thereafter the aforesaid slab is to applied.
- ii) 80 years of age – Income shall be exempted upto **₹5,00,000**. Thereafter, the aforesaid slab is to applied.

Surcharge = 12% , If the total income exceeds ₹ 1crores.

Education Cess: 2% on Total Tax

Secondary Higher Education Cess: 1% on Total Tax.

REBATE [SECTION 87A]

Section 87A: Rebate of income-tax in case of certain individuals.:

An assessee, being an individual resident in India, whose total income does not exceed five hundred thousand rupees, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent of such income tax or an amount of two thousand rupees, whichever is less.?"

Summary:

- (1) Allowed to resident Individual only
- (2) Whose total income does not exceed ₹ 5,00,000.
- (3) Amount of Rebate: (i) 100% of income tax payable or ₹ 2,000 ; lower

Section 288A: Total Income shall be rounded off to nearest multiples of ₹10

Section 288B: Tax Liability shall be rounded off to nearest multiples of ₹10

TAX RATES PARTICULARLY SPECIFIED ON CERTAIN INCOMES

Section	Income	Income Tax Rate A.Y. 2016-17
111A	Short Term Capital gains on sale of Equity shares and units of Equity oriented Fund on which STT has	15% subject to basic exemption limit for resident assessee.

	been paid	
112	Long Term Capital Gains General Rate: 20% subject to basic exemption limit for resident assessee. For Non-resident assessee without basic exemption limit.	However, the benefit of 10% tax without indexation or 20% tax with indexation is available on (1) Listed Shares (2) Zero Coupon bonds In case of mutual fund the assessee shall have to pay 20% tax with indexation benefit.
115BB	Winnings from lotteries, crossword puzzles, or races including horse races or card games and other games of any sort or from gambling or betting of any from or nature whatsoever	30% without basic exemption limit

MARGINAL RELIEF ON SURCHARGE

1) Marginal Relief w.r.t surcharge is available to all assessee where the total Income exceeds ₹ 1crores / ₹ 10 crores.

Quantum of Marginal relief = Additional Income tax payable along with surcharge on excess income over 1 Crores/ ₹ 10 crores (-) Amount of income exceeding ₹ 1 crores/ ₹ 10 crores.

Example: Total Income of an Individual (Aged 45 years) is ₹ 1,01,00,000. Compute Income tax Payable for A.Y 2016-17.

Solutions:

(1) Tax on ₹ 1,01,00,000 =	
Upto ₹ 2,50,000	NIL
Next ₹ 2,50,000 @ 10%	25,000
Next ₹ 5,00,000 @ 20%	1,00,000
On bal. ₹ 91,00,000 @ 30%	27,30,000
	<hr/>
	28,55,000
Add: Surcharge @ 12%	3,42,600
	<hr/>
	31,97,600

(2) Tax on ₹ 1,00,00,000	
Upto ₹ 2,50,000	NIL
Next ₹ 2,50,000 @ 10%	25,000
Next ₹ 5,00,000 @ 20%	1,00,000
On bal. ₹ 90,00,000 @ 30%	27,00,000
	<hr/>
	28,25,000
Add: Surcharge	NIL
	<hr/>
	28,25,000

(3) Additional Tax paid = 31,97,600 – 28,25,000 = 3,72,600

(4) Marginal relief = 3,72,600 – 1,00,000 = ₹ 2,72,600

Tax payable =	₹ 31,97,600
Less: Marginal relief	<hr/> 2,72,600
	29,25,000
Add: EC&SHEC @ 3%	<hr/> 87,750
	<hr/> 30,12,750

OTHER THAN INDIVIDUALS

ASSESSEE	RATE OF TAX	SURCHARGE	EDUCATION CESS
PARTNERSHIP FIRM	30% ON WHOLE OF TOTAL INCOME	12%, if total income > ₹ 1crores.	3%
LOCAL AUTHORITY	30% ON WHOLE OF TOTAL INCOME	12%, if total income > ₹ 1crores.	3%
CO-OPERATIVE SOCIETY	Upto ₹ 10,000 @ 10% 10,001 to 20,000 @20% If exceeds ₹ 20,000 @ 30%	12%, if total income > ₹ 1crores.	3%
DOMESTIC COMPANY	30% ON WHOLE OF TOTAL INCOME	7%, if Total Income > ₹ 1 crore but ≤ ₹ 10 crores. 12%, if Total Income > ₹ 10 crores.	3%
FOREIGN COMPANY	50% ON SPECIFIED ROYALTIES AND TECHNICAL SERVICES AND 40% ON THE BALANCE	2%, if Total Income > ₹ 1 crores but ≤ ₹ 10 crores. 5%, if Total Income > ₹ 10 crores.	3%
HUF, AOP, BOI, ARTIFICIAL JURIDICAL PERSON	Upto ₹ 250000: NIL 250001 to 500000 @ 10% 500001 to 1000000 @ 20% Above 1000000 @ 30%	12%, if total income > ₹ 1crores.	3%

RATE OF TAX ON LONG-TERM CAPITAL GAINS [SECTION 112]

For Resident Assessee:

Assets	For A.Y 2016-17
Listed Shares [if not exempt u/s. 10(38)], Listed Debentures, Listed Government securities or listed Bonds. Note- In any case indexation not allowed for Debentures.	Option 1: 20% with indexation benefit ; or Option 2: 10% without indexation benefit
Units of mutual fund [if not exempt u/s. 10(38)] or UTI (whether listed or unlisted)	Option 1: 20% with indexation benefit ; or Option 2: not available
Zero coupon bonds	Option 1: 20% with indexation benefit ; or Option 2: 10% without indexation benefit
Any other assets Such as land, building, unlisted securities etc.	20% with indexation benefit

For Non-resident Assessee (including foreign company): Above rate is applicable without basic exemption limit subject to:

- (1) **For unlisted securities:** NR shall charge 10% without indexation & without basic exemption limit.
- (2) Also for NR indexation benefit is not allowed for shares, debentures and bonds of Indian company where capital gain is computed by converting foreign currencies into Indian currencies. [Refer chapter Capital Gain]

APPLICABILITY OF SURCHARGE

► ON INCOME TAX

Assessee	Situation	Rate (%)
Individual/HUF/AOP/BOI	Total income > ₹ 1 crores	12%
Artificial Juridical Person	Total income > ₹ 1 crores	12%
Firm	Total income > ₹ 1 crores	12%
Domestic Company	Total Income > 1 crores but ≤ ₹ 10 crore	7%
	Total Income > ₹10 crore	12%
Foreign Company	Total Income > 1 crores but ≤ ₹ 10 crore	2%
	Total Income > ₹10 crore	5%
Co-operative society , Local Authority	Total income > ₹ 1 crores	12%

► ON MINIMUM ALTERNATE TAX (MAT)

Assessee	Situation	Rate (%)
Domestic Company	Book Profit > 1 crores but ≤ ₹ 10 crore	7%
	Book Profit > ₹10 crore	12%
Foreign Company	Book Profit > 1 crores but ≤ ₹ 10 crore	2%
	Book Profit > ₹10 crore	5%

► ON TDS

i) **If the recipient is a foreign company** and the payment subject to TDS exceeds ₹ 1 Crore but less than 10 crores, then surcharge @ 2 %, in case amount exceeds ₹ 10 crores, then surcharge @ 5% will be applicable.

ii) **if the recipient is a non resident non-corporate** and the payment subject to TDS exceeds ₹ 1 crore, then surcharge @ 12% will be applicable.

iii) **Any other assessee: NIL**

► ON CORPORATE DIVIDEND TAX [Sec. 115-O]: 12%

► ON DISTRIBUTION TAX BY A MUTUAL FUND [SEC. 115R]: 12%

► ON DISTRIBUTION INCOME FOR BUY BACK OF SHARES [SEC. 115QA]: 12%

► ON DISTRIBUTED INCOME BY SECURITIZATION TRUST [SEC. 115TA]: 12%

2

SALARY

Transport Allowance: Exemption upto ₹1600 p.m. for commuting between place of his residence and place of his duty. But in case of an employee who is blind or deaf and dumb (inserted w.e.f 23.9.2015) or orthopedically handicapped with disability of the lower extremities of the body, to meet his expenditure for commuting between his residence and place of duty – Exemption upto ₹3,200 per month.

3

BUSINESS PROFESSION

(1) Additional depreciation: Subsequent year depreciation allowed for remaining portion if in the year of acquisition asset is used for less than 180 days. Further, Rate of additional depreciation 35% in notified backward area of WB/Bihar/Telangana/ Andhra Pradesh

Additional Depreciation in case of new factory plant and Machinery [Section 32]

Where assessee is engaged in the business of manufacture or production of article or thing or in generation or generation and distribution of power then he shall be allowed 20% additional depreciation on the actual cost of new plant and machinery, which has been acquired and installed during the year.

From A.Y 2016-17: Additional depreciation shall be 35% instead of 20%,

[In case of manufacturing unit is set up on or after 1.4.2015 in any notified backward area, in the State of Andhra Pradesh or Telangana or Bihar or West Bengal, and the assessee acquires and installs any new plant or machinery between 1.4.2015 to 31.3.2020]

However if the asset is put to use for less than 180 days in the year of acquisition the rate of additional depreciation shall be 50% of the normal rate (i.e, 10%/17.5%) and in the immediately subsequent year balance 50% shall be allowed.

Plants on which additional depreciation shall not be allowed:

- (i) Second Hand Plant & Machineries; or
- (ii) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or
- (iii) any office appliances or road transport vehicles; or
- (iv) Ship or aircraft
- (v) any machinery or plant for which 100% deduction/depreciation is allowed in the same year;

(2) Investment allowances:

SECTION 32AC: SPECIAL DEDUCTION ALLOWED TO COMPANY FOR INVESTMENT IN NEW PLANT OR MACHINERY

(1) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets acquired and installed during any previous year exceeds ₹ 25 crore, then, there shall be allowed a deduction of a sum equal to 15% of the actual cost of such new assets for the assessment year relevant to that previous year [Section 32AC(1A)]

However, No deduction shall be allowed from A.Y 2018-19.

(2) **“new asset” Same as Additional depreciation** (exception under additional depreciation road transport vehicle are not included but u/s. 32AC any vehicle are not included).

(3) If the assets has been sold or transferred (except amalgamation or demerger or reorganisation) within a period of 5 years from the date of its installation, then deduction allowed u/s. 32AC shall be taxable under “Profit or Gains from Business or Professions ” in the year of such sale. Further, in addition to that if any capital gains arises on account of such transfer u/s. 50 shall also be taxable

(4) In case of amalgamation/demerger, the amalgamated/ the new company would required to hold such assets for the remaining lock in period. Otherwise taxable in same manner as given in point(3) in the hands of such amalgamated/new company.

Example: Compute Deduction allowed u/s. 32AC(1A)

Amount invested in new plant & Machinery:	Deduction allowed u/s. 32AC (1A):
P.Y 2015-16 ₹ 25 crore	In P.Y 2015-16 = NIL (since investment does not exceed ₹ 25 crore)
P.Y 2016-17 ₹ 30 crore	In P.Y 2016-17 = 15% of 30 crore = ₹ 4.5 crore.
P.Y 2017-18 ₹ 30 crore	In P.Y 2017-18 = Nil (No deduction shall be allowed w.e.f A.Y 2018-19)

SECTION 32AD: SPECIAL DEDUCTION ALLOWED TO ANY ASSESSEE FOR INVESTMENT IN NEW PLANT OR MACHINERY IN NOTIFIED BACKWARD AREA OF ANDHRA PRADESH/ TELANGANA/BIHAR/WEST BENGAL

[newly inserted from A.Y 2016-17]

(1) Where an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, and acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020 in the said backward area, then, there shall be allowed a deduction of a sum equal to 15% of the actual cost of such new asset for the assessment year relevant to the previous year in which such new asset is installed.

Point (2), (3) & (4): - same as section 32AC.

CLASS DISCUSSIONS

(1) Summary section 32AD:

- (i) any assessee set up manufacturing or production unit on or after 1.4.2015 in notified backward area in the state of Andhra Pradesh or Telangana or Bihar or West Bengal AND
- (ii) acquires and installed new asset (plant or machinery) between 1.4.2015 to 31.3.2020.
- (iii) Deduction allowed u/s. 32AD:- 15% of the actual cost of such new plant or machinery.

(2) Difference between section 32AC and 32AD

	Section 32AC(1A)	Section 32AD
Assessee:	Applicable to only company engaged in manufacturing or production.	Applicable to any assessee engaged in manufacturing or production.
Place of applicability:	Anywhere in India	Only Notified backward area in the state of Andhra Pradesh, Telangana, Bihar and West Bengal.
Minimum Investment Amount:	Deduction allowed only if gross investment in new asset exceeds ₹ 25 crore.	No such limit.

Period of Setting up of unit	Existing manufacturing or production unit can take the benefit	Only unit set up on or after 1.4.2015 can take the benefit.
Deduction allowed till	P.Y 2016-17.	P.Y 2019-2020

(3) Unit set up in notified area in the state of Andhra Pradesh/ Telangana/ Bihar/West Bengal on or after 1.4.2015 can take benefit of both section 32AC(1A) and 32AD in addition to normal depreciation and additional depreciation u/s. 32.

(4) Notified backward area u/s. 32AD: BIHAR

1. Patna, 2. Nalanda , 3. Bhojpur , 4. Rohtas , 5. Kaimur , 6. Gaya, 7. Jehanabad, 8. Aurangabad, 9. Nawada , 10. Vaishali , 11. Sheohar , 12. Samastipur. 13. Darbhanga 14. Madhubani. 15. Purnea . 16. Katihar . 17. Araria . 18. Jamui . 19. Lakhisarai . 20. Supaul . 21. Muzaffarpur.

Question 1: X Ltd. has set up a manufacturing unit on 1.04.2015, in a notified backward area in West Bengal. The company purchased Plant and Machinery as Under -

		<u>₹ crores</u>
01.05.2015	Factory plant & machinery	30
01.12.2015	Factory plant & machinery	10
01.06.2015	Motor Car	2
1.12.2015	Office appliances	8
		<u>50 crores</u>

Compute total deduction allowed to the assessee during the P.Y 2015-16 in relation to the above investment. Can the assessee claim additional depreciation in the next year in relation to the plant and machinery purchased during the year?

Question 2: Is there any change in your answer if in Question 1 the assessee is an Individual instead of company?

Question 3: Is there any change in your answer if in Question 1 the manufacturing unit is set up in Kolkata?

Question 4: X Ltd. has set up a new manufacturing unit in notified Backward area of Bihar. The Company has purchased a factory plant and machinery of ₹ 20 crores. Discuss the tax implication.

(3) SECTION 35: EXPENDITURE ON SCIENTIFIC RESEARCH

Section 35(2AA): weighted deduction of 200% shall be allowed on donation made to National Laboratory; Indian Institute of technology (IIT) or university or approved specified person for approved scientific research programme. [Now, as per the amendments, such scientific research programme must be approved by prescribed authority in order to get weighted deduction of 200%]

Section 35(2AB): Weighted deduction of 200% shall be allowed to a company assessee on in house scientific research subject to the following conditions -

(i) such company should not be a company approved u/s. 35(1)(ia) [means don't take any donation

from outside for scientific research]

(ii) such company must engaged in Manufacturing any goods (including biotechnology product) other than goods of 11th Schedule

(iii) make an agreement for co-operation with prescribed authority and

(iv) fulfils such conditions with regard to maintenance and audit of accounts and also furnishing prescribed reports. [new compliance procedure inserted]

Compliance and monitoring procedures tightened as per the recommendation of C&AG

The prescribed authority must satisfy itself about the feasibility of conducting scientific research before granting approval and required to submit its report to the Principal chief commissioner/ chief commissioner or principal Director General/Director General.

(4) Interest on Borrowed capital –Section 36(1)(iii) – amendments made in line of ICDS

(i) Interest on Loan is allowed as deduction only if loan is utilised for business purpose.

(ii) If loan is taken for construction or acquisition of the asset then interest on loan till the date when asset is put to use is capitalized and added to cost of the asset. [whether or not such acquisition of asset is for extension of business or profession]

(iii) The term interest includes any service fee or other charges incurred in respect of the moneys borrowed

(iv) Income Computation and Disclosure Standard (ICDS – IX) must be followed regarding treatment of Borrowing Cost along with this section.

(5) Bad debt: Section 36(1)(vii): Bad debt allowed even if not written off in BOA but shown as income under Income Tax as per ICDS.

As per Section 36(1) (vii) any amount written off as bad debts as irrecoverable in the accounts of the assessee for the previous year shall be allowed as deduction if:

(a) such debt or part thereof has been taken into account in computing the income of the assessee of the previous year or earlier previous year or

(b) It represents money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee.

Note: where any income is considered under Income Tax as per ICDS –IV but such income is not considered in the Books of Accounts as per AS 9. Then, on irrecoverable of such income bad debt shall be allowed as deduction under Income Tax and it shall be deemed that such debt has been written off as irrecoverable in the accounts for the purposes of this clause

[For example, As per AS-9 booking of anticipated income are postponed but as per ICDS –IV anticipated income are also considered in some cases.]

(6) Co-operative society manufacturing sugar is allowed deduction for sugarcane purchase at govt. rate.

Section 36(1)(xvii): The amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government shall be allowed as deduction. [From A.Y 2016-17]

(7) Section 40(a)(i): Disallowances w.r.t payment in the nature of section 195, restricted to income taxable in India. [Circular No.3/2015]

(8) Treatment of Government Grants: Define as Income as per section 2(24) read with ICDS

Section 2(24)(xviii): Income for the purpose of Income tax includes -

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

As per ICDS –VII: If it is received on purchase of any depreciable asset then it will be reduced from the cost of such asset and in all other cases it is taxable as business Income/ other sources.

It has been clarified by the MOF in Press Release dated 5th May, 2015, that the amended definition of income shall not apply to the LPG subsidy or any other welfare subsidy received by an individual in his personal capacity and not in connection with the business or profession carried on by him.

4

CAPITAL GAINS

(1) EXEMPTED TRANSFER IN CASE OF TRANSFER OF CAPITAL ASSET IN OUTSIDE INDIA BY ONE FOREIGN COMPANY/ NON-RESIDENT TO ANOTHER FOREIGN COMPANY/NON-RESIDENT

(1) any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident. [Section 47(viib)]

(2) any transfer of capital asset being share of a foreign company (which derives its value directly or indirectly substantially from the share(s) of an Indian Company) to another foreign company under amalgamation/ demerger is exempted provided that –

(i) at least 25% (in case of demerger 3/4th in the value of shares) of the shareholders of the amalgamating/demerged foreign company continue to remain shareholders of the amalgamated/resulting foreign company; and

(ii) such transfer does not attract tax on capital gains in the country in which the amalgamating/demerged company is incorporated;

(iii) the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause; [Section 47(viab)/(vice):- w.e.f A.Y 2016-17]

Notes:

(a) Foreign company means – as referred in *Explanation 5* to section 9 (1) (i)

(b) **Period of Holding:** to be considered from the date of previous owner (i.e, amalgamating/demerged foreign company).

(c) **Cost of Acquisition [Section 49(1)(iii)(e):** Cost to the previous owner (i.e, the cost of acquisition in the hands of such amalgamated/ resulting foreign company shall be the cost for which the

amalgamating/demerged foreign company acquired the capital asset) + cost of improvement incurred on that asset.

(2) TRANSFER OF UNIT OF MUTUAL FUND UNDER CONSOLIDATION SCHEME

[i.e. merger of various schemes of mutual fund with other schemes]

Section 47 (xviii): any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund, shall be exempted:

Provided that the consolidation is of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

Explanation.— For the purposes of this clause,—

(a) “consolidated scheme” means the scheme with which the consolidating scheme merges or which is formed as a result of such merger;

(b) “consolidating scheme” means the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the SEBI (Mutual Funds) Regulations, 1996]; [w.e.f A.Y 2016-17]

Notes: In the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47,

(a) Period of Holding [Section 2(42A)]: the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee;

(b) Cost of Acquisition [Section 49(2AD)]: the cost of acquisition to the assessee of the unit or units in the consolidating scheme of the mutual fund.

(3) Period of holding and cost of acquisition of shares acquired by non-resident on redemption of GDR:

In the case of a capital asset, being share or shares of a company, which is acquired by the non-resident assessee on redemption of Global Depository Receipts referred to in clause (b) of sub-section (1) of section 115AC held by such assessee,

(a) the period shall be reckoned from the date on which a request for such redemption was made. [Section 2(42A)]

(b) the cost of acquisition of the share or shares shall be the price of such share or shares prevailing on any recognised stock exchange on the date on which a request for such redemption was made. [Section 49(2ABB)]

(4) Circular No. 6/2015: No capital gains arises in the hands of unit holders in case of extension of period of maturity of unit of mutual fund held under Fixed Maturity Plans as the scheme remains same. However, capital gains arises at the time of redemption of the unit/ opting out of the scheme.

(5) Section 48: “Cost Inflation Index” in relation to a previous year shall mean such index as may be notified by the Central Government having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year. [applicable from A.Y 2016-17, Finance Act (No.2), 2014]

[Earlier it was based on 75% of average rise in the Consumer Price Index (CPI) for urban non-manual employees (UNME)]

CII for the F.Y 2015-16 = 1081

(6) **Circular No. 17/2015:** Agricultural Land: the distance between the municipal limit and the agricultural land is to be measured having regard to -

- (i) the shortest Aerial distance [applicable from A.Y 2014-15 and onwards]
- (ii) the shortest road distance [Applicable prior to A.Y 2014-15]

[Based on decisions of Bombay High Court on 30.3.2015 in the case of Smt. Maltibai R Kadu]

5.

RESIDENTIAL STATUS

(1) Calculation of NO. of days of stay in India for member of outgoing crew – CBDT prescribes rules:

In the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India, in respect of eligible voyage, shall not include the period from the date of joining the ship to the date of signing off from the ship in respect of such voyage. [The date of joining and signing off are entered in the Continuous Discharge Certificate.]

“eligible voyage” shall mean a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where- (i) for the voyage having originated from any port in India, has as its destination any port outside India; and (ii) for the voyage having originated from any port outside India, has as its destination any port in India.’ [A.Y 2016-17]

(2) Residential Status of Company [Section 6(3)]:- Substituted w.e.f A.Y 2016-17

A company is said to be resident in India in any previous year, if—

- (i) it is an Indian company; or
- (ii) its place of effective management, in that year, is in India.

What is meant by Place of effective management ?

‘place of effective management’ means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.’

Note: Under the earlier provision foreign company was regarded as resident only when its control and management was wholly in India. So there was a scope that a foreign company can avoid of being resident of India by conducting only one board meeting outside India during the previous year even though it is mainly controlled and managed from India because of use of the words ‘**controlled and managed wholly in India**’

Now, after the use of concept ‘place of effective management’, the said practice would not help a foreign company to become non-resident of India if the control and management in substance is in India.

Note: There is no concept of ordinarily or not ordinarily resident in the case of Company.

(1) charitable purpose u/s. 2(15):

Section 2(15) defines Charitable purpose to include

- (1) relief of the poor,
- (2) education,
- (3) yoga (newly inserted)**
- (4) medical relief,
- (5) preservation of environment (including watersheds, forests and wildlife)
- (6) preservation of monuments or places or objects of artistic or historic interest and

(7) the advancement of any other object of general public utility. However, **the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—**

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year. [earlier the limit was 25 lakh]

ACCUMULATION OF INCOME [SECTION 11(2)]

Where 85% of the income is not applied to charitable or religious purposes in India during the previous year but is accumulated or set apart, such income so accumulated or set apart shall be exempted, provided the following conditions are complied with, namely:

(a) such person furnishes a statement in the Form 10 and in the prescribed manner to the AO, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed 5 years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5).

(c) the statement in Form 10 is furnished on or before the due date specified u/s. 139(1) for furnishing the return of income for the previous year:

Provided that in computing the period of 5 years, the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Consequential amendments: If both the return of Income and Form 10 is not filed within the due date of section 139(1), then the benefit of accumulation shall not be available and such income shall be deemed income of that year. [Section 13(9)]

Question 5: Discuss the following with respect to recent amendments:

(1) A charitable trust the object of which is ‘the advancement of any other object of general public utility’ and engaged in the activity of nature of trade, commerce or business. It applied 85% of such income for its object. In P.Y 2015-16, receipts from trading activities is ₹ 12,00,000 and the total receipts of the trust (including donation) is ₹ 50,00,000. The nature of trade and commerce undertaken by the trust is relates to its object. Can the trust considered as charitable trust for the purpose of section 2(15)?

(2) Is your answer is different if in point (1) the object of the trust is to conduct yoga programme all over the world.

(3) a charitable trust the object of being advancement of general public utility having income from trade and commerce is 1% of its total receipts but the nature of trading activities does not relates to its object. Can it be consider as charitable for the purpose of section 2(15)?

(4) A charitable trust accumulated 85% of its income for construction of a school with in 5 years but unable to file its declaration in Form 10 within the Return filing date.

Answer to Question 5:

(1) The Finance Act, 2015 has substituted the proviso to section 2(15) which provides that , in case the object of the trust falls under the category of advancement of general public utility then the trust cannot engage itself in commercial activities unless (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts of the trust of that previous year, irrespective of the nature of use or application of the income

Since in the given case, receipts from trading activities exceeds 20% of total receipts [i.e, 12 lakh/50 lakh = 24%], therefore the assessee ceases to be charitable trust even if 85% has been applied for its object

(2) The Finance Act, 2015 has amended the definition of section 2(15) to include ‘Yoga’ as charitable purpose. Further, the restriction of trade and commerce shall not be applicable to a trust the object of which other than advancement of general public utility [i.e, medical, relief to poor, Yoga etc].

Therefore, such a trust may be engaged in commercial or business activities provided it is incidental to the object of the trust. Hence, it can be considered as charitable trust for the purpose of section 2(15).

(3) The Finance Act, 2015 has substituted the first proviso to section 2(15) which provides that a trust having object of being advancement of general public utility can be considered as charitable for the purpose of section 2(15) if the following two condition has been satisfied –

- (i) the business receipts should not exceeds 20% of its total receipts and
- (ii) such trading activity must be undertaken in the course of actual carrying out of such advancement of any other object of general public utility

(4) The Finance Act, 2015 has amended the provisions of section 11(2), which provides that where 85% of the income is not applied to charitable or religious purposes in India during the previous year but is accumulated or set apart, such income so accumulated or set apart shall be exempted, provided the following conditions are complied with, namely:

(a) such person furnishes a statement in the Form 10 and in the prescribed manner to the AO, stating

the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed 5 years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5).

(c) the statement in Form 10 is furnished on or before the due date specified u/s. 139(1) for furnishing the return of income for the previous year:

Further, the amended section 13(9) provides that if both the return of Income and Form 10 is not filed within the due date of section 139(1), then the benefit of accumulation shall not be available and such income shall be deemed income of that year.

7

EXEMPTION TO SPECIFIC ASSESSEE/GENERAL EXEMPTION

Summary

(a) Income under Sukanya Samriddhi A.c is exempted under section 10(11A)

(b) Specific Income under core settlement guarantee fund exempted u/s. 10(23EE).

(c) Income of Swachh Bharat Kosh and Clean Ganga Fund is exempted u/s. 10(23C)

(d) Substantially Govt. financed educational Institute/hospital u/s. 10(23C) means: Govt. finance exceeds 50% of total receipts **including any voluntary contributions during the relevant previous year.**

Section 10(11A): any Payment from an account, opened in accordance with the Sukanya Samriddhi Account Rules, 2014 made under the Government Savings Bank Act, 1873 shall be exempt; [w.r.e.f.A.Y 2015-16]

Section 10(23C)(iiiiaa)/(iiiiaaa): Any income received by any person on behalf of the following is exempt-

(i) The Swachh Bharat Kosh, set up by the Cent. Govt.

(ii) The Clean Ganga Fund, set up by the Central Government.

[w.r.e.f. A.Y 2015-16]

Section 10(23EE): Recognized clearing corporation are required to set up a fund called core settlement Guarantee Fund (SGF) for each segment of recognized stock exchange to guarantee the settlement of trades executed in the respective segment of exchange, as per the SEBI regulations.

The following specified income of Core Settlement Guarantee Fund, set up by a recognised clearing corporation shall be exempt:-

(a) the income by way of contribution received from specified persons;

(b) the income by way of penalties imposed by the recognised clearing corporation and credited to the Core Settlement Guarantee Fund; or

(c) the income from investment made by the Fund;

However if such exempted income is shared with the specified person then, the entire amount so shared shall be deemed to be income of the previous year in which such amount is shared and chargeable to income-tax.

“specified person” shall mean,—

(a) any recognised clearing corporation which establishes and maintains the Core Settlement Guarantee Fund; and

- (b) any recognised stock exchange being a shareholder in such recognised clearing corporation or a contributor to the Core Settlement Guarantee Fund; and
(c) any clearing member contributing to the Core Settlement Guarantee Fund;”.

8

DEDUCTION UNDER CHAPTER VIA

Summary of amendments

1. Section 80C: Amount deposited under Sukanya Samiriddhi A.c. eligible for deduction
2. Section 80CCC: Limit extended to 1,50,000. (pension fund of Insurance co.)
3. Section 80CCD(1B): Additional deduction provided over and above the limit of 80CCE of ₹ 50,000 on contribution made towards NPS. Condition of 1,00,000 u/s. 80CCD(1A)- withdraw
4. Section 80D: medical exp. of very snr citizen maximum 30,000.
5. Section 80DD & 80U: exemption limit extended to 75,000 and 125000
6. Section 80DDB: limit for very snr. citizen 80,000
7. Section 80EE: Interest on housing loan - not allowed w.e.f A.Y 2016-17
8. Section 80G: 100% without ceiling limit Swach Bharat Kosh, Clean Ganga Funds and National Fund for control of Drug Abuse
9. 80JJAA: Benefit extended to any assessee instead of company only. Limit of new regular workmen employed reduce from 100 to 50. Further, deduction not allowed in case factory is acquired through any business reorganization instead of amalgamation as before.

(1) Section 80C: Deduction allowed to the parents or legal guardian w.r.t any sum deposited under Sukanya Samridhhi A/c Scheme in the name of self or girl child during the previous year. [w.r.e.f A.Y 2015-16]

(2)

80CCC (Individual)	Amount invested in annuity plan of LIC or any other insurer [Pension Fund] out of taxable income	Deduction allowed:- Amount invested or 1,50,000; whichever is lower
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(3) Section 80CCD: Amount invested in new pension trust

Particulars	Deduction allowed
1) Self employed [Section 80CCD(1)]	Lower of the following - (a) Amount contributed or (b) 10% of GTI or
2) Employed:- (a) Employee contribution [Sec 80CCD(1)] To Pension fund of new pension trust	Lower of the following - (a) Amount contributed or (b) 10% of salary or
(b) Employer contribution [Sec. 80CCD(2)] To Pension fund of new pension trust: First taxable under salary	Lower of the following - (a) Amount contributed or (b) 10% of Salary or [limit of 1,50,000 not applicable]

1. Meaning of salary: Basic + D.A (if forming part)

2. The date of joining of service for Central Govt. employee should be on or after 1.1.2004. But for other employee date of joining is not relevant.

(3)

SECTION 80CCE	SEC 80C + SEC80CCC + SEC 80CCD(1) (i.e,other than employer's contribution to Pension Fund of Section	Maximum Limit ₹1,50,000
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	80CCD)	
Section 80CCD(1B)	Contribution made to NPS of the Central Govt. [Deduction is claimed whether or not any deduction is allowed u/s. 80CCD(1)]	₹ 50,000 (over and above the above limit) [No deduction u/s. 80CCD(1B) w.r.t amount on which deduction u/s. 80CCD(1) has been claimed and allowed]

SUMMARY

Section No.	Contribution towards:	Maximum Limit(₹)
80C	Various Saving funds, LIP, Housing loan etc	1,50,000
80CCC	Pension fund of Insurance company	1,50,000
80CCD(1)	New Pension Scheme of Central Govt. (any person being employed or not)	10% of Salary/GTI
Section 80CCE	Total Deduction u/s. 80C + 80CCC+ 80CCD(1)	1,50,000
Section 80CCD(2)	Employer's contribution to NPS scheme of Central Govt. [over and above the limit of section 80CCE]	10% of salary
Section 80CCD(1B)	Amounted contributed to NPS of Central Govt. [other than amount allowed in section 80CCD(1)], by any person being employed or not. [over and above the limit of section 80CCE]	50,000.

Question 6: Compute deduction under chapter VIA from the following-

	₹
Contribution to LIC policy (policy value ₹ 6,00,000)	80,000
PPF in the name of son	1,00,000
FD in the name of son	70,000
Pension plans/ Annuity Plan of LIC	1,60,000
Own Contribution to New Pension Trust of Sec. 80CCD [Salary is ₹ 60,00,000]	1,35,000
Employer's contribution to New Pension Trust	80,000

Solution to Question 6: computation of deduction allowed under Chapter VIA

	₹
Section 80C	
Contribution to LIC policy (maximum 10% of ₹ 6,00,000)	60,000
PPF in the name of minor son	1,00,000
15 year term deposit in the name of minor son – not allowed	Nil
	1,60,000
Maximum allowed u/s. 80C	1,50,000

Deduction u/s. 80CCC

Pension plans/ Annuity Plan of LIC [maximum allowed 1,50,000]	1,50,000
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Deduction u/s. 80CCD(1)

Own Contribution to New Pension Trust ₹ 1,35,000

Less: Set aside u/s. 80CCD(1B)	50,000	
	<u>85,000</u>	
Maximum limit 10% of 60,00,000	6,00,000	<u>85,000</u>
Sec. 80C + Sec. 80CCC + Sec. 80CCD(1)		<u>3,85,000</u>
(A) Max. deduction allowed as per Sec. 80CCE		1,50,000
 (B) Employer's contribution to NPT u/s. 80CCD(2) [maximum limit 10% of ₹ 60 lakh or 80,000; lower]		 80,000
 (C) Additional Deduction for own contribution to NPS u/s. 80CCD(1B)		 <u>50,000</u>
Total deduction (A + B + C)		<u>2,80,000</u>

(4) SECTION 80D: HEALTH INSURANCE PREMIUM

For Self, Spouse & Dependent Children

(+)

For parents (whether dependent or not)

i) Mediciam Insurance Premium paid
[other than cash]

ii) Contribution to Central Government
Health Scheme or *to such other Health
Scheme as may be Notified by Central
Govt.* [other than cash]

iii) Payment on account of preventive
health check up [may be paid in cash]

**(iv) Medical expenditure on health of the
person who is a very senior citizen and
in respect of whom no medical insurance
has been taken**

i) Mediciam Insurance Premium paid
[other than cash]

ii) Payment on account of preventive health
check up [may be paid in cash]

**(iii) Medical expenditure on health of the
person who is a very senior citizen and in
respect of whom no medical insurance
has been taken**

Deduction allowed (Aggregate)

Deduction allowed (Aggregate)

**Maximum ₹ 25,000 or if anyone has
attained the age of 60 years then ₹ 30,000**

(+)

(+)

**Maximum ₹ 25,000 or if anyone has
attained the age of 60 years then ₹ 30,000.**

Note:

(1) The Individual limit of payment for preventive health check up is ₹ 5,000 [for self, spouse, Dependent children and parents]

(2) The age limit of senior citizen is 60 years and for very senior citizen it is 80 years.

(3) The limit of medical expenditure incurred is ₹ 30,000 [for self, spouse, Dependent children and parents]

(4) Contribution to Contributory Health Scheme of the Department of Space shall be eligible for deduction U/s 80D.

(5) Where the assessee is a Hindu undivided family, the sum referred to in sub-section (1), shall be the

aggregate of the following, namely:—

(a) whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in the aggregate ₹25,000 [for senior/very senior citizen 30,000; and

(b) the whole of the amount paid on account of medical expenditure incurred on the health of any member of the Hindu undivided family as does not exceed in the aggregate ₹30,000 rupees:

Provided that the amount referred to in clause (b) is paid in respect of a very senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person:

Provided further that the aggregate of the sum specified under clause (a) and clause (b) shall not exceed thirty thousand rupees.”;

Question 7: From the following information given by Mr. X (aged 55 years) compute total deduction available u/s. 80D for the A.Y2016-17.

- 1) Mediciam insurance premium paid in Cheque for Father (aged 85 yrs) and dependent children ₹ 15,000 each.
- 2) Contribution to Central Govt. Health Scheme in cheque for self, spouse and dependent children ₹ 8,000.
- 3) payment on account of preventive check up in cash for self and for parents ₹ 4,000 each
- 4) Medical expenditure incurred: For mother (aged 80 yrs) - ₹ 15,000; For Father (aged 85 years) ₹ 20,000. Both father and mother are resident of India.

Solution to Question 7:

(A) <u>For self, spouse & Dependent children</u>	₹
1) Mediciam insurance premium paid in Cheque	15,000
2) Contribution to CGHS in Cheque	8,000
3) payment on account of preventive health check up ₹ 4,000 but since the maximum aggregate does not exceed ₹ 25,000, therefore restricted to	<u>2,000</u>
Deduction allowed (A)	25,000

(B) For parents [age 70 years]

1) Mediciam insurance premium paid for father	15,000
2) <u>Medical expenditure incurred:</u>	
For father – not allowed since covered under Health Insurance scheme	Nil
For mother:	<u>15,000</u> 15,000
3) payment on account of preventive health check up:	
Lower of the following –	
(a) amount incurred	₹ 4,000
(b) Maximum deduction allowed	
(-) Deduction already claimed	
[5,000 – 2,000]	<u>₹ 3,000</u> <u>3,000</u>
Gross	33,000
Maximum limit	<u>30,000</u>
Deduction allowed (B)	30,000
Total Deduction (A+B)	55,000

Question 8: From the following information given by Mr. X (aged 40 years) compute total

deduction available u/s. 80D for the A.Y 2016-17.

- 1) Mediciam insurance premium paid in Cheque for Father (aged 80 years) and dependent children ₹ 18,000 each.
- 2) Contribution to Central Government Health Scheme in cheque for self, spouse and dependent children ₹ 1000.
- 3) payment on account of preventive check up in cash for self and for parents ₹ 6,000 each
- 4) Medical expenditure incurred of mother (aged 75 yrs) ₹ 10,000
- 5) Parents are resident of India.

Solution :**(A) For self, spouse & Dependent children**

	₹	₹
1) Mediciam insurance premium paid in Cheque	18,000	
2) Contribution to CGHS in Cheque	1,000	
3) preventive health check up ₹6,000 but maximum allowed	<u>5,000</u>	
Maximum limit	<u>25,000</u>	24,000

(B) For parents:

1) Mediciam insurance premium paid father	18,000	
2) payment on account of preventive check up [Maximum limit for both 5,000]	NIL	
3) <u>Medical expenditure incurred:</u>	Nil	
(i) For father: not allowed since covered under Health Insurance Scheme		
(ii) For mother: not allowed since not attain Age of 80 yrs or more		
Maximum limit	<u>30,000</u>	<u>18,000</u>
Deduction allowed u/s. 80D		<u>42,000</u>

Summary : Section 80D: Allowed to Individual/ HUF

- (1) Amount paid (in any mode other than cash) by an individual or HUF to LIC or other insurer to effect or keep in force an insurance on the health of specified person.
- (2) **An individual** can also make payment to the Central Government health scheme and/or on account of preventive health check-up (subject to limit).
- (3) Deduction for preventive health check-up shall not exceed in aggregate ₹ 5,000. [may be paid in cash]
- (4)

Individual [self, spouse dependent children and parents]	HUF (Any member thereof)
For self, spouse and dependent children: ₹ 25,000 (₹ 30,000 if person insured is a senior citizen or very senior citizen);	Premium up to ₹ 25,000 (₹ 30,000 if member insured is a senior citizen or very senior citizen) paid to insure any member of the family.
For parents of the assessee : (Additional) ₹ 25,000 (₹ 30,000 if person insured is a senior citizen or very senior citizen)	NA
Medical expenditure if no amount is paid in respect of health insurance-₹ 30,000 (only in case of very senior citizen)	Medical expenditure if no amount is paid in respect of health insurance- ₹30,000 (only in case of very senior citizen)
Aggregate amount of deduction cannot > ₹ 60,000 in any case	Aggregate amount of deduction cannot > ₹ 30,000 in any case.

SEC 80DD Resident Individual/ HUF	Any expenses made for disabled dependent relative (amount not relevant): <u>Expenses related to medical treatment (including nursing), training and rehabilitation and paid to LIC or other insurance company for the maintenance of disabled dependant.</u>	Fixed deduction:- ₹ 75,000 ₹ 1,25,000 (if severely disabled)
SEC 80U Resident Individual	If assessee is a disabled [he may not incur any expenses] Note: Deduction can be claimed u/s 80DD or 80U and not Both. <u>Certificate must be obtained from medical authority to be a person with disability at any time during the previous year.</u>	Fixed deduction:- ₹ 75,000 ₹ 1,25,000 (if severely disabled)

Example:

incurred expenditure for treatment say ₹ 4000

Mr. X $\xrightarrow{\text{or}}$ Mr. Y [Disabled Dependent relatives]
paid to insurance co. ₹ 3000 for the benefit of [relative - Spouse, children, Parents, Brother and sisters]

Amount of deduction:

For Mr. X u/s. 80DD: ₹ 75,000/ (₹ 1,25,000 incase Mr. Y is severely disabled) – irrespective of amount spent.

For Mr. Y u/s. 80U: Mr. Y who himself is a disabled person can claim deduction of ₹ 75,000/ [₹ 1,25,000 if severely disabled] – without incurring any expenditure.

However, either Mr. X or Mr. Y can get deduction and not both.

Definitions (a) “disability” shall include “autism”, “cerebral palsy” and “multiple disability”.

(b) person with severe disability” means—

(i) a person with 80% or more of one or more disabilities, as referred to in section 56(4) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

(ii) a person with severe disability referred to in section 2(o) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

SECTION	PARTICULARS	DEDUCTIBLE AMOUNT
80DDB Resident Individual/ HUF	Medical treatment of specified disease of self or dependent relatives.	(i) Amount incurred xxx
		(ii) Maximum limit:
		Aged 80 yrs or more 80,000
		Aged 60yrs but less than 80yrs 60,000
		Below the age of 60yrs or HUF 40,000
		Less: Insurance claim received
	Or amount reimbursed by Employer xxx	
	Amount of deduction xxx	

Specified diseases:

(i) Neurological Diseases where the disability level has been certified to be of 40% and above,—(a) Dementia ; (b) Dystonia Musculorum Deformans ;(c) Motor Neuron Disease ;(d) Ataxia ;(e) Chorea ;(f) Hemiballismus ;(g) Aphasia ;(h) Parkinsons Disease; (ii) Malignant Cancers ;(iii) Full Blown Acquired Immuno-Deficiency Syndrome (AIDS); (iv) Chronic Renal failure ; (v) Hemophilia ; (vi) Thalassaemia.

Note: In order to get the benefit the assessee must obtain a prescription of medical treatment from a specialist doctor (whether or not working in a Government Hospital)

Mr. X -----→incurred expenditure -----→self or Dependent relative

(for specified disease) [relative-Spouse, children, Parents, Brother and sisters]

Example- Mr. X incurred ₹ 74,000 for medical treatment of specified disease of his father aged 65 years. He received a medical insurance claim of ₹ 22,000. Compute net deduction u/s. 80DDB

Solution – Amount incurred or ₹ 60,000 – lower = 60,000
 Less: Insurance claim received 22,000
Net deduction u/s. 80DDB 38,000

Section 80G: Following are the amendments

100% deduction allowed without any ceiling limit (payment exceeding ₹ 10,000 should be made other than cash)

- (1) Swachh Bharat Kosh (other than amount spent as CSR) – allowed to all assessee [w.r.e.f A.Y 2015-16]
- (2) Clean Ganga Fund (other than amount spent as CSR) – only resident assessee [w.r.e.f A.Y 2015-16]
- (3) National Fund for Control of Drug Abuse – allowed to all assessee w.e.f A.Y 2016-17

Note: these are the further additional to the category 100% deduction without ceiling limit and there are no changes w.r.t other provisions of section 80G.

80JJAA All assessee	Deduction allowed to all assessee Indian company (omitted w.e.f 01.04.2016) deriving profits from manufacture of goods in its factory in relation to additional wages paid to new regular workmen employed in such factory.	<ul style="list-style-type: none"> i) Amount of deduction: 30% of additional wages to paid to new regular workmen employed in the factory . ii) Time limit: 3 year including the year of employment. iii) No deduction if the factory is hived off or transferred from another exiting entity or acquired on account of amalgamation if the factory is acquired by the assessee by way of transfer from any other person or as a result of any business re-organisation. iv) Additional wages shall mean wages paid to new regular workmen in excess of 100 50 workers employed during the year.
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Factory includes where - <ul style="list-style-type: none"> i) 10 or more worker carrying manufacturing process with the aid of power. ii) 20 or more worker carrying manufacturing process without the aid of power. But does not include Mines, mobile unit of armed forces, a railways running shed or a hotel, restaurant or eating place.	‘Regular Workmen’ – does not include <ul style="list-style-type: none"> i) a casual workman; or ii) a workman employed through contract labour; or iii) any other workman employed for a period of less than 300 days during the previous year. 	‘Additional Wages’: the wages paid to the new regular workman, in excess of 100 50 workmen employed during the previous year. For existing factory: - The additional wages shall be nil if the increase in the number of new regular workmen employed during the year is less than 10% of existing number of workmen employed in such factory as on the last day of the preceding year.
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Example: M/s X Ltd. employs 70 workmen in P.Y. 2015-16 and total wages is ₹ 1,20,000. Deduction

U/s 80JJAA shall be 30% of wages to 20 workers (70-50) i.e. 30% of ₹ 20,000 = ₹ 6,000

In P.Y. 2016-17 the company employs 6 more workers. No deduction will be available since increase in new workers is less than 10%. Alternatively, it employs 10 new workers. The deduction shall be 30% of wages paid to these 10 new workers only.

Question 9: Mr. X owns a factory commencing from 1-4-2015. During the previous year it earns profits of ₹ 90 lakh before allowing any deduction for wages. Determine its total income for the Assessment year 2016-17 by considering the following employment schedules of workers-

Date of employment	No. of workers	Status of workers	Rate of wages
1-4-2015	20	Casual	4000 p.m
1-5-2015	60	Regular	5000 p.m
1-1-2016	10	Regular	5000 p.m

Solution:

Profit before deduction of salary	90,00,000
Less: Expenses incurred towards payment of salary	
20 X 4,000 x 12 =	9,60,000
60 x 5000 x 11 =	33,00,000
10 x 5000 x 3 =	<u>1,50,000</u>
	<u>44,10,000</u>
Profit from Business/Gross Total Income	45,90,000
Less: Deduction u/s. 80JJAA (Note 1)	<u>1,65,000</u>
Total Income	44,25,000

Note 1: Deduction allowed u/s. 80JJAA

Total worker employed =	90
(-) casual worker	20
(-) regular worker employed for less than 300 days	<u>10</u>
Total new regular worker	60

Additional wages paid to new regular workmen = 5000 p.m x 11m x 10(60 -50) = ₹ 5,50,000

Deduction allowed u/s. 80JJAA for the A.Y = 30% of 5,50,000 = 1,65,000.

9

TAX DEDUCTION AT SOURCE

SUMMARY

- (1) Employer responsible for obtaining evidence of exemption/deduction claimed by employee in computing salary u/s. 192
- (2) Premature withdrawal from RPF – liable for TDS u/s. 192A, if 30,000 or more
- (3) Section 194A: interest on recurring deposit subject to TDS, interest of all CBS branch of same bank is clubbed for the purpose of limit of 10,000, co-operative banks are liable to TDS on payment of interest to members subject to some exception, TDS at the time of payment on interest from Motor accident claim (if exceeds 50,000).
- (4) Section 194C: NO TDS on furnishing of PAN: benefit of exemption not allowed for transporter owning more than 10 goods carriage.
- (5) Section 194LD: period of concessional rate of TDS @ 5% extended to 31.3.2017
- (6) Section 195: compliance procedures
- (7) Section 197A: benefit of no TDS extended to payment covered in Sec. 194DA.
- (8) Section 203A: Notified deductor not required to obtain TAN
- (9) Processing of return u/s. 200A: Also determine fine u/s. 234E

(1) The person responsible for making the payment shall, for the purposes of estimating income of the assessee or computing tax deductible, obtain from the assessee the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed. [Section 192(2D) w.e.f A.Y 2016-17]

(2)

Section	Nature of Payment	Monetary Limit	Rate of Tax	Notes
192A w.e.f 1 st June 2015	Payment of accumulated balance due to employee (on account of Premature withdrawal from RPF, if not exempted)	No TDS if the payment is less than 30,000	10%. If PAN is not furnished then maximum marginal rate.	(1) tax is deductible at the time of payment.

Notes:

(1) The trustees of the EPF, Scheme, 1952, or any person authorized under the scheme to make payment of accumulated balance due to employees, shall, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable.

(3) Rule 8 of Part A of the Fourth Schedule of the IT Act provides withdrawal of accumulated balance from RPF is exempt in certain cases. However, if the employee withdraw money before continuous service of 5 years (other than the case of termination of employment due to ill health or discontinues of business etc) and does not opt for transfer of accumulated balance to new employer then the withdrawal is taxable.

(3)

Section	Nature of Payment	Monetary Limit	Rate of Tax	Notes
194A	Interest other than Interest on Securities	If the payer is a banking company including co-operative banks or in case of deposit under post office - ₹10,000 p.a. In any other case: ₹5000 p.a. (w.e.f 1.6.2015 The ceiling limit applies with respect to aggregate of payment made by all branches having core banking solutions). In case of Non-CBS, limit applicable for each branch separately)	10%	Tax need not be deducted in the following cases: (a) Interest paid or credited by firm to its partners (b) Interest paid to Banking companies, UTI, notified institution etc. (c) Interest other than on term/time/ recurring deposits/ paid by Banking companies, co-operative society. [Therefore, no interest is deducted on payment of interest on savings bank account;]

(1) Provisions of TDS where interest is paid/credited by a co-operative society:

Interest on term deposit paid/credited by a co-operative banks to its members are subjected to TDS u/s. 194A. [w.e.f 1.06.2015].

NO TDS in the following cases: However, the provisions of TDS shall not be attracted

(a) where interest is paid/credited by a co-operative society to its members.

(b) where interest is paid/credited by one co-operative society (including co-operative banks) to another co-operative society (including co-operative banks) on term deposit made by it.

(a) Where interest is paid/credited by a primary agricultural credit society/ primary credit society/ co-operative land mortgage bank or land development banks.

(2) w.e.f 1.6.2015 the definition of time/term deposit has been amended to include 'recurring deposit' hence the provisions of section 194A shall now be applicable on recurring deposit also subject to the ceiling limit.

(3) w.e.f 1.6.2015: The ceiling limit of ₹ 10,000/5,000 shall be computed with reference to aggregate of interest credited/ paid by all the branches of a banking company/ the co-operative society/ the public company, having facility of CBS (core banking solutions).

(4) w.e.f 1.6.2015: No TDS at the time of credit of interest on compensation amount awarded by the Motor Accidents Claims Tribunal. TDS is deductible at the time of payment only if the interest paid during the financial year exceeds ₹ 50,000. [earlier the provisions of TDS attracted on credit or payment, whichever is earlier]

Example 1: Mr. X has made one fixed deposits with Branch 1 of SBI and one recurring deposits with Branch 2 of SBI. On 30.6.2015 Interest on branch 1 is credited ₹ 9,000 and from branch 2 is ₹ 5,000. [The banks has adopted CBS]

Answer: TDS @ 10% shall be deductible by SBI on interest of ₹ 13,000.

Example 2: X Ltd pays interest on loan to Mr. Y ₹ 6,000.

Answer: Tax is deducted at source 10% of ₹ 6000 i.e. ₹ 600. (For banks the limit is ₹ 10,000 and for the others the limit is ₹ 5000.)

(4) Section 194C: where the contractor is engaged in the business of plying, hiring, or leasing goods carriages, no tax shall be deductible on payment of transport charges if the following two condition is satisfied –

- (1) such contractor owns 10 or less goods carriages at any time during the previous year and
- (2) furnished a declaration along with PAN to the payer.

Note: Earlier the exemption is allowed to any transporter irrespective of number of goods carriage owned on furnishing of PAN.

(5) Section 194LD: TDS 5% on any amount paid to FII or QFI

Interest on rupee denominated bond of an Indian company and Government securities paid at approved rate between 1.6.2013 to 31.5.2015 **30.06.2017** to FII (Foreign Institutional Investors) Or QFI (Qualified Foreign Investors).

(6) Section 195(6): The person responsible for paying to a non-resident/foreign company, any sum, **whether or not chargeable** under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed. [w.e.f 1.6.2015]. [In case of failure penalty may be levied upto ₹ 1 lakh u/s. 271-I]

(7) Section 197A: In respect of interest income u/s. 193/194A, **premature withdrawal from RPF u/s. 192A and LIP maturity u/s. 194DA**, the assessee (other than a company or firm) can make an application to the payer not to deduct tax at source where tax on his total income is NIL. This application is not possible where the amount of interest exceeds maximum exemption limit. [amended w.e.f 1.6.2015]

(8) The person deducting tax at source must apply for Tax Deduction and Collection Account Number (TAN) [section 203A]

However, w.e.f 1.06.2015, obtaining and quoting of TAN shall not be required for such person as may be notified by the Central Government.

(9) **Processing of statements of tax deducted at Source [Section 200A]**

Amendments has been brought to enable calculation of fee payable u/s. 234E at the time of processing of TDS statement [w.e.f 1.6.2016]

Section 200A:

(1) The following adjustment can be made during the computerized processing of statements of tax deducted at source -i) any arithmetical error in the statement; or ii) an incorrect claim, apparent from any information in the statement.

(2) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(3) **the fee, if any, shall be computed in accordance with the provisions of section 234E;**

(4) After making adjustments, tax, interest and fee would be calculated and sum payable by the deductor or refund due to the deductor will be determined. Accordingly an intimation shall be sent within 1 year from the end of the financial year in which the statement is filed to the deductor regarding amount payable or refundable and refund due shall be granted to the deductor.

(5) The processing of these statements can be done in Centralized processing centre.

Explanation: For this purpose “**an incorrect claim apparent from any information in the statement**” shall mean a claim, on the basis of an entry, in the statement –

i) of an item, which is inconsistent with another entry of the same or some other item in such statement

ii) in respect of rate of TDS , where such rate is not in accordance with the provisions of this Act.

(10) **The provisions of TDS shall not attracted:** where income is exempted u/s. 10 unconditionally and who are not required to file its return u/s. 139. For example – payment made to corporation established for welfare of ex-service men covered u/s. 10(26BBB) [Circular No.4/2002 as amended by **circular No. 7/2015**]

Question 10: Answer the following w.r.t applicability TDS as per recent amendments:

(1) Mr. X has made one fixed deposit with Branch 1 of SBI and one recurring deposit with Branch 2 of SBI. On 30.6.2015 Interest on branch 1 is credited ₹ 9,000 and from branch 2 is ₹ 5,000. [both the branches are CBS branches]

(2) a co-operative bank paid interest of ₹ 30,000 to one of its member during the year.

(3) a co-operative bank paid interest of ₹ 50,000 to another co-operative bank.

(4) Interest on delayed compensation awarded by Motor Accident claims Tribunal of more than 50,000 is subjected to TDS on due basis.

(5) An individual is engaged in plying goods carriage. He owns 20 goods carriage till 30.09.2015. He sells 15 goods carriage on 1.10.2015. No further purchase or sell of goods carriage has been taken place during the year. He claims that he is eligible for exemption from TDS on furnishing of PAN to the payer for payment received on or after 1.10.2015.

(6) All the persons responsible for deducting tax at source must obtain TAN.

(7) An employee withdraws ₹ 1,00,000 from RPF A/c. He is not eligible for get exemption from such premature withdrawal under Income Tax Act. comment

(8) At the time of deducting tax at source the employer is not responsible for obtaining any evidence in respect of Deduction under Chapter VIA claimed by the employee.

(9) Statement filed under the provisions of TDS cannot be rectified.

(10) Processing of TDS statement u/s. 200A means determination of amount of TDS and Interest thereon. Comment.

Answer to Question 10: briefly put (in exam you are required to write relevant provisions in detail)

(1) TDS @ 10% shall be deductible by SBI on interest of ₹ 13,000. [recurring also included in the definition of term deposit u/s 194A. Further, in order to determine the limit u/s. 194A the interest credited/paid by all CBS branches of same bank are to be clubbed]

(2) Liable for TDS @ 10% u/s. 194A on ₹ 30,000.

(3) No TDS: Specific exemption provided u/s. 194A.

(4) False. Tax is deducted at the time of payment and not at the time of due/credited.

(5) False. Exemption u/s. 194C(6) shall not be allowed since during the F.Y 2015-16 the assessee owned more than 10 goods carriage even though on the date of payment it owned less than 10 goods carriage.

(6) False. Person Notified by Central Govt. are not required to obtain TAN.

(7) Premature withdrawal from RPF of 30,000 or more if not exempted under Income tax shall be subjected to TDS u/s. 192A @ 10% at the time of payment.

(8) As per section 192(2D) the employer is binding to obtain evidence of claiming various benefit by the employee in computing taxable salary for the purpose of section 192.

(9) False. The Deductor may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered in such form and verified in such manner as may be specified by the authority. [Proviso to section 200(3)]

(10) It also determined the fine levied u/s. 234E for delaying filing of statement of TDS.

Question 11: Discuss whether in the following cases tax shall be required to be deducted u/s. 194C or not :

(1) ₹ 2,00,000 paid for plying, leasing or leasing goods carriage to a transporter who does not own any goods carriage during the year.

(2) Mr. T, an individual owns five goods carriages from 1st April, 2015 to 31st October, 2015. On 1st November, 2015, he purchased 6 more goods carriages. On 1st January, 2016, he sold 8 goods

carriages. X Ltd. makes following payment of transport charges to 'Mr. T' during the financial year 2015-16:

15th April, 2015 - ₹ 35,000

15th July, 2015 - ₹ 40,000

15th November, 2015 - ₹ 20,000

15th December, 2015 - ₹ 20,000

15th February, 2016 - ₹ 50,000

Answer to Question 11:

(1) TDS @ 1% u/s. 194C shall be applicable. The exemption given u/s. 194C(6) is applicable only in respect of transport charges received for plying, hiring or leasing of goods carriage (s) owned by the transporter. Therefore, if a person receives payment in respect of plying, hiring or leasing of goods carriage (s) which are not owned by him, he shall not be entitled to claim exemption from TDS in respect of these payments. [Circular No. 19/2015, dated 27.11.2015]

(2) Answer as per MOF clarification vide Circular No. 19/2015,27.11.2015

Payment made	TDS u/s. 194C deductible or not
15th April, 2015 - ₹ 35,000	No tax is deductible, if 'T' furnishes his PAN as per the pre-amended provisions of section 194C (6) of the Income-tax Act.
15th July, 2015 - ₹ 40,000	No tax is deductible, if 'T' furnishes a declaration that he does not own more than 10 goods carriages during the relevant financial year along with his PAN as per the requirement of the amended provision of section 194C(6) of the Income-tax Act.
15th November, 2015 - ₹ 20,000	NO TDS. Even though T owns more than 10 goods carriage. Since, the payment does not exceed ₹ 30,000 and the aggregate of payments during the period from 1st June, 2015 [i.e. the date of effectivity of the amended provision of section 194C(6)] to 15th November, 2015 does not exceed ₹ 75,000 as specified in proviso to section 194C(5) of the Income-tax Act.
15th December, 2015 - ₹ 20,000	Tax at the rate of 1% i.e. ₹ 200/- is deductible as 'T' owns more than 10 goods carriages on that date and the aggregate of the payments made during the period from 1st June, 2015 to 15th December, 2015 exceeded the threshold of ₹ 75,000.
15th February, 2016 - ₹ 50,000	TDS @ 1% is deductible, even though 'T' did not own more than 10 goods carriages on 15th February, 2016. Since, 'T' owned more than 10 goods carriages during the financial year 2015-16 and the payment exceeded both the specified threshold for individual and aggregate payments.

10

RESIDENT & ORDINARY RESIDENT OF INDIA MUST FILE ITS RETURN

[Fourth proviso to section 139(1) as substituted by the Finance Act, 2015 from A.Y 2016-17]

Resident and ordinary resident of India, who is not required to furnish a return u/s. 139(1), shall be required to furnish its return of loss or income on or before the due date of section 139(1) if any of the following conditions is satisfied, at any time during the previous year:

(a) holds any asset located outside India as beneficial owner or otherwise; or

(b) has signing authority in any account located outside India; or

(c) is a beneficiary of any asset located outside India; (However, where, income, arising from such asset is includible in the income of the person referred to in clause (a) & (b) above, as per the provisions of IT Act, then the beneficiary is not required to file its return as per fourth proviso).

Notes:

(1) Assets include any financial interest in any entity.

(2) "beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

(3) "beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.;

(4) such person is required to furnish details of asset of prescribed nature and value in the prescribed return form. [Section 139(6)]

Example 1: Mr. X (Resident and ordinarily resident of India for the P.Y 2015-16)

	<u>Case 1</u>	<u>Case 2</u>
Capital Gains income from property Situated in India	1,50,000	-
Capital Gains income from property situated Abroad (as beneficial owner)	-	<u>1,50,000</u>
Filing of return	Not required	Required to file return

Question 12: Mr. X a resident and ordinary resident of India has gifted a Canadian Bonds to his Minor Son and the minor son earned ₹ 1,00,000 interest during the P.Y 2015-16. Total Income of Mr. X during the P.Y is ₹ 12,00,000. Discuss the implication of filing of return.

Answer: Minor son's income is to be clubbed in the hands of Mr. X and therefore Mr. X is required to file its return showing his total income along with income earned by the minor son after allowing exemption u/s. 10(32).

Since, Income of minor son has already included in the hands of Mr. X and therefore the minor son being beneficiary of asset located outside India shall not required to file a separate return under fourth proviso to section 139(1).

11 **SOME SPECIAL PROVISIONS W.R.T RESIDENTIAL STATUS & SCOPE OF TOTAL INCOME:**

Summary

(1) Taxability of interest paid to outside India by a PE in India engaged in banking Business. [Explanation to section 9(1)(v)]

(2) Taxability of transfer of rights in Indian company by one foreign company to another foreign company in outside India by transferring share of foreign company.

(3) Fund managers in India not to constitute business connection of funds registered outside India [Section 9A]

Taxability of interest paid outside India by a PE in India engaged in banking Business. [Explanation to section 9(1)(v)]

Any interest payable by the PE in India of a non – resident (engaged in Banking business) to outside India to its HO/ any other PE/ any other part of such non-resident, shall be deemed to accrue or arise in India,

Such interest is chargeable to tax in addition to any income attributable to the permanent establishment in India and

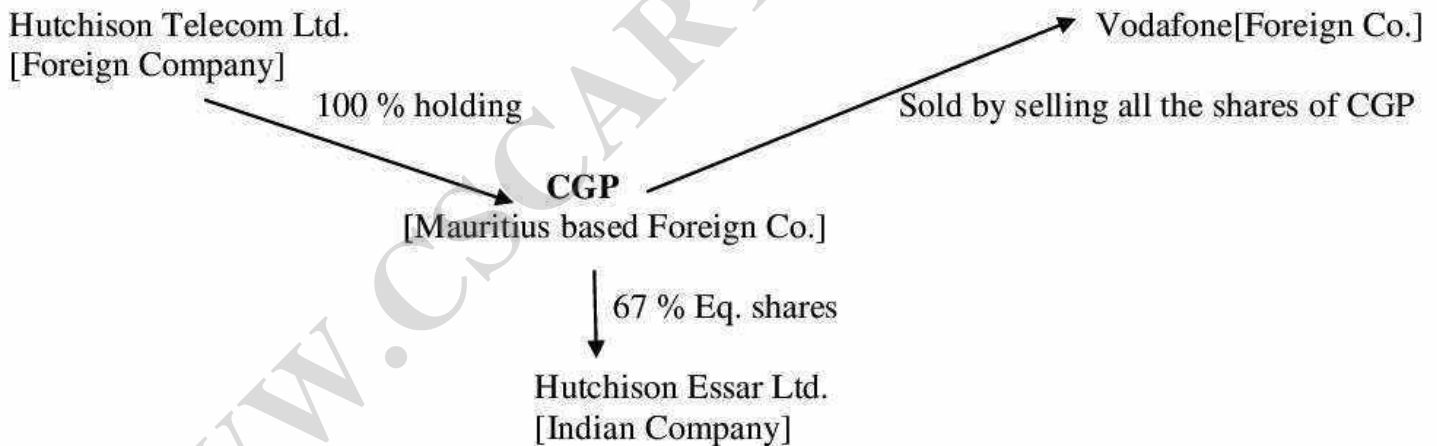
the permanent establishment in India shall be deemed to be a person separate and independent of the non-resident person of which it is a permanent establishment and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery shall apply accordingly;

Note: The PE in India must deduct tax on such payment otherwise disallowances of section 40(a)(i) and other consequences of TDS provisions shall attracted.

Permanent Establishment (PE) includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

TAXABILITY OF TRANSFER OF RIGHTS IN INDIAN COMPANY BY ONE FOREIGN COMPANY TO ANOTHER FOREIGN COMPANY IN OUTSIDE INDIA BY TRANSFERRING SHARE OF FOREIGN COMPANY

Case of Vodafone and consequential amendments



(1) Capital assets include “Right in shares of Indian company” [Section 2(14)]. Securities held as Stock in Trade by FII are always treated as Capital asset.

(2) Transfer of right in Indian Company directly or indirectly by way of transfer of shares of one foreign company to another foreign company in outside India amounts to Transfer. [Section 2(47)]

(3) **Scope of tax liability of Non-resident:** In the hands of Non-resident, Capital gain is taxable only if the capital assets are situated in India.

Share of a foreign company is deemed to be situated in India if such shares derives its value substantially directly/indirectly from the assets located in India. [Explanation 5 to section 9(1)(i)]

4) Determination of Substantial Value:

(i) Share of a foreign company shall deemed to be derive its value substantially from the asset (tangible/intangible) located in India, if, on the specified date, the value of such asset exceeds ₹ 10 crore and represents at least 50% of the value of all the assets owned by the company/entity. **[Explanation 6 to section 9(1)(i) – w.e.f A.Y 2016-17]**

Value of asset = FMV of such asset on the specified date, without reduction of liabilities on such asset, determined in such manner as may be prescribed;

Generally, “specified date” is the 31st March/such other day (end of the accounting period) preceding the date of transfer of share/interest. However, the specified date is the **date of transfer**, if the book value the assets of the company/ the entity on the date of transfer exceeds the book value of the assets as on preceding 31st March by 15%. .

Accounting period: Each period of 12 months ending with 31st March. In case of first year of incorporation then the accounting period should be from the date of incorporation till the date of 31st March.

If the company/ the entity ceases to exist before the end of accounting period, as aforesaid, then, the accounting period shall end immediately before the company/ the entity, ceases to exist

However, if a company/entity regularly follow accounting period ending other than 31st March as per the tax laws of country in which it is registered or for the purpose of reporting to persons holding the shares/interest, then the accounting period shall be period of 12 months ending with such other day.

(5) Nothing taxable in the hands of transferor (foreign company):

[Explanation 7 to section 9(1)(i) w.e.f A.Y 2016-17]

(i) Transfer of share of a foreign company who directly owns asset in India: Nothing shall be taxable, if transferor along with its associated enterprises at any time in the 12 months preceding the date of transfer – **(a)** neither holds the right of management/control; **(b)** nor holds more than 5% of the total voting power/share capital/interest in the foreign company/entity who directly holds Indian Asset.

(ii) Transfer of a shares of a foreign company who Indirectly owns asset in India: Nothing shall be taxable, if transferor along with its associated enterprises at any time in the 12 months preceding the date of transfer -

(a) neither holds the right of management or control in relation to such company or entity,
(b) nor holds any right in such company which would entitle him to the right of management or control in the company that directly owns the assets in India, or entitled it to more than 5% voting in the company who owns directly asset in India.

(6) in a case where all the assets owned, directly or indirectly of such foreign company are not located in India, the income of the non-resident transferor, from transfer outside India of a share/interest of such foreign company, deemed to accrue or arise in India under this clause, shall be only such part of the income as is reasonably attributable to assets located in India and determined in such manner as may be prescribed; [Explanation 7 to section 9(1)(i)]

(7) Dividend declared and Paid by a foreign company outside India which derives its value substantially from an asset in India shall not be deemed to be accrue or arise in India, since it does not involves transfer of shares as provided in Explanation 5 to section 9(1) [Circular No. 4/2015]

(8) Exempted transfer in case of amalgamation/demerger u/s. 47(viab)/(vcc): Refer amendments heading capital gains

(9) The Indian concern where the Indian asset are held by foreign company shall be required to furnish specified information as per section 285A. In case of failure penalty shall be levied u/s. 271GA 2% of value or ₹ 5,00,000 as the case may be.

Business Connection

The expression Business connection has not been defined under Income Tax Act but is used in Section 9(1) to deem income arising through Business connection is taxable in India. A Business connection involves a relationship between a business carried by a non resident which yields profit or gains and an activity in India which contributes directly or indirectly in earning those profit or gains.

Explanation 2 to Section 9(1) states that “Business connection” shall include any business activity carried out through a person who, acting on behalf of the non-resident,—

- (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or
- (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
- (c) habitually secures orders in India for the non-resident

FUND MANAGERS IN INDIA NOT TO CONSTITUTE BUSINESS CONNECTION OF FUNDS REGISTERED OUTSIDE INDIA [SECTION 9A]

(1) The fund management activity carried out through an eligible fund manager acting on behalf of an **eligible investment fund** shall not constitute business connection in India. [This section overrides section 9(1)]

(2) an eligible investment fund shall not be said to be resident in India for the purpose of section 6 merely because the eligible fund manager, undertaking fund management activities on its behalf, is situated in India. [This provisions overrides section 6]

(3) Every eligible investment fund shall, in respect of its activities in a financial year, furnish within 90 days from the end of the financial year, a statement in the prescribed form, to the prescribed income-tax authority containing information relating to the fulfillment of the conditions specified in this section and also provide such other relevant information or documents as may be prescribed.

[Note: in case of failure penalty of ₹ 5 lakh shall be levied u/s. 271FAB]

(4) Non-applicability of section 9A:

(a) Nothing contained in this section shall apply to exclude any income from the total income of the eligible investment fund, which would have been so included irrespective of whether the activity of the eligible fund manager constituted the business connection in India of such fund or not.

(b) Nothing contained in this section shall have any effect on the scope of total income or determination of total income in the case of the eligible fund manager.

(5) The provisions of this section shall be applied in accordance with such guidelines and in such manner as the Board may prescribe in this behalf

Notes:

(1) What is eligible investment fund for the purpose of section 9A?

The eligible investment fund, means a fund established/ incorporated/ registered outside India, which collects funds from its members for investing it for their benefit and fulfils the prescribed conditions.

(2) What are prescribed conditions for eligible investment fund u/s 9A?

- (a) the fund is not a person resident in India;
- (b) the fund is a resident of a country or a specified territory with which an agreement referred to in section 90(1) or section 90A(1) has been entered into;
- (c) the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed 5% of the corpus of the fund;
- (d) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;
- (e) the fund has a minimum of 25 members who are, directly or indirectly, not connected persons;
- (f) any member of the fund along with connected persons shall not have more than 10% participation interest, directly or indirectly, in the fund.;
- (g) the aggregate participation interest, directly or indirectly, of 10 or less members along with their connected persons in the fund, shall be less than 50%;
- (h) the fund shall not invest more than 20% of its corpus in any entity;
- (i) the fund shall not make any investment in its associate entity;
- (j) the monthly average of the corpus of the fund shall not be less than ₹ 100 crore. However, if the fund has been established during the previous year the corpus of fund shall not be less than ₹ 100 crore rupees at the end of such previous year;
- (k) the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;
- (l) the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;
- (m) the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity;

(3) Is there any relaxation with respect to above conditions?

Yes. where the investment fund is established by the Government or the Central Bank of a foreign State or a sovereign fund or such other fund as notified by the Central Govt., the conditions specified in point (e), (f) and (g) above shall not be applicable.

(4) Who is eligible fund manager for the purpose of section 9A?

The eligible fund manager, in respect of an eligible investment fund, means any person who is engaged in the activity of fund management and fulfils the following conditions, :—

- (a) the person is not an employee of the eligible investment fund or a connected person of the fund;
- (b) the person is registered as a fund manager or an investment advisor in accordance with the specified regulations;
- (c) the person is acting in the ordinary course of his business as a fund manager;
- (d) the person along with his connected persons shall not be entitled, directly or indirectly, to more than 20% of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through the fund manager.

(5) For the purposes of this section,—

- (a) “associate” means an entity in which a director or a trustee or a partner or a member or a fund manager of the investment fund or a director or a trustee or a partner or a member of the fund manager of such fund, holds, either individually or collectively, share or interest, being more than 15% of its share capital or interest, as the case may be;
- (b) “corpus” means the total amount of funds raised for the purpose of investment by the eligible investment fund as on a particular date;
- (c) “entity” means any entity in which an eligible investment fund makes an investment;

Question 13: Discuss the scope and taxability of following income in India –

- (1) Interest payable by a non-resident carrying Banking business through a permanent establishment in India to its H.O.
- (2) X Inc. a foreign company (a 100% subsidiary of Y Inc another foreign company) holds 75% shares in A Ltd. (an Indian Company). The value of such shares is ₹ 500 crores and it represents 70% of the total value of asset of X Inc. During the year if -
 - (i) Y Inc. sold out all the shares in X Inc, to Z Inc.(a foreign company) in outside India.
 - (ii) Y Inc. gets amalgamated with Z Inc. (a foreign company) .
 - (iii) X inc. declares and paid dividend to Y inc.
- (3) If in the above case Y inc. holds only 1% voting power in X inc. What will be the tax implication if it sold out its voting right to Z inc. (foreign company).
- (4) The fund management activity carried out through an eligible fund manager acting on behalf of an eligible investment fund. What is the tax implication of the said fund and of fund manager?
- (5) a foreign company having place of effective management in India but during the year conduct a board meeting outside India. whether the company is a resident of India or not.

Answer:

- (1) Any interest payable by the PE in India of a non – resident (engaged in Banking business) to outside India to its HO/ any other PE/ any other part of such non-resident, shall be deemed to accrue or arise in India. Hence, taxable in India.
- (2) Share of a foreign company is deemed to be situated in India if such shares derives its value substantially directly/indirectly from the assets located in India. Share of a foreign company shall deemed to be derive its value substantially from the asset (tangible/intangible) located in India, if, on the specified date, the value of such asset exceeds ₹ 10 crore and represents at least 50% of the value of all the assets owned by the company/entity. [Explanation 5 and 6 of section 9(1)]

In the given case X inc. has substantial interest in A Ltd.(Indian Company). Accordingly the tax implication under various situations are as under -

(i) Transfer of shares of foreign company (deriving its value substantial from an Indian company) by one foreign company to another outside India shall be liable for capital gain tax in India.

(ii) **Exempted transfer u/s. 47:** any transfer of capital asset being share of a foreign company (which derives its value directly or indirectly substantially from the share(s) of an Indian Company) to another foreign company under amalgamation/ demerger is exempted provided that –

(a) at least 25% (in case of demerger 3/4th in the value of shares) of the shareholders of the amalgamating/demerged foreign company continue to remain shareholders of the amalgamated/resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country in which the amalgamating/demerged company is incorporated;

(c) the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause

(iii) not taxable in India. Dividend declared and Paid by a foreign company outside India which derives its value substantially from an asset in India shall not be deemed to be accrue or arise in India, since it does not involves transfer of shares as provided in Explanation 5 to section 9(1) [Circular No. 4/2015]

(3) Nothing taxable in India, Explanation 5 to section 9(1) shall not gets attracted as per specific provisions of Explanation 7 to Section 9(1) which provided that if transferor along with its associated enterprises at any time in the 12 months preceding the date of transfer – (a) neither holds the right of management/control; (b) nor holds more than 5% of the total voting power/share capital/interest in the foreign company/entity who directly holds Indian Asset, then nothing shall be taxable in India.

(4) The fund management activity carried out through an eligible fund manager acting on behalf of an eligible investment fund shall not constitute business connection in India as per section 9A. Hence, not taxable in India. However, this section shall not exclude any income from the total income of the eligible investment fund, which would have been so included irrespective of whether the activity of the eligible fund manager constituted the business connection in India of such fund or not.

Further, the provisions of section 9A shall not alter the scope of total income of the eligible fund manager.

(5) Resident of India. since in substance the place of effective management is in India.

Question 14: Examine the following w.r.t recent amendments

- 1) LPG subsidy received from Central Govt. on purchase of LPG cylinder for personal use.
- 2) Govt. grants received for purchase of depreciable asset
- 3) Govt. grant as cash assistance received during the course of Export Business.
- 4) Transfer of shares of an Indian company by a foreign company to another foreign company on account of amalgamation.
- 5) An Individual started manufacturing of goods for the first time in a factory and employed 60 new regular workmen. Whether he is eligible to get any benefit under Income Tax?

- 6) Transfer of mutual fund unit under consolidation scheme of Mutual Fund shall be subjected to capital gains in the hands of unit holder.
- 7) Income of core settlement guarantee fund set up by recognized clearing corporations are taxable.
- 8) The A.O is the prescribed authority for the purpose of granting exemption to educational institute u/s. 10(23C).
- 9) CII is based on 75% of average rise in the Consumer Price Index (CPI) for urban non-manual employees (UNME).
- 10) X Ltd. purchased a Plant and machinery of ₹30 crores on 1/12/2015 which is used in the factory newly set up in specified backward area of Telengana.

Answer: briefly put (in exam you are required to write relevant provisions in detail)

- 1) Not taxable. It has been clarified by the MOF in Press Release dated 5th May, 2015, that the amended definition of income shall not apply to the LPG subsidy or any other welfare subsidy received by an individual in his personal capacity and not in connection with the business or profession carried on by him.
- 2) It is reduced from the cost of such asset.
- 3) Taxable as business income
- 4) Exempted transfer u/s. 47
- 5) In addition to deduction on entire salary paid to such workers u/s. 37(1). Deduction u/s. 80JAA shall be allowed w.r.t 30% of salary paid to new regular workmen in excess of 50.
- 6) False. It is exempted transfer u/s. 47.
- 7) Specified income is exempted u/s. 10(23EE): write provisions in detail in exam.
- 8) False, the prescribed authority is the Commissioner of Income Tax (Exemptions)
- 9) False w.e.f A.Y 2016-17, it is based on 75% of the average rise in the CPI (Urban).

10) Total Deduction in computing business Income:

- (i) Normal Depreciation: 7.5% in P.Y 2015-16 and 7.5% in 2016-17. (since used for less than 180 days)
- (ii) Additional Depreciation: 17.5% in P.Y 2015-16 and 17.5% in 2016-17 ((since used for less than 180 days)
- (iii) Deduction u/s. 32AC(1A) @ 15% on 30 cr. in P.Y 2015-16
- (iv) Deduction u/s. 32AD @ 15% on 30 cr. in P.Y 2015-16

SL
NO

ASSESSMENT OF VARIOUS ENTITIES

12

MINIMUM ALTERNATE TAX

(1) APPLICABILITY OF MAT ON FOREIGN COMPANY

Whether a foreign company shall liable to pay MAT in India?

Yes. Provisions of section 115JB shall be applicable to every company, where 18.5% of book profit exceeds tax on total income, the book profit shall be deemed to the total income and the tax payable on such total income shall be 18.5% (+SC+EC& SHEC). However, it is not applicable to insurance company.

However, a foreign company shall not be liable to pay MAT in India w.r.t the following income and accordingly such incomes are excluded from net profit in computing Book Profit for the purpose of section 115JB :-

Items to be deducted from Net Profit [Explanation 1 to Section 115JB]

Clause (iid): the amount of income accruing or arising to an assessee, being a foreign company, from,—

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII [i.e., special tax rate]

if such income is credited to the profit and loss account and the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub-section (1); or

Note: Accordingly, expenses if any debited to P/L A/c. related to the above income shall be added to Net Profit for computation of Book profit.

Applicability of Minimum Alternate Tax (MAT) on foreign companies having no PE in India [Press release, CBDT, MOF, Govt. of India dated 24th September, 2015]

After due consideration of the various aspects of the matter, the Government has decided that with effect from 01.04.2001 the provisions of section 115JB shall not be applicable to a foreign company if—

- the foreign company is a resident of a country having DTAA with India and such foreign company does not have a permanent establishment within the definition of the term in the relevant DTAA, or
- the foreign company is a resident of a country which does not have a DTAA with India and such foreign company is not required to seek registration under section 592 of the Companies Act 1956 or section 380 of the Companies Act 2013.

An appropriate amendment to the Income-tax Act in this regard will be carried out.

(2) Applicability of MAT on income Exempted u/s. 86 being share of Income received by a company as a member from AOP.

MAT not applicable on share of income received by a member being a company from an AOP.

The Finance Act, 2015 has amended the provisions so as to deduct the said income from Net Profit in computing the Book Profit -

Explanation 1

Income covered u/s. 86 to be excluded

(iic) the amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any, such amount is credited to the profit and loss account; or

Expenditure in relation to said income to be added:

Clause *fa*) the amount or amounts of expenditure relatable to income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86; or;

(3) Provisions of MAT not applicable on notional gain/loss on exchange of shares in Special Purpose vehicle by sponsor for units of Business Trust as referred u/s. 47(xviii) [w.e.f A.Y 2016-17]

Company 'A' is holding 100 shares of Special Purpose Vehicle (SPV) which are carried at Rs.2000 in the books of the company as on 1st April, 2015. During the financial year 2015-16, these 100 shares are exchanged with the 100 units of Business Trust (BT) and the same is recorded at the fair value of Rs.3000 resulting into a notional gain of Rs.1000. At the end of financial year 2016-17, the carrying amount of the units has been recorded at Rs.2500 resulting into a notional loss of Rs.500. During the financial year 2017-18, these units are sold for Rs.4000.

In the above illustration, the notional gain of Rs.1000 shall be excluded from the book profit of the financial year 2015-16. Similarly, the notional loss of Rs.500 shall be excluded from the book profit of the financial year 2016-17. For computation of book profit for the financial year 2017-18, the actual gain of Rs.2000, computed by taking into account the carrying cost of shares i.e. Rs.2000 and the actual sale price of unit i.e. Rs.4000 shall be included in the book profit of financial year 2017-18 for the purposes of levying MAT under section 115JB of the Income-tax Act.

Accordingly following adjustment should be made in Net Profit to find out Book Profit

Items to be added

(fc) the amount representing notional loss on transfer of a capital asset, being share of a special purpose vehicle, to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii) of section 47; or

(k) the amount of gain on transfer of units referred to in sec. 47(xvii) computed by taking into account:-

(a) the cost of the shares exchanged with units of business trust.

(b) the carrying amount of the shares at the time of exchange. (where such shares are carried at a value other than the cost through profit or loss account)

Income to be deducted

(iie) the amount representing,—

(A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or

(B) notional gain resulting from any change in carrying amount of said units; or

(C) gain on transfer of units referred to in clause (xvii) of section 47, if any, credited to the profit and loss account; or

(iif) the amount of loss on transfer of units referred to in sec. 47(xvii) computed by taking into account:-

(a) the cost of the shares exchanged with units of business trust.

(b) the carrying amount of the shares at the time of exchange. (where such shares are carried at a value other than the cost through profit or loss account)

ADVANCE TAX & INTEREST

(1) Section 234B(3): Calculation of interest when tax liability is increased on reassessment u/s. 147 or recomputation u/s. 153A [substituted w.e.f 1.6.2015]

Where the total income is increased on reassessment or recomputation u/s. 147 or section 153A, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the 1st day of April next following such financial year and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the increased amount.

Increased amount = the tax on total income determined on the basis of the reassessment or recomputation (-) the tax on the total income determined u/s. 143(1) or on the basis of the regular assessment.

Prior to amendments: the interest was calculated from the date of determination of total income u/s. 143(1) or regular assessment till the date of reassessment.

(2) Section 234B(2A): newly inserted w.e.f 1.6.2015

Calculation of interest in case where application is filed to Settlement Commission

(a) Where an application u/s. 245C(1) for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section.

(b) Where as a result of an order of the Settlement Commission u/s. 245D(4) for any assessment year, the amount of total income disclosed in the application u/s. 245C(1) is increased, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the increased amount.

Increased amount = the tax on the total income determined on the basis of order (-) the tax on the total income disclosed in the application filed u/s. 245C(1).

(c) where, as a result of an order u/s. 245D(6B) for rectification of mistake apparent from record, the amount on which interest was payable under clause (b) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly

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TRANSFER PRICING

(1) Limit of specified domestic transaction increased from 5 crores to 20 crores.
[Sec. 92BA]

(2) COMPARABILITY OF TRANSACTION [RULE 10B(2)(3)(4)(5)]

The comparability of an international transaction with an uncontrolled transaction shall be judged with reference to the following, namely:—

- (a) the specific characteristics of the property transferred or services provided in either transaction;
- (b) the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions;
- (c) the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;
- (d) conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

When two transactions are deemed to be comparable

An uncontrolled transaction shall be comparable to an international transaction if—

- (i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or
- (ii) reasonably accurate adjustments can be made to eliminate the material effects of such differences.

The data to be used in analyzing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year (**hereafter in this rule and in rule 10CA referred to as the 'current year'**) in which the international transaction has been entered into.

However, the data relating to a period not being more than 2 years prior to such ~~financial year~~ current year may also be considered if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared.

“Provided further that the first proviso shall not apply while analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014.

(5) In a case where the most appropriate method for determination of the arm's length price of an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014, is the method specified in section 92C(1)(b) or (c) or (e) [i.e., resale price method, cost plus method, transitional net margin method] then, notwithstanding anything contained in sub-rule (4), the data to be used for analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction shall be,-

(i) the data relating to the current year ; or

(ii) the data relating to the financial year immediately preceding the current year, if the data relating to the current year is not available at the time of furnishing the return of income by the assessee , for the assessment year relevant to the current year:

Provided that where the data relating to the current year is subsequently available at the time of determination of arm's length price of an international transaction or a specified domestic transaction during the course of any assessment proceeding for the assessment year relevant to the current year, then, such data shall be used for such determination irrespective of the fact that the data was not available at the time of furnishing the return of income of the relevant assessment year.

(3) ALLOWABLE VARIATION FROM ALP AND INTRODUCTION OF RANGE CONCEPT

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

[Notification No. 83/2015, dated 19th October 2015]

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

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

Provided that in a case referred to in clause (i) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of data relating to the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then,-

(i) the most appropriate method used to determine the price of the comparable uncontrolled transaction undertaken in the current year shall be applied in similar manner to the comparable uncontrolled transaction or transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the current year and in the aforesaid period preceding it shall be included in the dataset instead of the price referred to in sub-rule (1) :

Provided further that in a case referred to in clause (ii) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of the data relating to the financial year immediately preceding the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in the financial year immediately preceding the said financial year undertaken the same or similar comparable uncontrolled transaction then, -

(i) the price in respect of such uncontrolled transaction shall be determined by applying the most appropriate method in a similar manner as it was applied to determine the price of the comparable uncontrolled transaction undertaken in the financial year immediately preceding the current year; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the aforesaid period of two years shall

be included in the dataset instead of the price referred to in sub-rule (1):

Provided also that where the use of data relating to the current year in terms of the proviso to sub-rule (5) of rule 10 B establishes that,-

- (i) the enterprise has not undertaken same or similar uncontrolled transaction during the current year ;
or
- (ii) the uncontrolled transaction undertaken by an enterprise in the current year is not a comparable uncontrolled transaction,

then, irrespective of the fact that such an enterprise had undertaken comparable uncontrolled transaction in the financial year immediately preceding the current year or the financial year immediately preceding such financial year, the price of comparable uncontrolled transaction or the weighted average of the prices of the uncontrolled transactions, as the case may be, undertaken by such enterprise shall not be included in the dataset.

(3) Where an enterprise has undertaken comparable uncontrolled transactions in more than one financial year, then for the purposes of sub-rule (2) the weighted average of the prices of such transactions shall be computed in the following manner, namely:-

(i) where the prices have been determined using the method referred to in clause (b) of sub-rule (1) of rule 10 B , the weighted average of the prices shall be computed with weights being assigned to the quantum of sales which has been considered for arriving at the respective prices;

(ii) where the prices have been determined using the method referred to in clause (c) of sub-rule (1) of rule 10 B , the weighted average of the prices shall be computed with weights being assigned to the quantum of costs which has been considered for arriving at the respective prices ;

(iii) where the prices have been determined using the method referred to in clause (e) of sub-rule (1) of rule 10 B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs incurred or sales effected or assets employed or to be employed, or as the case may be, any other base which has been considered for arriving at the respective prices.

(4) Where the most appropriate method applied is a method other than the method referred to in clause (d) or clause (f) of sub-section (1) of section 92 C and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule(5) and sub-rule (6).

(5) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is within the range referred to in sub-rule (4), then, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(6) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the arm's length range referred to in sub-rule (4), the arm's length price shall be taken to be the median of the dataset.

(7) In a case where the provisions of sub-rule (4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset:

Provided that, if the variation between the arm's length price so determined and price at which the

international transaction or specified domestic transaction has actually been undertaken **does not exceed such percentage not exceeding three percent. of the latter, as may be notified by the Central Government in the Official Gazette in this behalf**, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price .

NOTIFICATION No. 86/2015: the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken **does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases**, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for **Assessment Year 2015-2016**.

Explanation.- For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions,

namely:- (i) purchase cost of finished goods is eighty percent. or more of the total cost pertaining to such trading activities; and

(ii) average monthly closing inventory of such goods is ten percent. or less of sales pertaining to such trading activities.

(8) For the purposes of this rule,-

(a) "the thirty-fifth percentile" of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least thirty five percent. of the values included in the dataset are equal to or less than such value :

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number , then the thirty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset ;

(b) "the sixth-fifth percentile" of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least sixty five percent. of the values included in the dataset are equal to or less than such value:

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number , then the sixty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(c) "the median" of the dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least fifty percent. of the values included in the dataset are equal to or less than such value :

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

[Illustration as provided by CBDT]

Illustration 1: The data for the current year of the comparable uncontrolled transactions or the entities undertaking such transactions is available at the time of furnishing return of income by the assessee and

based on the same, seven enterprises have been identified to have undertaken the comparable uncontrolled transaction in the current year. All the identified comparable enterprises have also undertaken comparable uncontrolled transactions in a period of two years preceding the current year. The Profit level Indicator (PLI) used in applying the most appropriate method is operating profit as compared to operating cost (OP/OC). The weighted average shall be based upon the weight of OC as computed below:

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

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

S.I. No.	1	2	3	4	5	6	7
Values	2.2%	6%	8.2%	9%	10.57%	11.9%	12%

Thus, the data place of the thirty-fifth percentile = $7 \times 0.35 = 2.45$.

Since this is not a whole number, the next higher data place, i.e.; the value at the third place would have at least thirty five percent. of the values below it. The thirty-fifth percentile is therefore value at the third place, i.e., 8.2%.

The data place of the sixth-fifth percentile is = $7 \times 0.65 = 4.55$.

Since this is not a whole number, the next higher data place, i.e.; the value at the fifth place would have at least sixty five percent. of the values below it. The sixty-fifth percentile is therefore value at fifth place, i.e., 10.57%.

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

Therefore, if the transaction price of the international transaction or the specified domestic transaction has OP/OC percentage which is equal to or more than 8.2% and less than or equal to 10.57%, it is within the range. The transaction price in such cases will be deemed to be the arm's length price and no adjustment shall be required.

However, if the transaction price is outside the arm's length range, say 6.2%, then for the purpose of determining the arm's length price the median of the dataset shall be first determined in the following

manner:

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

Since this is not a whole number, the next higher data place, i.e.; the value at the fourth place would have at least fifty percent. of the values below it (median).

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

Illustration 2: The data of the current year is available in respect of enterprises A , C, E, F and G at the time of furnishing the return of income by the assessee and the data of the financial year preceding the current year has been used to identify comparable uncontrolled transactions undertaken by enterprises B and D . Further, if the enterprises have also undertaken comparable uncontrolled transactions in earlier years as detailed in the table, the weighted average and dataset shall be computed as below:

Sl. No.	Name	Year 1	Year 2	Year 3 [Current Year]	Aggregation of OC and OP	Weighted Average
1	2	3	4	5	6	7
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	B	OC = 80 OP = 10	OC = 125 OP = 5		Total OC = 205 Total OP = 15	OP/OC = 7.31%
3	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%
4	D		OC = 220 OP = 22		Total OC = 220 Total OP = 22	OP/OC = 10%
5	E			OC = 100 OP = (-) 5	Total OC = 100 Total OP = (-)5	OP/OC = (-)5%
6	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9 %
7	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%

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

S.I. No.	1	2	3	4	5	6	7
Values	(-)5%	7.31%	9%	10%	10.57%	11.9%	12%

If during the course of assessment proceedings, the data of the current year is available and the use of such data indicates that B has failed to pass any qualitative or quantitative filter or for any other reason the transaction undertaken is not a comparable uncontrolled transaction, then, B shall not be considered for inclusion in the dataset. Further, if the data available at this stage indicates a new comparable uncontrolled transaction undertaken by enterprise H, then, it shall be included. The weighted average and dataset shall be recomputed as under:

Sl. No.	Name	Year 1	Year 2	Year 3 [Current Year]	Aggregation of OC and OP	Weighted Average
1	2	3	4	5	6	7

1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%
3	D		OC = 220 OP = 22	OC = 150 OP = 20	Total OC = 370 Total OP = 42	OP/OC = 11.35%
4	E			OC = 100 OP = (-) 5	Total OC = 100 Total OP = (-) 5	OP/OC = (-)5%
5	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9 %
6	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%
7	H	OC = 150 OP = 12		OC = 80 OP = 10	Total OC = 230	OP/OC = 9.56%

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

S.I. No.	1	2	3	4	5	6	7
Values	(-)5%	9%	9.56%	10.57%	11.35%	11.9%	12%

Illustration 3.- In a given case the dataset of 20 prices arranged in ascending order is as under:

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

Applying the formula given in the Illustration 1, the data place of the thirty-fifth and sixty-fifth percentile is determined as follows:

Thirty-fifth percentile place = $20 * (35/100) = 7$.

Sixty-fifth percentile place = $20 * (65/100) = 13$.

Since the thirty-fifth percentile place is a whole number, it shall be the average of the prices at the

seventh and next higher, i.e.; eighth place. This is $(47+48) / 2 = ₹ 47,500$

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

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

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

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

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

ADDENDUM FOR CS FINAL JUNE 2016 EXAMINEES

INDIRECT TAX

(1) SECTION 66B: RATE OF SERVICE TAX

Period	Service Tax	EC&SHEC	Swachh Bharat Cess (SBC)	Effective Rate of Service Tax
From 1.4.2015 to 31.05.2015	12%	3%	NIL	12.36%
From 01.06.2015 to 14.11 2015	14%	Not applicable (subsumed in revised rate of service tax)		14%
From 15.11.2015 to 31.03.2016	14%	Not applicable	0.5 % on taxable value.	14.5%

All the above rates are relevant for exam depending on the date of point of taxation.

Notes:

(1) CALCULATION OF SBC ON COMPOSITE TAX RATE: $\frac{\text{COMPOSITE RATE} \times 0.5}{14}$

For example: in case of air travel agent the composite rate of service tax is **0.7%** of the basic fare in the case of domestic bookings. If the basic fare is ₹ 20,000, then Service tax to be paid ₹ 140 and SBC to be ₹ 5 i. e. $[(140/14) \times 0.5]$.

(2) Provisions of reverse charge equally applicable for SBC also.

(3) CENVAT credit cannot be utilised for payment of SBC. Credit is also not available on such payment.

(4) Swachh Bharat Cess shall not be leviable on services which are exempt from service tax or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

(5) SBC is calculated on taxable value [i.e after providing abatement]

(6) value of taxable services for the purposes of the Swachh Bharat Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

DIRECT TAX

(1) **INCOME COMPUTATION AND DISCLOSURE STANDARD (brief notes):** CBDT has prescribed ICDS I to ICDS X, which are **applicable** for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources". These are not relevant for the purpose of maintenance of books of accounts. It is applicable for assessee following mercantile system of accounting.

(2) Section 139A(5): Transactions in relation to which permanent account number is to be quoted :
W.e.f 1.1.2016, every person shall quote his permanent account number in all documents pertaining to the transactions specified in the Table below,

Sl.No.	Nature of transaction	Value of transaction (in ₹)
1.	Sale or purchase of a motor vehicle other than two wheeled vehicles.	Any amount
2	Opening an account [other than a time-deposit and a Basic Savings Bank Deposit Account]	Any amount
3	Making an application for issue of a credit or debit card.	Any amount
4	Opening of a demat account	Any amount
5	Cash payment to a hotel or restaurant against a bill or bills at any one time.	> 50,000
6	Cash payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	> 50,000
7	Payment to a Mutual Fund for purchase of its units.	> 50,000
8	Payment to a company or an institution for acquiring debentures or bonds issued by it.	> 50,000
9	Payment to the Reserve Bank of India, for acquiring bonds issued by it.	> 50,000
10	Cash deposit with a bank/ co-operative bank	> 50,000 during any one day.
11	Purchase of bank drafts or pay orders or banker's cheques in cash	> 50,000 during any one day.
12	A time deposit with, - (i) a banks/ co-operative bank; (ii) a Post Office; (iii) a Nidhi company; or (iv) registered NBFC.	> 50,000 or aggregating more than 5,00,000 during a financial year.
13	Payment in Cash/DD/pay order/banker's cheque for one or more pre-paid payment instruments, prescribed by RBI to a banks/ co-operative banks.	> 50,000 in a financial year.
14	Payment as life insurance premium to an insurer	> 50,000 in a financial year.
15	A contract for sale or purchase of securities (other than shares).	> 1,00,000 per transaction.
16	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.	> 1,00,000 per transaction.
17	Sale or purchase of any immovable property.	Actual consideration or value of SVA u/s. 50C > ₹ 10 lakh.
18	Sale or purchase, by any person, of goods or services of any nature other than those covered above (Sl. No. 1 to 17)	> 2,00,000 per transaction.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
[briefly given. for details refer ICSI supplementary study module]

(1) Applicable: w.e.f 1.7.2015

(2) Normal Scheme:

- (i) Tax 30% and penalty 90% on the value of undisclosed assets held abroad by resident of India.
- (ii) rigorous imprisonment of 3 to 10 years for willful attempt to evade tax in relation to an undisclosed foreign income or asset.
- (iii) the value of the asset has to be determined as per Fair Market Value to be determined as per prescribed rules.

(3) One-time compliance Scheme:

(a) Section 59 to 72 of the Act provides for a one - time compliance window for a limited period.

(b) Person availing it will have to make a declaration of undisclosed foreign asset and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2016-17 for which he had, earlier failed to furnish a return u/s. 139 or failed to disclose such income in a return furnished before the

date of commencement of the Act, or such income had escaped assessment by reason of the omission or failure on the part of such person.

(c) Declaration to be made on or before 30.09.2015 in Form 6. Tax and penalty to be paid by 31.12.2015. in case of failure of to pay tax and penalty within the due date the declaration shall be invalid.

(d) Declaration cannot be made for matter already pending before Income Tax authority, assessment pending for survey/search cases, information in respect of undisclosed asset received on or before 30.6.2015 under agreement of Sec. 90/90A

(e) If the declaration has been made by misrepresentation or suppression of facts or information then it shall be invalid.

(f) **Benefit of the scheme:**

(i) Rate of tax and reduced penalty: 30% tax and 30% penalty. [Total 60% of the value of the undisclosed asset declared]. No imprisonment.

(ii) Assessment already completed cannot be reopened under Income Tax Act. Further, amount of undisclosed investment in the asset declared shall not be included in the total income the Income-tax Act for any assessment year.

(iii) Value of asset declared shall not be chargeable to Wealth Tax.

(iv) The contents of the declaration shall not be admissible as evidence in in any penalty or prosecution proceedings under the Income-tax Act, the Wealth Tax Act, the Foreign Exchange Management Act, the Companies Act or the Customs Act;

(g) In case of invalid declaration all the provisions of the Act, including penalties and prosecutions, shall apply and any tax or penalty paid in pursuance of the declaration shall not be refundable under any circumstances.

ASSESSMENT OF NON-RESIDENT

For other amendments – Refer chapter Residential status

(1) Furnishing of specified Information by Indian Entity u/s. 285A: The Indian concern where the Indian assets are held by foreign company shall be required to furnish specified information as per section 285A. In case of failure, penalty shall be levied u/s. 271GA 2% of value or ₹ 5,00,000 as the case may be.

(1) SECTION 285A: Where any share of, or interest in, a company or an entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India, as referred to in *Explanation 5* to section 9(1)(i), and such company or entity, holds, directly or indirectly, such assets in India through, or in, an Indian concern, then, such Indian concern shall, for the purposes of determination of any income accruing or arising in India u/s. 9(1)(i), furnish within the prescribed period to the prescribed income-tax authority the information or documents, in such manner, as may be prescribed.

(2) Penalty:

271GA	If any Indian concern, which is required to furnish any information or document under section 285A, fails to do so.	(i) a sum equal to 2% of the value of the transaction in respect of which such failure has taken place, if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; (ii) ₹ 5,00,000, in any other case."
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SECTION 271FAB: If any eligible investment fund which is required to furnish a statement or any information or document, as required u/s. 9A(5) fails to furnish such statement or information or document within the time

prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such fund shall pay, by way of penalty, a sum of ₹ 5,00,000

SECTION 115A: Royalty and fees for technical services received under agreement entered on or after 31.03.1976 :
RATE OF TAX REDUCED FROM 25% TO 10% FROM A.Y 2016-17.

Global Depository Receipts' means any instrument in the form of a depository receipt or certificate created by Overseas Depository Bank outside India and issued to investors against the issue of,—

- (i) ordinary shares of issuing company, being a company listed on a recognised stock exchange in India; or
- (ii) foreign currency convertible bonds of issuing company;

SOME OTHER PROVISIONS ON ROLL BACK OF ADVANCE PRICING AGREEMENT

The APA shall contain rollback provision in respect of an international transaction subject to the following, namely:-

- (i) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies;
- (ii) the return of income for the relevant rollback year has been or is furnished by the applicant before the due date u/s section 139 ;
- (iii) the report in respect of the international transaction had been furnished in accordance with section 92E;
- (iv) the applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and
- (v) the applicant has made an application seeking rollback in Form 3CEDA.

Manner of determining arm's length price shall be the same as APA.

Procedure for giving effect to rollback provision of an Agreement [Rule 10 RA]:

- (1) The applicant shall furnish modified return of income in respect of a rollback year with the proof of payment of any additional tax (if any).
- (2) The modified return in respect of rollback year shall be furnished along with the modified return to be furnished in respect of first of the previous years for which the agreement has been requested for in the application
- (3) Any pending appeal filed by applicant/department before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year shall be withdrawn.

CIRCULAR NO. 10/2015, DATED 10.6.2015 [Briefly Put]

1. Rollback provisions will not be available in case the return is belated. Application cannot be done for the said year. However, in case of revised return the applicant is entitled for rollback.

2. The transaction in the rollback year has to be of same nature and undertaken with the same associated enterprise(s), as proposed to be undertaken in the future years and in respect of which agreement has been reached.

3. The applicant does not have the option to choose the years for which it wants to apply for rollback. The applicant has to either apply for all the four years or not apply at all. However, if the covered international transaction(s) did not exist in a rollback year or there is some disqualification in a rollback year, then the applicant can apply for rollback for less than four years.

4. The rollback provision shall not be provided in respect of an international transaction for a rollback year if the determination of arm's length price for the said year has been the subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement.

5. The agreed determination of ALP or the agreed manner of determination of ALP is subject to the condition that the ALP would get modified to the extent that it does not result in reducing the total income or increasing the total loss, as the case may be, of the applicant as declared in the return of income of the said year, the rollback provisions could be applied.

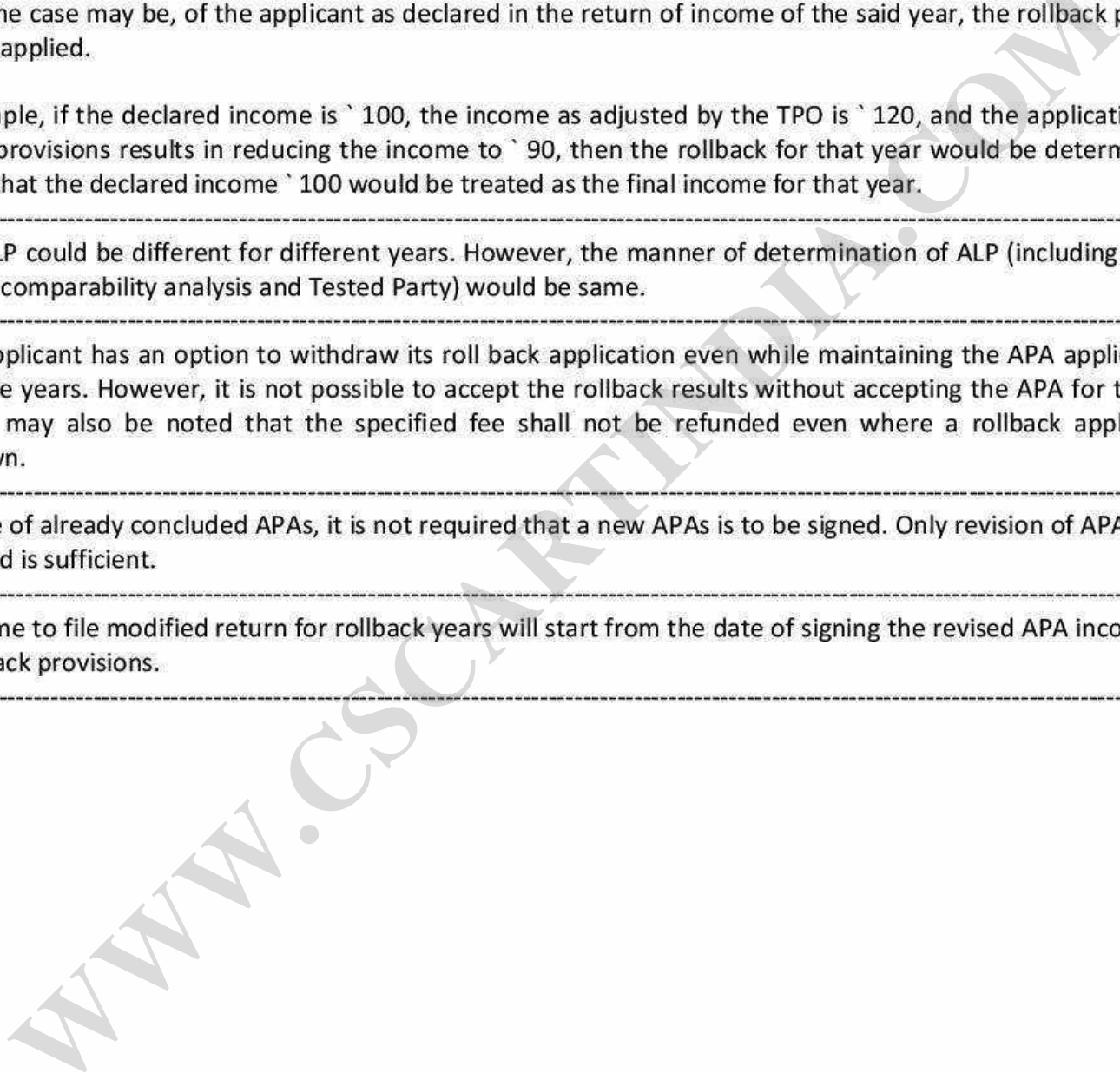
For example, if the declared income is ₹ 100, the income as adjusted by the TPO is ₹ 120, and the application of the rollback provisions results in reducing the income to ₹ 90, then the rollback for that year would be determined in a manner that the declared income ₹ 100 would be treated as the final income for that year.

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

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

8. In case of already concluded APAs, it is not required that a new APAs is to be signed. Only revision of APAs already concluded is sufficient.

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



ADDITIONAL AMENDMENTS RELEVANT EXTRACTS FOR OLD SYLLABUS ONLY

PENALTY PROCEEDINGS

(1) EXPLANATION 4 TO SECTION 271: [substituted w.e.f A.Y 2016-17 by the Finance Act, 2015] - The purpose of amendments is to nullify various case laws where it was held that penalty u/s. 271(1)(c) shall not be levied in a situation where concealment is w.r.t income computed as per normal provisions but the assessee paid tax under MAT/AMT.

AMOUNT OF TAX SOUGHT TO BE EVADED

Where provisions of MAT/AMT also applicable

Tax sought to be evaded = (A – B) + (C – D)

A- B = [Tax on total income assessed as per general provisions (-) tax on (total income assessed – concealed income)]

C – D = [Tax on total income assessed u/s. 115JB/115JC (-) tax on (total income assessed u/s. 115JB/115JC – concealed income (ignore if same income is already considered under general provisions))]

C = amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished:

Provided that where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D:

(2)

271-I	If a person, who is required to furnish information under sub-section (6) of section 195, fails to furnish such information; or furnishes inaccurate information.	Penalty may be levied upto ₹ 1,00,000.
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(3) PENALTY FOR TAKING AND REPAYING LOAN OTHER THAN THROUGH A/C. PAYEE CHEQUE/DRAFT

Where an assessee takes loan, advance, deposit or repays the same other than account payee cheque/DD/ECS of ₹ 20,000 or more then penalty of 100% of the loan, deposit, advance taken and repaid shall be imposed. However, penalty shall not be levied if the assessee prove that there was reasonable cause for doing so. Any penalty imposable in the above case shall be imposed by the Joint Commissioner.

ADVANCE TAX & INTEREST

(1) Section 234B(3): Calculation of interest when tax liability is increased on reassessment u/s. 147 or recomputation u/s. 153A [substituted w.e.f 1.6.2015]

Where the total income is increased on reassessment or recomputation u/s. 147 or section 153A, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the 1st day of April next following such financial year and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the increased amount.

Increased amount = the tax on total income determined on the basis of the reassessment or recomputation (-) the tax on the total income determined u/s. 143(1) or on the basis of the regular assessment.

Prior to amendments: the interest was calculated from the date of determination of total income u/s. 143(1) or regular assessment till the date of reassessment.

(2) Section 234B(2A): newly inserted w.e.f 1.6.2015

Calculation of interest in case where application is filed to Settlement Commission

(a) Where an application u/s. 245C(1) for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section.

(b) Where as a result of an order of the Settlement Commission u/s. 245D(4) for any assessment year, the amount of total income disclosed in the application u/s. 245C(1) is increased, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the increased amount.

Increased amount = the tax on the total income determined on the basis of order (-) the tax on the total income disclosed in the application filed u/s. 245C(1).

(c) where, as a result of an order u/s. 245D(6B) for rectification of mistake apparent from record, the amount on which interest was payable under clause (b) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly

SETTLEMENT COMMISSION

1. Section 245D(6B): Rectification of mistake apparent from the record

The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4)—

(a) at any time within a period of six months from the end of the month in which the order was passed; or

(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which an order under sub-section (4) is passed by the Settlement Commission:

2. Section 245H(1): Settlement commission must record reasons in writing while granting immunity to any person from prosecution. [ALL OTHER PROVISIONS ARE SAME]

3. BAR ON SUBSEQUENT APPLICATION FOR SETTLEMENT [SECTION 245K]

(1) Where a person has made an application which has been allowed to be proceeded with u/s 245D(1), then, such person ~~shall not be subsequently entitled~~ **or any related person shall not be subsequently entitled** to make an application u/s 245C.

ASSESSMENT PROCEDURES

(1) SECTION 153C: ASSESSMENT OF INCOME OF ANY OTHER PERSON

Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
- (b) any books of account or documents, seized or requisitioned, pertains to or
- (c) any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in section 153A(1).

Section 153C(2) provides that in respect of the Assessment year relevant to the previous year in which search is conducted U/s 132 or requisition is made U/s 132A, where (i) no return has been furnished by such person and no notice U/s 142(1) has been issued to him (ii) a return of income has been furnished by such person but no notice U/s 143(2) has been served and limitation of serving the notice U/s 143(2) has expired or (iii) assessment or reassessment has been made before the date of receiving of books of accounts or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person for such Assessment year in the manner provided U/s 153A.

2. SECTION 132B: APPLICATION OF SEIZED OR REQUISITIONED ASSETS

- (i) Application for release of seized assets within 30 days from the end of the month in which asset was seized.
- (ii) Adjustment of Assets seized –
 - a) Existing liabilities under Income tax Act/ Wealth tax Act
 - b) Liability determined u/s 153A
 - c) **Liability arising on an application made before the Settlement Commission u/s. 245C(1) – w.e.f 1.6.2015**

Note: "existing liability" does not include advance tax payable.

- (iii) Asset can be released after the above adjustment within 120 days from the date on which search was completed.

APPEALS & REVISIONS

1. Section 253: Appeal can be filed before ITAT for order of the Commissioner (Exemption) against refusal of exemption approval u/s.10(23C)(vi)/(via) [w.e.f 1.6.2015].

2. Section 255: Increase in limit for deciding matter by a single member bench of ITAT

The president or any of the member authorized by central Govt. may, sitting singly, dispose of any case which has been allotted to the bench of which he is a member and the total income of the assessee concerned as computed by the AO does not exceed ~~₹5,00,000~~ **₹ 15,00,000 (substituted w.e.f. 1.6.15)**

3. Section 263: Order deemed to erroneous and prejudicial to the interest of revenue for the purpose of section 263

It is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, —

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.” [w.e.f 1.6.2015
Explanation 2 to Section 263(1)]

4. Section 158AA: Procedure to be followed by Department when identical question of law is pending before Supreme Court [newly inserted w.e.f 1.6.2015]

(1) Notwithstanding anything contained in this Act, where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Supreme Court against the order of the High Court in favour of the assessee, he may, instead of directing the Assessing Officer to appeal to the Appellate Tribunal direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within 60 days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case.

(2) The Commissioner or Principal Commissioner shall direct the Assessing Officer to make an application only if an acceptance is received from the assessee.

(3) Where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within 60 days from the date on which the order of the Supreme Court in the other case is communicated to the Commissioner or Principal Commissioner.

TAX DEDUCTION & COLLECTION AT SOURCE

FOR AMENDMENTS OF TDS – REFER HEADING TDS. FOLLOWING ARE FURTHER AMENDMENTS w.e.f 1.6.2015

(1)

194LBA	(a) Interest Income as referred u/s. 10(23FC), distributed by business Trust to its unit holders (which is taxable in the hands of such holders)	Any amount	10% : for resident unit holders 5% : for non-resident unit holders.
	(b) Rental income as referred u/s. 10(23FCA), distributed by Business trust being REIT to its units holders.	Any amount	10%: for resident unit holders At the rate in force: for non-resident units holders
194LBB (newly inserted w.e.f. 1.6.15)	Where any income, is payable to a unit holder in respect of units of an investment fund referred to section 115UB (which is taxable in the hands of unit holders)	Any amount	10%