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Score Max in Tax

Dec 22

साथ | समय | समर्पण

REVISION NOTES

For
CS PROFESSIONAL -
DIRECT TAX

" मंजिल मिले ना मिले ये तो मुक्कदर की बात है हम कोशिश भी ना करे ये तो गलत बात है | "

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Chapter 1

TAX PLANNING

★ COMPARE TAX EVASION, TAX AVOIDANCE AND TAX PLANNING

Aspect	Tax Evasion	Tax Avoidance	Tax Planning
Meaning	Method of evading or reducing tax liability by dishonest means Methods of tax evasion include – *Concealing of Income; *Overstating Expenses; *Manipulating accounts; *Violating Rules.	Method to reduce or minimize tax liability by exploiting or taking advantages of a loop holes in the law. It does not give rise to any critical offence.	It is the arrangement of financial activities to minimize the tax incidence by making use of all beneficial provisions of the Income Tax Law.
Effect	Result of illegality, supper-session, misrepresentation and fraud.	Result of actions none of which is illegal or forbidden either singly or in any combination.	Result of availing the benefits under various beneficial provisions of Law.
Legality	Illegal	Technically Legal	Legal
	Note Permissible	Decided on the basis of –	Legally permissible under all circumstances.
		a Facts and circumstances of each case; and	
		b General principles of conscience and justice	
Violation of Law.	Involves blatant violation of law.	No violation of laws. Loop holes in law are taken advantage of by circumventing certain provisions.	No violation or circumvention of the provisions of tax laws.
Penalties	Heavy penalty including prosecution.	Does not invite any penalty	No Penalties.

Illustration 1

Specify with brief reasons, whether the following acts can be considered as (i) Tax Management, or (ii) Tax Planning, or (iii) Tax Evasion.

	Question	Reason	Answer
a	P deposits Rs. 50,000 in PPF Account so as to reduce Total Income from Rs. 3,40,000 to Rs. 2,90,000	Tax Planning	Reducing liability by use of beneficial provisions of law
b	PQR Industries Ltd installed an Air Conditioner costing Rs. 75,000 at the Residence of a director as per terms of his appointment, but treats it as fitted in Quality Control Section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation	Tax Evasion	Reducing tax liability by dishonest means.
c	SQL Ltd maintains a register of Tax Deduction at Source effected by it to enable timely compliance.	Tax Management	Objective is to ensure comply with law
d	R Ltd. issues a Credit Note for Rs. 40,000 for brokerage payable to Suresh, who is son of R, Managing Director of the Company. The purpose of this is to increase him Income from Rs. 1,40,000 to Rs. 1,80,000 and reduce its Income correspondingly.	Tax Avoidance	Making use of Loopholes in the Provisions of Law.

TAX PLANNING WITH RESPECT TO NON- RESIDENT ASSESSEE

★ SECTION 44B: PROFITS AND GAINS OF SHIPPING BUSINESS IN THE CASE OF NON-RESIDENTS

•	**Section applies to:** A non-resident assessee engaged in the business of operation of ships.
•	Deemed profits and gains of business or profession: 7.5% of the aggregate of the following:
a	Amount paid/ payable in or outside India to assessee or any person on his behalf for carriage of goods, livestock, mail or passengers shipped at any port in India; and Amount received or deemed to be received in India by or on behalf of the assessee for any of the above shipped at any port outside India.

★ SECTION 44BB PROFITS AND GAINS IN CONNECTION WITH BUSINESS OF EXPLORATION OF MINERAL OILS

a	**Section applies to:** A non-resident engaged in the business of providing services or facilities in connection with, or supplying plant (including ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the said business) and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils (including petroleum and natural gas).
b	**Deemed profits and gains of business or profession:** 10% of the aggregate of following:
•	Amount paid or payable in or outside India to the assessee or to any person on his behalf for any of the above for prospecting for, or extraction or production of, mineral oils in India; and
•	Amount received or deemed to be received in India by or on behalf of the assessee for any of the above for prospecting for or extraction or production of mineral oils outside India.
c	**Claim of lower profits:** The assessee may claim lower profits and gains than the profits as deemed above, if he:
•	Keeps and maintains books of account and other documents as per Section 44AA; and
•	Gets his accounts audited and furnishes a report thereof as per Section 44AB.

★ SECTION 44BBA PROFITS AND GAINS OF THE BUSINESS OF OPERATION OF AIRCRAFT IN CASE OF NON-RESIDENTS

a	**Section applies to:** Non-resident assessee engaged in business of operations of aircraft.
b	**Deemed profits and gains of business or profession:** 5% of the aggregate of the following
•	Amount paid / payable in or outside India to assessee or any person on his behalf for carriage of goods, livestock, mail or passengers from any place in India; and
•	Amount received or deemed to be received in India by or on behalf of the assessee for any of the above from any place outside India.

★ SECTION 44BBB PROFITS AND GAINS OF FOREIGN COMPANIES ENGAGED IN THE BUSINESS OF CIVIL CONSTRUCTION, ETC., IN CERTAIN TURNKEY POWER PROJECTS

a	**Section applies to:** A foreign company engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf.
b	**Deemed profits and gains:** 10% of the amount paid / payable in or outside India to the assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning
c	**Claim of lower profits:** The assessee may claim lower profits than what deemed under this section by maintaining proper books of account and getting its accounts audited.

★ SECTION 44DDA INCOME BY WAY OF ROYALTIES, ETC., IN CASE OF NON-RESIDENTS

1	**Section applies to:** This section applies if the following conditions are fulfilled:	
	a	The assessee is a non-resident (not being a company) or a foreign company;
	b	He is in receipt of income by way of royalty or fees for technical services from Government or an Indian concern;
	c	Such income is received in pursuance of an agreement made by the assessee with Government or the Indian concern after 31-3-2003;
	d	Assessee carries on business in India through a permanent establishment situated in India, or performs professional services from a fixed place of profession situated in India; and
2	**Computation of income:** The income of such assessee shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of this Act.	
	However, no deduction is allowed in respect of:	
	i	Any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India; or
	ii	Amounts paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to its head office or to any of its other offices.
	a	**Accounts and audit:** The assessee shall: Keep and maintain books of account and other documents as per Section 44AA;
	b	Get his accounts audited by a Chartered Accountant; and
	c	Furnish along with the return of income the report of such audit in prescribed form duly signed and verified by such Chartered Accountant.

★ TAXATION OF NON-RESIDENT ENTITY

Section	Assessee	Specified income	Tax	Remarks if any
115A	Any non-resident assessee (see note 2)	Interest from government of Indian concern on debt given in foreign currency.	20%	Deduction u/s 28 to 44C, 57 and chapter VI-A is not allowed in computing such income. However, deduction under chapter VI-A shall be available in computing income referred in clause (b) (from royalty/ fees for technical services). However, in respect of unit located in international financial services centre deduction under section 80LA shall be allowed. A unit of an IFSC can claim deduction under section 80LA against dividend and interest referred above. [amended by finance (no.2) act, 2019 w.e.f. 1-04-2020 I.e AY 2020-21]. Such agreement must be approved by the central government or must relate to a matter covered by the industrial policy of the government of India.
		Interest received from n infrastructure debt fund referred u/s 10(47).	5%	
		Interest of the nature reffered u/s 194LC / 194LD.		
		Distributed income being interest referred in section 194LBA (2).		
		Royalty and fees for technical services (excluding royalty/ fees for technical services covered by section 44DA) received under agreement.		
115AB	Overseas financial organization (off shore fund)	LTCG from transfer of units of UTI or a mutual fund specified u/s 10(23)D which were purchased in foreign currency.	10%	Indexation benefit will not be available in computing LTCG
115AC	Any non-resident assessee	Interest o notified foreign currency bonds of Indian/ public sector company. LTCG from transfer of such bonds or global depository receipts GDRs	10%	No deduction u/s 28 to 44C, 57 and chapter VI-A in computing income and no indexation benefit in computing LTCG

115 ACA	Resident employee	LTCG from transfer of foreign currency GDRs of an Indian currency engaged in specified knowledge based industry or service issued under employees stock option scheme (ESOPs).	10%	Assessee must be the employee of such Indian company or its subsidiary. No indexation benefit in computation of LTCG
115 AD	Notified foreign institutional investor (June 2005) (5 mark, Dec. 2009)	Incoming in respect of securities other than units referred to in section 115AB;	20%	No deduction u/s 28 to 44C, 57 and chapter VI-A in computing income and no indexation benefit in computing LTCG
		Capital gains on transfer of the securities		
		STCG under section 111A	15%	
		Income by way of interest refer to in section 94 LD	5%	
		Other STSG	30%	
		LTSG	10%	
		Income arising from the transfer of a long term capital assest referred to in section 112A exceeding 1,00,000	10%	
115 BBA	Non- resident sportsman being foreign citizen	Income from- Participation in a game/ sports in India. Advertisement. Contribution of articles relating to any game or port in India in newspapers, magazine journals.	20%	No deduction allowable in computing such incomes under any provisions of act. Winnings from lottery, cross word puzzle etc. Are taxable under section 115BB @30% and therefor they do not fall under this section.
	Non-resident sports association	Any amount guaranteed to be paid or payable such association or institution for any games/ sports played in India	20%	
	Non- resident entertainer being foreign citizen	Any income received or receivable for his performance in India.		

Notes		
1	No need to file return if TDS deducted:	in cases falling under section 115A(1)(a) 115AC and 115BBA the assessee need not file return of income consist of specified incomes only and tax of such income has been deducted at source.
2	Additional provision of section 115A	**if royalty is received as consideration for transfer for all or any rights (including granting of liasance) in respect of -**
		a: Copyrights in any book to an Indian concern or
		b: Any computer software to resident person
		Then, approval of central government of conformity with industrial policy is not required to such books/ computer software is permitted to be imported in India under open general licence
3	Global depository receipts	**mans any instrument in the forms of a depository receipts or certificate (by whatever name called) created by the overseas depository bank outside India and issued to investors against the issue of**
		a: Ordinary shares of issuing company, being a company listed on a RSE in India.
		b: Foreign currency convertible bonds of issuing company.

★ BUSINESS CONNECTION [SEC, 9(1) (i)]

Any income which arises through a business connection/ professional connection in India is deemed to accrue or arise in India.

Meaning of business connection

1	Includes	
	It includes a profession connection. It includes a person acting on behalf of a non-resident and who performs any one or more the following:	
	a	He exercises in India an authority to conclude contracts on behalf of the non-resident (it does not cover the activity of only the purchase of goods or merchandise for the non-resident)
	b	He 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.
	c	He habitually secures order in India (mainly or wholly) for the non-resident or for non-residents under the same management
	d	**He habitually plays the principal role leading to conclusion of contracts by the non-resident and the contracts are –**
		i: In the name of the non-resident; or

			ii	For the transfer of the ownership of (or for the granting of the right to use) property owned (or the non-resident has right to use) by the non-resident; or
			iii	For the provisions of services by the non-resident
		e	**Economic Presence Of NR:** Moreover from the significant economic presence of a non-resident in India shall constitute "business connection" in India. "significant economic presence" for this purpose, shall mean	
			i	Transaction in respect of any goods, services or property carry out by a non-resident in India (including provisions of download of data or software in India) if the aggregate of payments arising from such transactions during the previous year exceeds such amount as may be prescribed; or
			ii	Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means
	2	**Does Not Include**		
		a	**In the case of a business, in respect of which all the operations are not carried out in India [Explanation 1(a) to section 9(1) (i)]:** In the case of a business of which all the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India. Therefore, it follows that such part of income which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.	
		b	**Purchase of goods in India for export [Explanation 1(b) to section 9(1)(i)]:** In the case of non – resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.	
		c	**Collection of news and views in India for transmission out of India [Explanation 1(c) to section 9(1) (i)]:** In the case of a non – resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India from transmission out of India.	
		d	**Shooting of cinematograph films in India [Explanation 1(d) to section 9(1)(i)]:** In the case of a non-resident, no income shall be deemed to accrue or arise in India through or from operations which are confined to the shooting of any cinematograph film in India, if such non-resident is:	
			i	An individual, who is not a citizen of India or
			ii	A firm which does not have any partner who is a citizen of India or who is resident in India; or
			iii	A company which does not have any shareholder who is a citizen of India or who is resident in India
		e	**Activities confined to display of rough diamonds in SNZs [Explanation 1(e) to section 9(1)(i):** In order to facilitate the FMCs to undertake activity of display of	

			uncut diamond (without any sorting or sale) in a Special Notified Zone (SNZ), clause (e) has been inserted in Explanation 1 to section 9(1)(i) to provide that in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut an unsorted diamonds in any special zone notified by the Central Government in the Official Gazette in this behalf

★ **WHO MAY REGARD AS AGENT (SEC 163)**

Representative Assessee / Agent of a Non-Resident

1. **Representative Assessee of Non – Resident (Section 160):** In respect of Income of a Non – Resident specified in Section 9(1), his Agent, including a person deemed to be his agent under section 163, will be treated as a Representative Assessee, after giving him an opportunity of being heard.

2. **Agent of a Non – Resident (Section 163):** Agent, in relation to a Non – Resident, includes the following persons in India:

a Person employed by or on behalf of the Non – Resident.

b Person who has any business connection with the Non – Resident.

c Person from or through whom the Non – Resident is in receipt of any income, whether directly or indirectly.

d Trustee of the Non – Resident.

e Person who has acquired Capital Asset in India by means of a transfer from the Non – Resident, whether such person is a Resident or Non – Resident.

3. **Broker of Non – Resident is not regarded as Agent, if the following conditions are fulfilled**

a The Broker in India does not deal directly with or on behalf of the Non – Resident Principal,

b He deals with or through a Non – Resident Broker,

c The transactions are carried on in the ordinary course of business of the Resident Broker, and

d The Non-Resident Broker carries on such business in ordinary course of his business as Broker and not as Principal.

4. **Liability of Agent (Section 161)**

a He shall have same duties, responsibilities and liabilities as if the Income were received by

	him or accruing or in favour of him beneficially.
b	Assessment shall be deemed to be made upon him in respective capacity only,
c	Tax shall be levied and recovered from him in the same manner as on the person represented by him.

5.	**Rights of Agent (Section 162)**
	To be given opportunity of being head by the AO, before being treated as Agent,
	To recover amounts paid under the Act, from the outsider, i.e. Principal,
	To retain amounts paid under Wealth Tax Act, based on Certificate from AO.

TAX PLANNING WITH REFERENCE LOCATION OF A NEW BUSINESS

★ **SPECIAL PROVISIONS IN RESPECT OF NEWLY ESTABLISHED UNITS IN SPECIAL ECONOMIC ZONES [SECTION 10AA]**

Sr	Provisions		Explanation
1	Who can claim?		All Assessee
2	Nature of business		**Profits or gains from an undertaking** profit & gains derived from export of articles/things /services shall be allowed from the total income of the assesses.
3	Conditions to claim deduction	a	It has begun or begins to manufacture or produce articles or things or produce any service during the previous year relevant to any assessment commencing on or after 1.4.2005 in any Special Economic Zone,
		b	It should not be formed by the splitting up or reconstruction of a business already in existence.
		c	It should also not be formed by the transfer of machinery or plant, previously used for any purpose, to a new business. However, the following are the two exceptions to this condition:
		•	Machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled:
		•	The machinery or plant should not be previously used in India.
		•	The machinery *or* plant should be imported into India from a foreign country.

			•	No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act to any person previously.
			•	Deduction u/s 10AA will, be available if the total value of the second-hand machinery or plant transferred to the new undertaking does not exceed 20 per cent of the total value of the machinery or plant used in the industrial unit.
	4	Period of tax holiday	a	100% the profits and gains of the first five years
			b	50% for the next five assessment years.
			c	Further deduction for 5 years beyond the period of 10 years, mentioned shall be allowed as under:
			Quantum of deduction for next 5 years: The amount of deduction shall be so much mount not exceeding 50% of the profit as is debited to the profit and loss account previous year in respect of which the deduction is to be allowed and credited to an account (to be called the "Special Economic Zone Re-investment Allowance Account") to be created	
	5	Utilisation of reserve	For the purposes of acquiring new machinery or plant which is first put to use before the expiry of a period of three years next following the previous year in which the reserve was created; and until the acquisition of new machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India	
	6	Consequences of mis-utilisation of reserve	Shall be treated as deemed to be the profits of the year in which so utilized for any other purpose or not utilized within 3 yrs. After creating reserve	
	7	Report	Report of CA in form 56F	
	8	How to calculate profit	Profit from business of the undertaking × Export turnover / Total turnover of the undertaking	
	9	Export turnover	•	Export turnover does not include freight, telecommunication charges and insurance attributable to the delivery of the article or things outside India.
			•	Expenses incurred in foreign exchange in providing technical service outside India.
	10	Consequences of Amalgamation of Demerger	•	Amalgamated or resulting company shall be entitled to deduction under this section from the previous year in which the amalgamation or the demerger rakes place in the same manner if the amalgamation or demerger had not taken place.

★ SECTION 80-IAB: DEDUCTION IN RESPECT OF PROFITS AND GAINS BY AN UNDERTAKING OR ENTERPRISE ENGAGED IN DEVELOPMENT OF SPECIAL ECONOMIC ZONE

Condition	
a	Applicable to all assessee
b	The taxpayer is a Developer of Special Economic Zone
c	The Gross Total income includes Profit from business of developing SEZ
d	SEZ is notified after 1-4-2005

Amount of Deduction:

100% deduction for 10 out of 15 years beginning with the year when the SEZ was notified by the Govt

★ PROFITS AND GAINS FROM BUSINESS OF HOTELS AND CONVENTION CENTERS IN SPECIFIED AREA SEC 80ID

Assessee: Any undertaking, engaged in the business of hotel (2,3, or 4 star) located in the specified district having a world heritage site, if such hotel is constructed and has started or starts functioning at any time during the period 1-4-2008 to 31-3-2013.

Deduction: 100% of the profit and gains derived from such business for 5 consecutive AYs beginning from initial assessment year.

★ CERTAIN UNDERTAKINGS IN NORTH – EASTERN STATES SEC. 80IE

Assessee: Any undertaking which has, during the period 1/4/2007 to 31/3/2017, begun or beings, in any of the North-Eastern States

1	To manufacture or produce any eligible article or thing
2	To undertake substantial expansion to manufacturer or produce any eligible article or thing
3	To carry on any eligible business.

Deduction = 100% of the profits and gains derived from such business for 10 consecutive AYs commencing with the initial assessment year

For the purpose of this section

1	"North-Eastern States" means the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura
2	"Substantial expansion" means increase in the investment in the plant and machinery by at least 25% of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;

3	"Eligible article or thing" means the article or thing other than the following:	
	a	Goods falling under chapter 24 of the first schedule to the CETA 1985 which pertains to Tobacco and manufactured tobacco substitutes;
	b	Pan masala as covered under chapter 21 of the first schedule to the CETA 1985
	c	Plastic carry bags of less than 20 microns; and
	d	Goods falling under chapter 27 of the first scheduled to the CETA 1985, produced by petroleum oil or gas refineries
4	"Eligible business" means the business of	
	a	Hotel (not below two star category);
	b	Adventure and leisure sports including ropeways
	c	Providing medical and health services in the nature of nursing home with a minimum capacity of twenty-five beds
	d	Running an old-age home
	e	Operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medicine, civil aviation related training, fashion designing and industrial training
	f	Running information technology related training centre
	g	Manufacturing of information technology hardware; and
	h	Bio – technology

★ TAX PLANNING BASED ON NATURE OF BUSINESS

1	Tea Development Account, Coffee Development Account and Rubber Development Account [Section 33AB];
2	Site Restoration fund [Section 33ABA];
3	Specified business eligible for deduction of Capital Expenditure [Section35AD];
4	Amortization of certain preliminary expenses [Section 35D];
5	Expenditure on prospecting for certain minerals [Section 35E]
6	Special reserve created by a financial corporation under Section 36(1)(viii)
7	Special provisions for deduction in the case of business for prospecting for mineral oil [Section 42 and 44BB];
8	Special provisions for computing profits and gains of business on presumptive basis [Section 44AD];
9	Special provisions in the case of business of plying, hiring or leasing goods carriages [Section 44AE];
10	Special provisions in the case of shipping business in the case of non-residents [Section 44B];

11	Special provisions in the case of business of operation of aircraft [Section 44BBA];
12	Special provisions in the case of certain turnkey power projects [Section 44BBB];
13	Special provisions in the case of royalty income of foreign companies [Section 44D];
14	Special provisions in case of royalty income of non-residents [Section 44DA];
15	Certain income of offshore banking units and International financial service centre [Section 80-LA];
16	Profits and gains of industrial undertakings or enterprises engaged in Infrastructure development etc. [Section 80-IA].
17	Profits and gains of an undertaking or an enterprise engaged in development of SEZ [Section 80-IAB];
18	Profits and gains from certain industrial undertaking other than infrastructure development [Section80-IB];
19	Special provisions in respect of certain undertakings or enterprises in certain category States [Section 80-IC];
20	Deduction in respect of profits and gains from business of hotels and convention centres in specified area or a hotel at world heritage site [Section 80-ID].
21	Special provisions in respect of certain undertakings in North-Eastern States. [Section 80-IE];
22	Profits and gains from the business of collecting and processing of bio-degradable waste [Section80JJA
23	Employment of new workmen [Section 80JJAA]
24	Special tax rates under Section 115A, 115AB, 115AC, 115AD, 115B, 115BB, 115BBD, 115BA and 115D

★ TAX PLANNING WITH RESPECT TO CORPORATE RESTRUCT

The following suggestions could be useful for tax planning in respect of amalgamation, merger, demerger etc

1	**Planning to carry forward and set off of unabsorbed losses an unabsorbed depreciation:** Since the unabsorbed losses and unabsorbed depreciation cannot be allowed to be carried forward or set off in the hands of the amalgamated company, except in the cases prescribed under section 72A of the Act, it is suggested	
	a	That the scheme of the amalgamation can be put off till such time the full benefit of set off is availed of by the amalgamating company; and
	b	That the loss carrying company should absorbed or take over the business of profit making company. In other words, the profit making company should merge itself with the loss incurring company. This would help in carrying forward the benefits of all unabsorbed losses and depreciation for set off against the profits derived from the business of the profit making company

2	**Allow ability of bad debts in amalgamation scenario:** To save from disallowance of the debts of the amalgamating company, company which subsequently become bad in the hands of the amalgamated company, the amalgamated company should plan to make suitable provision for the expected losses on account of bad debts at the time of fixing the consideration while taking over business of the amalgamated company, However, in view of the Court judgment of CIT v. T. Veerbhadra Rao (1985) 22 Taxman 45, the bad debts are not allowed to an assessee by of personal relief but to a business. So, it is possible for the amalgamated company to claimed bad debts even in respects of debts taken over from the amalgamating company
3	**Amalgamation of a unlisted company with a listed company:** A company whose shares are not quoted on a recognised stock exchange may avail the benefit to amalgamation by amalgamating itself with another company whose shares are quoted on a recognised stock exchange. This would help is shareholders to take the advantage of the quote price of their shares in the stock exchange while determining their liability for wealth tax purpose
4	**Amalgamation of a company holding immovable properties with an Industrial company:** A company holding investments in immovable properties may avail the benefit of non-applicability of the provisions of the Urban Land Celling Act by amalgamating itself with an Industrial company
5	**Amalgamation of loss incurring company and profit making company to reduce tax incidence:** A loss incurring company and a profit making company may merge in order to reduce the overall incidence of liabilities of tax under the Income-tax Act, 1961
6	**Reverse merge:** In case the conditions provided under section 2(1B) and 72A of the Act are not satisfied, it may be suggested that the profit making company should merge itself with the loss making company, so that the loss making company does not lose its existence and also enjoys all other benefits
7	**Reduction of dissenting shareholders to complete amalgamation:** Under Section 2(1B) of the Act, it is provided that for availing the benefits of amalgamation, atleast 75% of the shareholders of the amalgamating company should become shareholders of the amalgamated company. In case more than 25% of the shareholders are not willing to become shareholders of the amalgamated company, it is proposed that the amalgamating company may persuade the other shareholders who may be willing, to purchase the shares in the amalgamated company to acquire the shares of the remaining shareholders so that the percentage of dissenting shareholders does not exceed 25%. Alternatively, the amalgamated company prior to amalgamation may purchase shares for such dissenting shareholders to go below the specified percentage of 25%

★ **WHAT ARE THE TAX IMPLICATIONS IN CASE OF AMALGAMATION OR DEMERGER OF UNDERTAKINGS?**

Ans: The following table exhibits tax implications in case of amalgamation / demerger of undertakings:

Section	Provisions applicable on fulfilment of conditions specified under respective sections in respect of	Whether provision applies in case of	
		Amalgamation	Demerger
35	Transfer scientific research asset in course of amalgamation: The provisions continue to apply to amalgamated company.	Yes	NA
35AAB	Transfer of telecommunication license: Expenditure can be carried forward and claimed by successor company.	Yes	Yes
35D	Preliminary Expenses can be carried forward and claimed by successor company.	Yes	Yes
35DD	Expenditure on amalgamation or demerger is allowable in 5 equal annual instalments.	Yes	Yes
35DDA	Expenditure on Voluntary Retirement Scheme can be carried forward and claimed by successor company.	Yes	Yes
35E	Expenditure on prospecting etc. for mineral can be carried forward and claimed.	Yes	Yes
36(1)(ix)	Transfer of asset purchased for family planning in course of amalgamation: The provisions continue to apply to amalgamated company.	Yes	NA
41(1)	Subsequent receipt of an already claimed deduction is taxable in hands of successor.	Yes	Yes
42	Deduction in respect of business of prospecting etc. of mineral oil can be carried forward and claimed by successor company.	Yes	Yes
43(1)	Actual cost of transferor is actual cost to transferee company.	Yes	Yes
43(6)	WDV of block of assets in hands of transferor is WDV in hands of transferee company.	Yes	Yes
43C	Special provision for computation of cost of capital asset transferred by amalgamating company as stock-in-trade.	Yes	Yes
47	Transfer of capital assets by transferor company to transferee company is exempt. Transfer by shareholder of shares in amalgamating company to amalgamated company is exempt. Similarly, transfer or issue of shares by resulting company to	Yes	Yes

		shareholders of demerged company does not entail capital gains tax liability.		
	72A	Unabsorbed business losses and unabsorbed depreciation of transferor company are allowed in hands of transferee company.	Yes	Yes
	79	Provisions relating to set off and carry forward or losses in case of private companies are relaxed in case of amalgamation and demerger.	Yes	Yes
	801B-80IE & 10AA	Deduction is available in case the transferor company transfers the undertaking, which is eligible for deduction, to the transferee company in course of amalgamation or demerger.	Yes	Yes

★ TAX PLANNING WITH REGARD TO FINANCIAL MANAGEMENT DECISIONS

★ CAPITAL STRUCTURE

Importance in selection of capital structure: Before setting up a new project, an important decision about the type of capital structure has to be taken. While selecting a particulars capital structure, the entrepreneur has to keep in view the following considerations

a	Serving the capital base with consistent dividend policy
b	Cost of capital to be raised from the market
c	Chargeability or otherwise of taxes, i.e., direct and indirect taxes
d	Keeping a margin for ploughing back of profits for future plan towards diversification, expansion, modernisation and other development aspects

Means of financing: Generally, the following means of finance are available for new projects

a	Equity share capital
b	Debentures / Loans and borrowings / Lease Finance

Capital mix: A capital structure is said to be optimum when it has a mix of deb: equity that will yield the lowest weighted average cost of capital. At the same tin capital mix should not have high debt equity ratio. A high debt/equity ratio has its advantages and disadvantages

Illustration 3

2014- DEC-1 (a) Virat ltd. is widely held company.it is currently considering a major expansion of its production Facilities and the following alternatives are available:

Particulars	Alt-1	Alt-2	Alt-3

Share capital	50,00,000	20,00,000	10,00,000
14% debenture	-	20,00,000	15,00,000
18% loan from bank	-	10,00,000	25,00,000

Solution

Analysis of Financing Options for expansion of Virat Ltd.

Analysis of Financing Options for X Ltd.

Particulars	Amount in		
	Option 1	Option 2	Option 3
Share Capital			
14%Debentures			
Bank Loan@18%			
Total Capital			
PBIT (Expected Rate of Return @ 30% of total Capital)			
Less: Interest on debenture @ 14%			
Less: Interest on bank loan @ 18%			
Profit Before Tax			
Tax @ 31.2%/0 on PBT			
Net Profit After Tax			
Rate of Return in % (Net profit/Share Capital)			

Since, Alternative 3 offers the maximum rate of return, with reference to tax planning company should opt it.

★ **TAX PLANNING WITH REFERENCE TO SPECIFIC MANAGEMENT DECISIONS**

★ **LEASE OR BUY DECISIONS**

In recent years, leasing has become a popular source of financing in India. From the lessee's point of view, leasing has the attraction of eliminating immediate cash outflow, and the lease rentals can be claimed as admissible expenditure against the business income. On the other hand, buying has the advantages of depreciation allowance interest on borrowed capital being tax-deductible. Thus, an evaluation of the two alternatives is to be made in

order to take a decision.

Disadvantages of lease finance; before opting for a lease decision one has to keep in mind the following disadvantages	
1	Leased assets are not owned assets and therefore, the asset cover to equity comes down due to increased dependence on lease finance
2	Financial ratios are also distorted due to greater dependence on lease finance
3	Lease rent payments are made out of working capital funds which means that fixed assets are financed out of short-term funds
4	The asset taken on lease is taken back by the lessor at the expiry of lease period. Thus, he will be bothered about finding alternative asset at the expiry of lease period

★ **MAKE OR BUY DECISION**

The leasing or buying decision is taken only when it is finalised that a particular asset is to be acquired. In most of the industries, the conception of establishing a new project itself involves acquisition of fixed assets. In assembling industry different components are assembled to make a product. Now a decision regarding the manufacturing of these components is to be taken. It is decided whether the product/part/ component of product should be bought from the market or should be manufactured by having necessary manufacturing facilities. The main consideration affecting such a decision is cost. In a make or buy decision, the variable cost of making the product or part /component of product is compared with its purchase price prevailing in the market.

Where the manufacturing of the product requires additional fixed cost also: Sine; in this case, the assessee will have to incur the additional fixed cost it will form part of the cost of manufacturing of the product.

Illustration 1

What are tax benefits available, where the asset is acquired on lease or purchase by own fund.

Solution

Purchase vs. lease

1. In case of purchase, depreciation is allowed under section 32, while depreciation will not be allowed u/s 32 in case of lease. This principal has also been upheld by the Hon. Supreme Court in the case of ICDS Ltd. Vs CIT (2013) 350 ITR 527,

2. In case of Lease, revenue expenditure i.e., lease rent will be allowed as deduction u/s 37(1). Repairs are also allowable under section 31.

In case of purchase, insurance premium, current repairs are allowed as deduction u/s 31. Further, interest on borrowed funds is deductible under section 36.

3. Purchase of machinery would create a tangible asset which can also be mortgage in the hours of need. While it is not so in case of Lease.

Illustration 2

A Ltd. wants to acquire a machine on 1st April, 2015. It will cost Rs. 1,50,000. It is expected to have a useful life of 3 years. Scrap value will be Rs. 40,000. If the machine is purchased through borrowed funds, rate of

Interest is 15% p.a. the loan is repayable in three annual instalments of Rs. 50,000 each. If machine is acquired through lease. Lease rent would be Rs. 60,000 p.a.

Profit before depreciation and tax is expected to be Rs. 1,00,000 every year. Rate of depreciation is 15%. Average rate of tax may be taken at 33.99%

A Ltd. seeks your active whether is should:

i Acquire he machine through own funds, or borrowed funds; or

ii Take it on lease.

Advice whether asset should be taken on lease or on purchase. Whether it should be acquired through own funds or borrowed funds? Present value factor shall be taken @ 10%.

Note: The profit or Loss on sale of the asset is to be ignored

Solution

In all the scenarios, profit is same, therefore, we can advise on the basis pf present value of Outflow and loans.

1. **PURCHASINF MACHINE**

a) **Through own Funds**

Particulars	Year			
	0	1	2	3
Cash Outflow	(1,50,000)	-	-	-
Less: Tax Relief on depreciation @33.99%	-	7,650	6,500	5,525

	(Rounded Off)				
	Less: Sale Proceeds of machine	-	-	-	40,000
	Total	(1,50,000)	7,650	6,500	45,525
	Present Value Factor @10%	1	10.909	0.826	0.751
	Present Value of Cash Outflows	(1,50,000)	6,954	5,369	34,189
	Cash Inflows (-) Outflows Rs. (1,03,487)				

b. **Through Loan Funds**

Particulars	Year			
	0	1	2	3
Cash Outflows:				
Loan repayment		(50,000)	(50,000)	(50,000)
Interest Payment		(22,500)	(15,000)	(7,500)
Cash inflow				
Less: Tax Relief on Depreciation / Loss		7,650	6,500	5,525
@ 33.99%				
Less: Tax Relief on Interest		7,650	6,500	5,525
Sale Proceeds of machinery		-	-	40,000
Total		(57,200)	(53,400)	(9,425)
Discounting factor @ 10%	1	0.9.9	0.826	0.751
Present value of Cash outflows (Rs)	Nil	(51,995)	(44,108)	(7,078)
Net Present Value of Cash Outflows Rs. (1,03,181)				

2. **ACQUIRING MACHINE ON LEASE**

Particulars	Year			
	0	1	2	3
Cash Outflow on Lease Rent	-	(60,000)	(60,000)	(60,000)
Less: Tax Relief on Lease Rent @ 33.99%	-	20,390	20,390	20,390
Net Cash Outflow		(39,610)	(39,610)	(39,610)

	Discounting factor @ 10%	1	0.9.9	0.826	0.751
	PV of Cash Outflows	-	(36,005)	(32,718)	(29,747)
	Net Present Value of Cash Outflows Rs. (98,470)				

Conclusion: Cash outflow is latest if machine is acquired on lease. Hence, machine shall be acquired on lease.

Working Notes:

Calculation of Tax relief on Depreciation and Balancing Allowance

Year	Opening Balance	Depreciation @ 15%	Tax Relief @33.99%	Year
1	1,50,000	22,500	7,650	1
2	1,27,500	19,125	6,500	2
3	1,08,375	16,257	5,525	3
			19,675	

Chapter 2

ASSESSMENT OF PARTNERSHIP FIRM/ LLP

★ ASSESSMENT OF FIRM

Introduction

1. Under Income Tax Act, a partnership firm has a separate identity apart from its partner. It is taxed as a separate entity at a flat rate of 30% + SC + H&EC

➢ **Taxpoint:** Unless and until otherwise mentioned, a partnership firm shall include limited liability partnership. Further, the word 'Partner' includes partner of a limited liability partnership.

2. The share of partner (member) in the income of the firm is not taxable in the hands of partners [Sec. 10(2A)].

3. As in case of any other assessee, income of the firm (including LLP) is also assessed under heads of income i.e. 'Income from house property'. 'Profits & gains of business or profession'. 'Capital gains' and 'Income from other sources'.

★ DEDUCTION U/S. 40(B)

In case of computation of income under the head "Profits & gains of business or profession" a partnership firm shall apart from all deductions discussed in the said chapter, be further allowed deduction u/s. 40(b) in respect of:

- Interest to partner, and
- Remuneration to partner

➢ **CONDITIONS:** As per Sec. 185, to claim deduction u/s. 40(b), the firm shall have to fulfill the following conditions as laid down u/s. 184.

1. The partnership must be evidenced by an instrument [Sec. 184(1)(ii)]
2. A certified copy of the instrument of partnership shall accompany the return of income of the year in which assessment as a firm is first sought [Sec. 184(2)].
3. The individual shares of the partners must be specified in the instrument. [Sec. 184(1)(ii)]

➢ **Effect of non-fulfillment of above conditions:**

As per sec. 185, where a firm does not comply with the provisions of Sec. 184 for any assessment year, then no deduction by way of interest to partner or remuneration to partner shall be allowed.

★ **INTEREST TO PARTNER**

Interest to partners whether on capital or on loan is allowed as deduction.

➢ **Conditions:**

a) Interest must be authorized by the partnership deed.

b) Payment must pertain to a period after the partnership deed.

➢ **Deduction:** Minimum of the following is allowed as deduction:

Actual interest given to partner as per deed.

Max. 12% p.a. simple interest.

Illustration 1

Case	Interest on capital as per books of account	Rate of interest allowed to partner	Interest allowed as per partnership deed	Workings	Disallowed account
a)	20000	10%	10%		Nil
b)	30000	15%	12%	(Rs. 30000 / 15) *3	*6000
c)	30000	15%	Deed is silent	Interest must be given as per deed	30000
d)	30000	20%	18%	(Rs. 30000/20) *8	12000
e)	30000	15%	10%	(Rs. 30000/15) *5	10000
f)	30000	30%	30%	(Rs. 30000/30) *18	18000

★ **REMUNERATION TO PARTNER**

Remuneration to partner includes salary, fees, commission, bonus, etc.

Conditions: Remuneration is allowed subject to fulfillment of the following conditions:

1. Partner must be a working partner,
2. Remuneration must be authorized by the partnership deed.
3. Payment must pertain to a period after the partnership deed.

Working partner means an individual who is actively engaged in conducting the affairs of the business or profession of the firm. 'Time devotion' is not the key factor for deciding the

status of partner as a working partner.

➢ **Deduction:** Remuneration (in total) is allowed to the minimum of the following

1. Actual remuneration allowed to all partners.
2. Maximum permissible limit u/s. 40(b) (v) as discussed under.

➢ **Maximum permissible limit:**

Amount of book-profit	Maximum remuneration allowed
In case of loss	Rs. 150000
In case of profit First Rs. 300000	90% of book profit or Rs. 150000, whichever is higher
On balance book-profit	60% of next book profit.

Taxpoint: The above slab indicates that in any case remuneration to the minimum of Rs. 150000 is allowed.

★ **COMPUTATION OF BOOK PROFIT:**

STEP 1: Find out the net profit of the firm as per Profit and Loss A/c.

STEP 2: Make adjustment as per Sec. 28 to 44DB (including adjustment for interest on partner's capital)

STEP 3: Add remuneration to partner, if debited to the Profit & Loss A/c.

STEP 4: Subtract unabsorbed depreciation but do not subtract brought forward business losses. The resultant figure is book profit.

Note: Due to subtraction of unabsorbed depreciation the residual profit should not be less than the brought forward losses, which are to be set-off in the current year.

Notes: Income from house property, Income from other sources and Capital gains do not form part of book profit. Deduction under chapter VIA (i.e. 80C to 80U) shall be ignored for this purpose.

Illustration 3

ABC is a partnership Firm carrying on business, in which A, B and C are partners sharing profit and losses equally. In respect of Assessment Year 2021-2022, it furnishes the following particulars-

Loss as per P&L A/C after debiting remuneration to partners and Interest on their Capital Rs. 2,50,000

Remuneration to Partners: A-90,000, B-60,000, C-30,000: Total = Rs. 1,80,000

Interest paid on capital:	Capital as on 01.04.2018	Interest
A	Rs. 1,00,000	Rs. 20,000
B	Rs. 1,00,000	Rs. 20,000
C	Rs. 1,00,000	Rs. 20,000

Compute the income of the Firm and of the partners assuming that the partners have no other income

Solution

Computation of Firm's Income under the head Profits and Gains of Business or profession

Particular		Rs.
	Net loss as per Profit and Loss account	(2,50,000)
Add:	Partners remuneration	1,80,000
Add:	Interest on Capital to Partners	60,000
	Net loss before Interest and Remuneration	(10,000)
Less:	Allowable Interest on Capital at 12% (A-12,000, B-12,000 and C-12,000)	(36,000)
	Book Profit	(46,000)
Less:	Remuneration allowable u/s 40(b) Rs. 1,50,000 or 90% of Books Profit, whichever is Higher	(1,50,000)
	Loss of the Firm	(1,96,000)

ASSESSMENT OF LLP

★ **DEFINITIONS: (SECTION 2(23))**

"Firm" means a firm as defined in the "Indian Partnership Act, 1932" and includes a "Limited Liability Partnership" as defined in the "Limited Liability Partnership Act, 2008".

"Partner" means as defined in the "Indian Partnership Act", and includes a Minor admitted to the benefits of the Partnership, and a Partner of a LLP.

★ **LIABILITY OF PARTNERS OF PARTNERS OF LLP IN LIQUIDATION (Section 167C)**

1. Joint and Several Liability (Section 167C): Every person who was a Partner of a LLP during the previous year, and the Legal Representative of the Deceased Partner shall be jointly and severally liable along with the LLP for any tax due includes penalty or interest or other sum payable by the LLP for the assessment year relevant to such previous year.

2.	**Exception:** The above liability shall not apply if the Partner is able to prove that the non – recovery cannot attributed to any gross neglect, misfeasance or breach of duty on his part, in relation to affairs of LLP.
★	**CONVERSION OF PARTNERSHIP FIRM TO LLP**
	Conversion of Partnership Firm into LLP will not attract Capital Gains Tax provided:
1.	The rights and obligations of the partners remain the same after conversion, and
2.	There is no transfer of any asset or liability after conversion.
★	**CONVERSION OF PRIVATE COMPANY / UNLISTED PUBLIC COMPANY TO LLP**
a.	**Principle:** The following transactions are not considered as transfer, and hence, not chargeable to Capital Gain Tax.
•	Transfer of Capital Asset or Intangible asset by a private company or unlisted public company to a limited liability partnership (LLP) as a result of conversion as per LLP Act, 2008 or
•	Transfer of Share(s) held in the Company by a shareholder. (Note: "Private Company" and "Unlisted Public Company" have the meanings respectively assigned to them in LLP Act, 2008).
b.	**Conditions:**
•	All assets and liabilities of the company immediately before the conversion become the Assets and liabilities of the LLP.
•	All the shareholders of the company immediately before the conversion, become the partners of the LLP, and their Capital Contribution and Profit-Sharing Ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion.
•	The shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in Profit and Capital Contribution in the LLP.
•	The aggregate of the Profit-Sharing Ratio of the shareholders of the company in the LLP shall not be less than 50%, at any time during the period of 5 years from the date of conversion.
•	Total sales, turnover or Gross Receipts in the business of the Company in any of the 3 previous years preceding the previous year in which the conversion takes place does not exceed Rs.60 lakhs.

•	No amount is paid, either directly or indirectly, to any partner out of balance of Accumulated Profit standing in the accounts of the Company on the date of conversion for a period of three years from the date of conversion.
C.	**Circumstances of Withdrawal (Section 47A(4)):** Where any conditions laid down in Section 47(xiiib) are not complied with, the amount of profits or gains arising from the transfer of such Capital Asset or Intangible Asset shall be chargeable to tax in the hands of Successor LLP or the Shareholders of the Predecessor Company.
	This transaction is not regarded as transfer, if specified conditions are satisfied.
★	**SET OFF AND CARRY FORWARD OF LOSSES IN OF SUCCESSION OF PRIVATE COMPANY / UNLISTED PUBLIC COMPANY BY A LLP (SEC 72A)**
1.	Succession of a Private Company / Unlisted Public Company by a LLP

Nature of Loss	Accumulated Loss or Unabsorbed Depreciation of Predecessor Company.
Condition	Conditions laid down in Section 47(xiiib) shall be fulfilled.
Non-compliance with Section 47(xiiib)	If the conditions under section 47(xiiib) are not satisfied, the Loss or Depreciation set off by the LLP shall be taxable in its hands in the year of non – compliance.

	No carry forward of MAT credit: In the case of conversion of Private Company or Unlisted Public Company into a Limited Liability Partnership, MAT Credit shall not be allowed to be carried forward by the Successor Limited Liability Partnership.

Chapter 3

CORPORATE TAX PLANNIG (ASSESSMENT OF COMPANIES)

★ COMPANY UNDER THE INCOME TAX ACT, [SECTION 2(17)]

Company means –
An Indian Company, or Body corporate incorporated outside India under the laws of a Foreign Country, or Any institution, association or body whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a Company.

★ "INDIAN COMPANY" UNDER THE INCOME TAX ACT [SECTION 2(26)]

"Indian Company" means a Company formed and registered under the Companies Act, 1956 and includes:

1	A Company formed and registered under any law relating to Companies formerly in force in any part of India other than the State of Jammu and Kashmir and the Union Territories mentioned below in.
2	A Corporation established by or under a Central, State or Provincial Act.
3	Any institution, association or body which is declared by the Board to be a Company u/s. 2(17).

★ MEANING "SUBSTANTIAL INTEREST" UNDER THE INCOME TAX ACT

According to Sec. 2(32) of the Income Tax Act, a person has a substantial interest in the following cases:

a	In relation to a Company	A person who is the beneficial owner of shares, not being shares entitled to fixed rate of dividend, whether with or without a right to participate in profits, carrying not less than 20% of the voting power.
b	In the case of a non-corporate entity	A person can be said to have substantial interest, if he holds 20% or more share of profit.

★ DOMESTIC COMPANY AND FOREIGN COMPANY UNDER THE INCOME TAX ACT 1961

Particulars	"Domestic Company" (Section 2(22A))		Foreign Company (Section 2(23A))
Meaning	a.	An Indian Company;	A company, which is not a Domestic Company.

		Any other Company, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on Preference Shares) payable out of such income.	
Rate of tax	**Income is taxed at 30%. Surcharge is:**		**Income is taxed at 40%. Surcharge is:**
	• 7%, if Total income > Rs.1 crore but ≤ Rs.10 Crores, and		• 2%, if Total income > Rs.1 crore but ≤ Rs.10 crores, and
	• 12%, if Total income >Rs.10 crores		• 5%, if Total Income > Rs.10 crores.
Liability of DDT Taxability of Dividends in the hands of Shareholders	Not applicable w – e – f 01-04-2020 Dividend received by the Shareholders from an Indian Company is fully Taxable At normal Rates		Not applicable Dividend received by Shareholders from a Foreign Company is fully taxable. At normal Rates.

RATES OF INCOME TAX FOR THE ASSESSMENT YEAR 2020 - 21

★ **FOR DOMESTIC COMPANIES**

		Surcharge		
Particulars	**AY 22-23**	**Income between 1 cr to 10 cr**	**Particulars**	**AY 22-23**
If turnover of or gross receipt during PY 19-20 dose not exceeds 400 cr	25%	7%	12%	4%
Otherwise	30%	7%	12%	4%

Key Note

A domestic company can opt for the alternative tax regime provided under section 115BA or section 115BAA or section 115BAB.

★ **SPECIAL RATES OF INCOME TAX**

Section	Nature of Income	Rate of Tax
111A	Short-term capital gains from transfer of securities on which Securities Transaction Tax has been charged	15%
112	Long term capital gain	20% /10%

112A	On Long-term Capital Gain (Listed Share/Unit)	Exempt upto Rs. 1 lakh. Excess taxable @10%
115BB	Casual Income	30%
115BBE	Unexplained amounts treated as income under sections 68, 69, 69A, 69B, 69C and 69D of the Act	60%
115BBDA	Income by way of dividends in excess of Rs. 10 Lacs	10%

★ SPECIAL PROVISIONS O TAX ON CERTAIN INCOME OF DOMESTIC MANUFACTURING COMPANY AND OTHER DOMESTIC COMPANY AS PER PROVISIONS OF SECTION 155BAB AND SECTION 115BBA OF THE INCOME TAX ACT, 1961

Particulars	Section 115BAB		Section 115BAA
Applicability	Domestic manufacturing company		Any domestic company
Rate of tax	15%		22%
Rate of surcharge	10%		10%
Effective rate of tax [including surcharge & cess]	17.16% except special category of income		25.168% except special category of income
Conditions to be fulfilled for availing the concessional rate of tax and exemption from MAT.	i.	The company should be set-up and registered on or after 1-10-2019.	No time limit specified. Both existing companies and new companies can avail benefit.
	ii.	It should commence manufacturing on or before 31-3-2023.	Need not be a manufacturing company.
	iii.	It should not be formed by splitting up or the reconstruction of a business already in existence [exception as per 33B]	No similar condition has been prescribed.
	iv.	It does not use any machinery or plant previously used for any purpose [Refer Note at the end]	No similar condition has been prescribed.
	v.	It does not use any building previously used as a hotel or a convention centre [meanings assigned in section 80-ID(6)]	No similar condition has been prescribed.
	vi.	It should not be engaged in any business other than the business of manufacture or	No similar condition has been prescribed.

		production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.	

Particulars	Section 115BAB	Section 115BAA
No deduction U/S.	10AA, 32(1)(iia), 32AD, 33AB, 33ABA, 35, 80IA to 80RRB except 80JJA	
Applicability of MAT	Not applicable	Not applicable
Availability of set-off of MAT credit brought forward from earlier years.	Since it is a new company, there would be not brought forward MAT credit	Brought forward MAT credit cannot be set-off against income u/s. 115BAA.

★ RESIDENTIAL STATUS OF A COMPANY [SEC.6 (3)]

Section	Company	Residential status
6(3)(i)	Indian company	Always resident in India
6(3)(ii)	A foreign company (whose turnover/ gross receipt in the previous year is more than Rs. 50 crore)	It will be resident in India if its place of effective management (POEM), during the relevant previous year, is in India
6(3)(ii)	A foreign company (whose turnover/gross receipt in the previous year is Rs. 50 crore or less)	Always non-resident in India

Place of effective management (POEM) as per Circular No. 6/2017 - "Place of effective management" (POEM) is an internationally recognized test for determination of residence of a company incorporated in a foreign jurisdiction. The process of determination of would be primarily based on the fact as to whether or not the company is engaged in active business outside India.

COMPANY ENGAGED INACTIVE BUSINESS OUTSIDE INDIA - The place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India.

- **Active business outside India -A company shall be said to be engaged in "active business outside India" if-**

a. The passive income is not more than 50 per cent of its total income;

b. Less than 50 per cent of its total assets are situated in India;

c. Less than 50 per cent of total number of employees are situated in India or are resident in India; and

d. The payroll expenses incurred on such employees is less than 50 per cent of its total payroll expenditure.

- **Passive income** - "Passive income" of a company shall be aggregate of,

a. income from the transactions where both the purchase and sale of goods is from/ to its associated enterprises; and

b. income by way of royalty, dividend, capital gains, interest or rental income;

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

OTHER CASES

The location where a company's Board regularly meets and makes decisions may be the company's place of effective management provided, the Board-

a. Retains and exercises its authority to govern the company; and

b. Does, in substance, make the key management and commercial decisions necessary for the conduct of the company's business as a whole.

★ RESIDENTIAL STATUS & INCIDENCE OF TAX

Nature of income	Resident	Non – resident
Income received in India (no matter where it is earned)	Taxable	Taxable
Income earned in India (no matter where it is received)	Taxable	Taxable
Income earned and received outside India from a source controlled from India	Taxable	Not Taxable
Income earned and received outside India from a source not controlled from India	Taxable	Not Taxable

Note: Past year untaxed income brought in India shall not be taxable in the current year; however, past year file shall be reassessed.

- **Remittance v/s Receipt:** Receipt is different from remittance. The receipt of income refers to the first occasion when the recipient gets the money under his control. Once amount is received as income any subsequent remittance of amount to India dose not result income in India.
- If income is accrued and received outside India in any year preceding the previous year and later on remitted to India in current financial year is not taxable.

★ MINIMUM ALTERNATE TAX SEC [115JB (1)]

Where in the case of a company the income tax payable on the total income as computed under income tax act is less than 15% of its book profit [FA 2019], such book profit shall be deemed to be the total income of the assessee.

NOTES

- Advance tax provisions are applicable to tax payable u/s 115JB hence assessee is liable to pay interest under section 234B and 234C.
- Every company shall for the purpose of this section, prepare its profits and loss account for the relevant previous year in accordance with the provisions of part II and III of schedule III to the companies Act 2013.
- Surcharge. EC and SHEC shall be applicable on tax payable under MAT.

★ HOW TO CALCULATE BOOK PROFIT? [SEC 115JB (1) & (2)]

For the purpose of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared as per sub-section (2) above, AS

INCREASED BY –

	Less Item	Explanation
1	The amount withdrawn from any reserve or	
2	Income exempt u/s 10 [except section 10(38)], 11 and 12	
3	The amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets)	
4	The amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of asset	
5	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;	

6	**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 rate specified in Chapter XII, if such income is credited to the statement of profit and loss 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 Section 115JB(1); or
7	**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,
8	The amount of loss on transfer of units referred to in Section 47(xvii) computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit and loss, as the case may be; or
9	The amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF; or
10	**The aggregate amount of unabsorbed depreciation and loss brought forward in case of a:** a) Company, and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government under section 242 of the said Act. b) Company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016. It may be noted that loss does not include depreciation. A company would be a subsidiary of another company if such other company holds more than half in the nominal value of equity share capital of the company. [Amended by Finance (No. 2) Act, 2019 w.e.f. 01.04.2020 i.e. AY 2020-21]
11	The amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account in case of a company other than the company referred to in point 10. **Explanation:** (a) the loss shall not include depreciation; (b) the above provisions shall not apply if the amount of loss brought forward or unabsorbed depreciation, is nil; or
12	The amount of profits of sick company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company u/s. 17(1) of the SICA, 1985, and ending with the

	assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
13	The amount of deferred tax, if any such amount is credited to the statement of profit and loss.

★ **MAT CREDIT: SECTION 115-JB**

1. **Relevant year in which tax credit becomes available:** tax credit becomes available in the assessment year in which the assessee pays minimum alternate tax in accordance with provisions of section 115JB.
2. **Amount of MAT credit to be allowed:** The tax credit to be allowed shall be the difference of the tax paid for any assessment year under section 115JB (1) and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act.

   No interest to be payable: No interest shall be payable on the tax credit allowed under this section.
3. **Period for which tax credit is allowed:** the amount of tax credit shall be carried forward upto 15 years immediately succeeding the assessment year in which tax credit becomes available.
4. **Year in which tax credit shall be set-off:** The tax credit shall be allowed set-off in a year when tax payable on the total income computed in accordance with the provisions of this Act exceed minimum alternate tax u/s 115JB.
5. **Amount of tax credit eligible shall be set-off:** set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of section 115JB, as the case maybe for that assessment year.
6. **Credit not to be allowed to successor LLP:** In case of conversion of a private company or unlisted public company into a limited liability partnership under the Limited Liability Partnership Act, the provisions of this section shall not apply to the successor limited liability partnership.

★ **PERMANENT ESTABLISHMENT IN INDIA?**

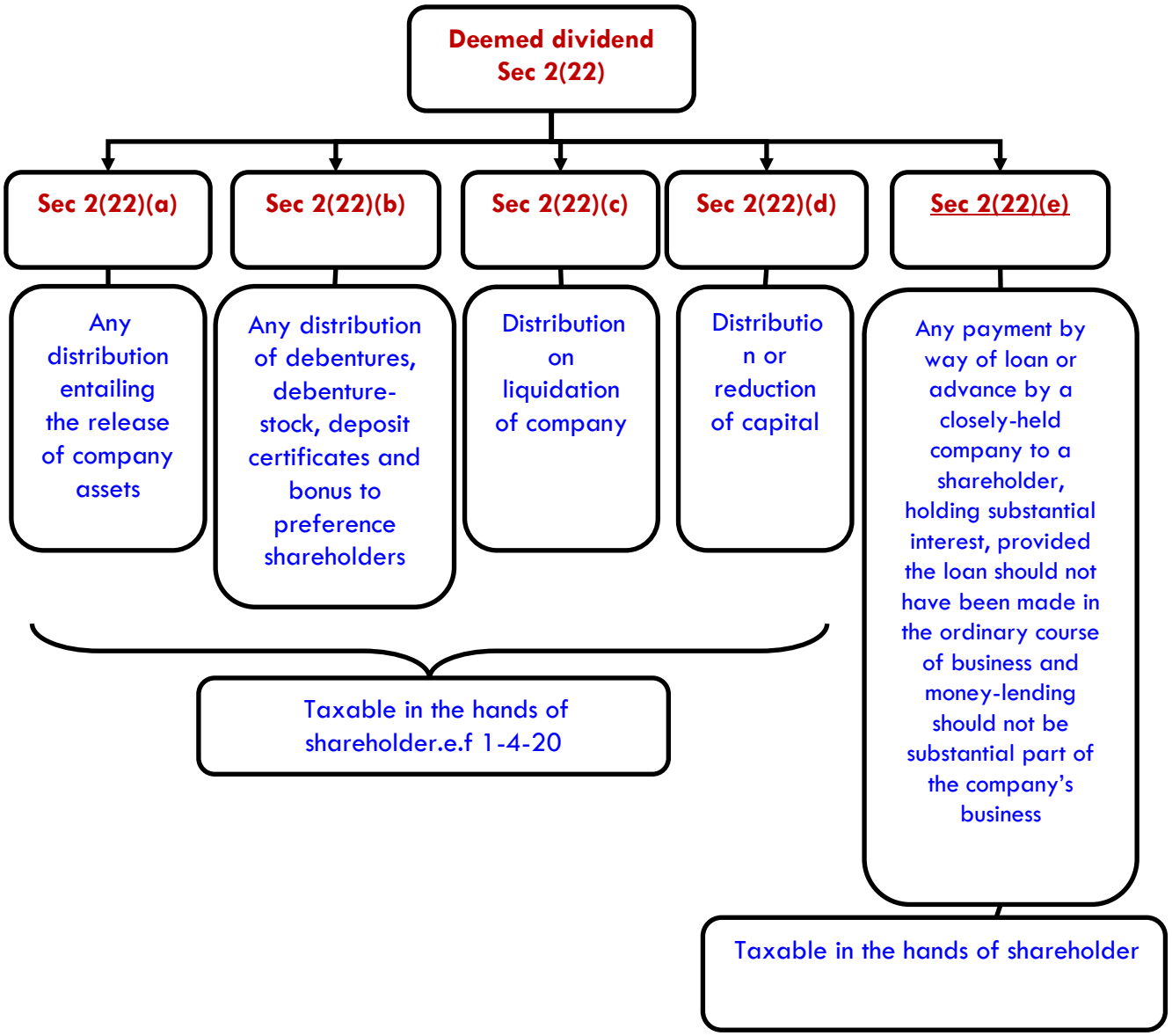
A non-resident or a foreign company is said to have a permanent establishment in India has been clarified as per Circular No. 5/2004 dated 28.9.2004 issued by CBDT. Therefore, a non-resident or a foreign company is said to have a permanent establishment in India, if the said

non-resident or foreign company carries on business in India through a branch, sales office etc. or through an agent (other than an independent agent) who habitually exercises an authority to conclude contracts or regularly delivers goods or merchandise or habitually secures orders on behalf of the non-resident principal. In such a case, the profits of the non-resident or foreign company attributable to the business activities carried out in India by the permanent establishment become taxable in India.

DIVIDEND & DIVIDEND DISTRIBUTION TAX (DDT)

What is dividend: Dividend in its ordinary connotation means the sum paid to or received by a shareholder proportionate to his shareholding in a company out of the total sum distributed. However, section 2(22) of the Income-tax Act, 1961 has devised a special inclusive definition of dividend. As per the definition given in section 2(22), 'dividend' includes deemed divided which is discussed below.

★ DEEMED DIVIDEND 2(22)



★ TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES [SECTION 115-0]

Not Applicable w – e – f 01/04/20

★ SECTION 115BBD: TAX ON CERTAIN DIVIDEND RECEIVED FROM FOREIGN COMPANIES

1. Where the total income of an assessee, being an Indian company, includes any income by way of dividends declared, distribute or paid by a specified foreign company, the income-tax payable shall be the aggregate of-

a. The amount of income-tax calculated on the income by way of such dividends, at the rate of 15%; and

The amount of income tax which with the assessee would have been chargeable had its total income been reduced by the aforesaid income by way of dividends.

2.	Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing its income by way of dividends referred to in sub-section (1).
3.	In this section-
(i)	"Dividends" shall have the same meaning as is given to "dividends" in clause (22) of section 2 but shall not include sub-clause (e) thereof
(ii)	"Specified foreign company" means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company.
	ALTERNATE MINIMUM TAX SEC 115JC
1.	**Applicability:** The provisions shall be applicable to a person, other than a company, whose regular income – tax payable for a previous year is less than the alternate minimum tax payable.
2.	**Adjusted total income to be deemed income:** If regular income tax payable for a previous year is less than the alternate minimum tax payable then the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay tax on such income @ 18.5% of adjusted total income.
	Under section 115JC, alternate minimum tax in the case of a non-corporate assesse is 18.5 per cent of adjusted total income. In order to promote the development of world class financial infrastructure in India, section 115JC has been amended (W.e.f. the Assessment Year 2019 – 20) so as to provide that in case of a unit located in an International Financial Service Centre, the alternate minimum tax shall be calculated at the rate of 9 per cent.
3.	**Meaning of Adjusted Total Income:** Adjusted Total Income shall be the total income as increased by:
a.	Deductions claimed under sections 80IA to 80RRB (other than section 80P);
b.	Deduction under section 10AA; and
c.	Deduction claimed, if any, under section 35AD as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under section 35AD was allowed in respect of the assets on which the deduction under that section is claimed. (Bold portion amended by Finance (No.2) Act, 2014 w.e.f. 1.4.2015 i.e. AY 2015 – 16).
4.	**Provisions applicable when adjusted total income exceeds Rs.20 lakhs:** The above provisions shall not apply to an individual or HUF or an AOP / BOI, whether incorporated or not, or an artificial juridical person, if the adjusted total income of such person does not

	exceed Rs.20 lakhs.
5.	**Report to be obtained from a Chartered Accountant:** Every such person shall obtain a report,
	in prescribed form, from a chartered Accountant, certifying that the adjusted total income
	and the alternate minimum tax have been computed in accordance with the provisions of
	this Chapter and furnish such report on or before the due date of filing of return under
	section 139(1).
6.	**Tax credit for alternate minimum tax (Section 115JD):** The credit for tax paid by a person
	under section 115JC shall be allowed in accordance with the provisions of this section as
	under:
a.	Tax credit to be allowed = Alternate minimum tax paid – regular income tax payable.
b.	No interest shall be payable on tax credit so allowed.
c.	The tax credit so allowed shall be credited forward and set – off during 15 subsequent
	assessment years.
d.	If the regular income tax exceeds the alternate minimum tax, the tax credit shall be allowed
	to be set off to the extent of the excess of regular income tax over the alternate minimum
	tax and the balance of the tax credit, if any, shall be carried forward.
	Note: An amendment has been made under Section 115JEE to provide that even if the
	assessee has not claimed any deduction under section 10AA or section 35AD or Chapter VI
	– A in any previous year and the adjusted total income of that year does not exceed Rs.20
	lakh, it would still be entitled to set – off his brought forward AMT credit in that year. (Bold
	portion amended by Finance (No.2) Act, 2014 w.e.f. 1.4.2015 i.e. AY 2015 – 2016).

Chapter 4

GENERAL ANTI AVOIDANCE RULES 'GAAR'

★ BACKGROUND

General Anti-Avoidance Rule (GAAR) is a concept which generally empowers the Revenue Authorities in a country to deny the tax benefits of transactions or arrangements which do not have any commercial substance or consideration other than achieving the tax benefit. Denial of tax benefits by the Revenue Authorities in different countries, often by disregarding the form of the transaction, has been a matter of conflict between the

★ CHAPTER X-A [INCOME TAX ACT 1961]

Chapter X-A under Income Tax Act, 1961 ('Act') has been inserted to include General Anti-Avoidance Rules ('GAAR') to be applicable from April 1, 2012. However, the protest from industry which feared arbitrary usage of power by tax officers forced the government to defer its implementation and to constitute an Expert Committee under the chairmanship of Dr. Parthasarathi Shome to frame guidelines for GAAR after consultations with all the stakeholders. Following the report of Dr. Shome Committee, various amendments were carried out under the tax law and clarifications were provided by CBDT through issue of Circular. With effect from April 1, 2017, GAAR have finally become effective.

★ GENERAL ANTI-AVOIDANCE RULE

Applicability of General Anti-Avoidance Rule [Section 95]: Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.

Even in cases where relief is available under Double Taxation Avoidance agreement ('DTAA'), the tax payer will still be continued to be monitored by the provisions of GAAR by virtue of section 90(2A) of the Act. CBDT vide Circular No. 7 of 2017, dated 27-1-2017 further clarified that anti-abuse rules in tax treaties may not be sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. If a case of avoidance is sufficiently addressed by Limitation of Business

('LOB') in the treaty, there shall not be an occasion to invoke GAAR.

Rule 10U of the Income Tax Rules, 1962 ('Rules') restrict applicability of GAAR only in cases where tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does exceed a sum of rupees three crore.

★ **RULE 10U OF INCOME-TAX RULES, 1962 (RULES) INTER ALIA PROVIDES THAT THE PROVISIONS OF GAAR WILL NOT APPLY TO ARRANGEMENTS WHERE**

- the tax benefit arises prior to 1 April 2017
- the tax benefit in the relevant assessment year does not exceed INR 3 crore

It is to be noted that the threshold of INR 3 crore is not taxpayer specific and it has to be determined with regard to all the parties to the arrangement. Further, the Rules also provide that the tax benefit shall be with reference to the amount of tax, and in the case of an increase in loss, it will be with reference to the tax that would have been chargeable had the increase in loss referred to therein been the total income.

★ **SECTION 99 OF THE ACT PROVIDES THAT FOR THE PURPOSES OF DETERMINING WHETHER A 'TAX BENEFIT' EXISTS**

a. The parties who are connected persons in relation to each other may be treated as one and the same person;
b. any accommodating party may be disregarded;
c. The accommodating party and any other party may be treated as one and the same person;
d. The arrangement may be considered or looked through by disregarding any corporate structure.

The term connected person is defined as any person who is connected directly or indirectly to another person and to include several specific categories of persons set out therein. Thus, in addition to the specific categories, it may still be possible for a person to be a connected person on the basis of the general test.

★	**IMPERMISSIBLE AVOIDANCE AGREEMENT**
	Impermissible avoidance arrangement [Section 96]: An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it:
a.	Creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
b.	Results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;
c.	Lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or
d.	Is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.
	Hence, there are a couple of tests that should be conducted and if both the results are positive, then a would be declared as an "Impermissible Avoidance Arrangement". The main purpose / intent of the arrangement is to obtain a tax benefit
	The arrangement should have one or more below mentioned specified elements:
a.	The arrangement creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
b.	The arrangement results, directly or indirectly, in the misuse, or abuse, of the provisions of the Act;
c.	The arrangement lacks commercial substance or is deemed to lack commercial substance under section 97 of the Act, in whole or in part;
d.	The arrangement is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bonafide purposes.
★	**SECTION 97 OF THE INCOME TAX ACT, 1961,**
	provides certain situations where the arrangement will be deemed to lack commercial substance.

Where the substance of the arrangement is inconsistent with, or differs significantly from its form

Clause (a) of section 97(1) codifies the doctrine of substance over form. It implies that where substance of an arrangement is different from what is intended to be shown by the form of the arrangement, then tax consequence of a particular arrangement should be assessed based on the 'substance' of what took place. In other words, it reflects the inherent ability of the law to remove the corporate veil and look beyond form.

Where the arrangement involves

Round trip financing - Section 97(2) of the Act defines round trip financing to include any arrangement in which, through a series of transactions, funds are transferred among the parties to the arrangement and such transactions do not have any substantial commercial purpose other than obtaining the tax benefit.

★ **GAAR V/S SAAR**

The following are some distinguishing features between GAAR and SAAR.

SAAR [SPECIFIC ANTI AVOIDANCE RULES]

- These are specific and help reduce time and costs involved in tax litigation
- These provide certainty to any tax payer while formalising specific arrangements
- These don't provide any discretion to the tax authorities
- There is always a possibility that the tax payers find loopholes and circumvent these limited application, specific provisions

GAAR [GENERAL ANTI-AVOIDANCE RULES]

- These involve necessarily granting the discretion to the tax authorities to invalidate the arrangements as impermissible tax avoidance.
- They have a far broader application and hence interpreted in a more extensive manner.
- GAAR has the potential to counter more effectively and outsmart the tax payers in their "out of the box thinking" and their approach in devising new means of tax avoidance.

★ EXCLUSIONS FROM GAAR

★ APPLICATION OF GENERAL ANTI AVOIDANCE RULE [RULE 10U]

The provision of GAAR not to apply in certain cases as follow:

An arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of rupees three crore;

A Foreign Institutional Investor,–
Who is an assessee under the Act;
Who has not taken benefit of an agreement referred to in section 90 or section 90A as the case may be; and

Who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable, in relation to such investments;

A person, being a non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor;
Any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the 1st day of April, 2017 by such person.

The Consequences

GAAR has been brought into effect from 1 April 2017. Hence, it might take at least a couple of years to gauge how and when the tax authorities invoke GAAR and how far-reaching the implications would be. The Act meanwhile contains provisions relating to the consequences of an impermissible avoidance arrangement, the particulars of which are briefly discussed below.

Section 95 of the Act dealing with the applicability of GAAR opens with a non-obstante clause i.e. the clause should prevail despite anything to the contrary in the provision mentioned in such clause. Hence, the consequences in relation to tax arising from an

	arrangement can be determined, regardless of the consequences that would otherwise arise in respect of the arrangement under the normal provisions of the Act.
	The Act provides that the power to determine the consequences shall include (but not be limited to):
a	disregarding, combining or characterizing any step in, or part of or whole of the impermissible avoidance arrangement;
b	treating the impermissible avoidance arrangement as if it had not been entered into or carried out;
c	disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;
d	deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;
e	reallocating amongst the parties to the arrangement– **(i)** any accrual, or receipt, of a capital nature or revenue nature; or **(ii)** any expenditure, deduction, relief or rebate;
f	treating– **(i)** the place of residence of any party to the arrangement; or **(ii)** the situs of an asset or of a transaction, at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or
g	Considering or looking through any arrangement by disregarding any corporate structure.
	It is also provided that, while determining the consequences, any equity can be re-characterized as debt or vice versa, any accrual or receipt of a capital nature can be treated as revenue or vice versa & any expenditure, deduction, relief or rebate might be re-characterized. The provision clearly specifies that the consequences are not limited to the list provided and that they can be determined in any manner deemed appropriate by the tax authorities depending on the circumstances of the case. The power given to the tax authorities to determine the consequences of an impermissible avoidance arrangement are extremely open ended. However, it must be kept in mind that the consequences determined must be in relation to tax. It would be necessary for the tax authorities to show that the determination of the tax consequences is appropriate with regards to the circumstances of the case. This would imply that the tax consequences must be aimed at counteracting the tax benefit that would have arisen from the arrangement in the absence of GAAR, rather than punishing the taxpayer.

Another question that arises is whether corresponding adjustments are permissible. It has been represented that corresponding adjustments should be permitted while determining the consequences of GAAR. For example, if by applying GAAR, an interest payment is characterized as dividend and the payer is required to pay Dividend Distribution Tax (DDT), then the tax liability of the recipient should be computed by treating the payment as exempt dividend. This observation is merely a policy view and not based on interpretation of the statute. However, corresponding adjustments too must be subject to the overall limitation that they are appropriate in the circumstances of the case.

★ **SOME CASE STUDIES**

Illustration 1

M/s ABC Ltd. is an Indian Company. It sets up a unit in a SEZ in FY 2017-18 for manufacturing of cement. It claims 100% deduction of profits, earned from that unit in FY 2020-21 and subsequent years per Sec 10AA of the Act. Would GAAR be invoked in that case?

Solution

There is an arrangement of setting up a unit in a SEZ which results in tax benefits. However, this is clearly a case of tax mitigation wherein the assessee is taking advantage of a benefit offered to him vide adherence to the conditions so imposed, and the consequences that emanate from it, that is setting up a business in an SEZ area. Hence, the Revenue would not ideally invoke GAAR in this situation.

Illustration 2

M/s XYZ Ltd. has 2 factories, one which produces certain goods in a non SEZ area and one in a SEZ area. It diverts produce from the non SEZ factory and shows the same as being manufactured in the SEZ factory, whilst it is only packaging the goods therein. Would GAAR apply in this case?

Solution

This is a clear case of misrepresentation of facts by showing production of non SEZ units as within the SEZ unit, and hence falls in the bracket of tax evasion and not tax avoidance. Hence, GAAR would not be invoked in this case as GAAR intends to tackle only tax avoidance

and not tax evasion.

Illustration 3

DEF Ltd. has 2 factories and moves the produce of the non SEZ factory at a price considerably lower than the fair market value, to the SEZ Factory. This lowers the cost of production of the SEZ Factory and the goods are sold from therein after insignificant value addition. Consequently, the SEZ Factory shows higher profits and that entitles the assessee to claim a higher deduction from the computation of Income. Can GAAR be invoked?

Solution

There is no misrepresentation of facts in this situation and hence there is no tax evasion. In this case the company has tried to shift the profits from a taxable zone to a zone with tax benefits and hence would be dealt with by the transfer pricing regulations. Hence, GAAR will not be invoked in this case.

Chapter 5

INTERNATIONAL TAXATION

TRANSFER PRICING

★ INTERNATIONAL TRANSACTION [SEC. 92B]

1. Meaning:

a. International Transaction means a transaction between two or more Associated Enterprises.

b. Either both or at least one of the enterprises should be a Non-Resident

c. It should be in the nature of –

- Purchase, Sale or Lease of tangible or intangible property,
- Provision of Services
- Lending or Borrowing of money
- Any other transaction having bearing on Profits/ Income/ Assets of such enterprises.

d. It includes a mutual agreement or arrangement between two or more Associated Enterprises for –

• Allocation of, or • Apportionment of, or • Contribution to	any cost or expenses in connection with a benefit, service or facility provided or to be provided to one or more of such enterprises

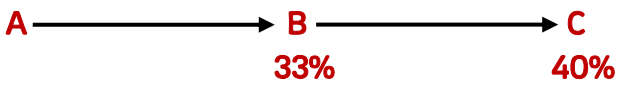
Transaction between a Resident Assessee and its Foreign Branches or between its two or more Foreign Branches	• One of the Parties to the International Transaction should be a Non-Resident
	• When a company is resident in India, all its Foreign Branches will be deemed to be resident in India, and any transaction between Head Office and Branches or between branches inter-se will be considered as transaction between Residents.
	• Hence this will not be considered as International Transaction.
Transaction between a Non-Resident Assessee and its Indian Branches or between its two or more Indian Branches	• Indian Branch is considered to be a Permanent Establishment of a Foreign Assessee.
	• Any transaction between Indian Branch with its Head Office abroad, or with any of the Branches of the foreign Assessee outside India shall be considered as International Transaction.

2.	**Deemed Transaction between Non-Associated Enterprises:** A transaction by an Enterprises with a person other than an Associated Enterprises shall be deemed to be an International transaction between two Associated Enterprises, if –
a.	There is a prior agreement in relation to the relevant transaction between such person and the Associated Enterprises, or
b.	The terms of the relevant transaction are determined in substance between such other person and the Associated Enterprises.
	Where the Enterprise or the Associated Enterprise or both of them are Non-Residents, irrespective of whether such other Person is a Non-Resident or not (w.e.f. 01/04/2015).

★ SECTION 92A: ASSOCIATED ENTERPRISE' & DEEMED ASSOCIATED ENTERPRISES

As per Section 92A, associated enterprise means an enterprise which participates, directly or indirectly, in management or control or capital of other enterprise. Further, if one or more persons participate, directly or indirectly, in the management or control or capital of two enterprises, those two enterprises are associated enterprise.

Deemed associated enterprises: Two enterprises are deemed to be associated enterprises if, at any time during the previous year

a	One holds, directly or indirectly, shares carrying 26% or more of voting power in other enterprise. **Example:** A Ltd. holds 33% of voting power in B Ltd. and B Ltd. holds 40% voting power in C Ltd.  In above situation, A Ltd. holds 33% of voting power in B Ltd. directly and 40% of voting power in C Ltd. indirectly (i.e. through B Ltd.). Therefore, both B Ltd. & C Ltd. are deemed associated enterprises of A Ltd
b	Any person holds, directly or indirectly, shares carrying 26% or more voting power in both of them. Mr. A holds 40% of shareholding in both X Ltd. and Y Ltd. where In this situation, since Mr. A directly holds 40% of shareholding in both X Ltd. and Y Ltd., X Ltd. & Y Ltd. will be deemed associated enterprises
c	A loan advanced by one to the other constitutes 51% or more of book value of total assets of other. **Example:** Book value of total assets of Y Ltd. is Rs. 100 crores. X Ltd. advances loan of Rs. 60 crores to Y Ltd. Since, in this case, X Ltd. advances loan of Rs. 60 Crores to Y Ltd, which is 60% of the book value of total assets of Y Ltd. Hence, X Ltd. & Y Ltd. are deemed associated enterprises

d	One enterprise guarantees 10% or more of the total borrowings of the other enterprise.
e	One appoints more than half of board of directors or one or more executive directors of the other. **Example:** X Ltd. has 15 directors on its Board. Out of that, Y Ltd. has appointed 8 directors. In such case, X Ltd. and Y Ltd. are deemed associated enterprises
f	Any person appoints more than half board of directors or one or more executive directors of both **Example:** Mr. A appointed 9 directors out of 15 directors of X Ltd. and appointed 2 executive directors on the board of Y Ltd. In such case, since a common person i.e. Mr. A appointed more than half of the directors in X Ltd. and appointed 2 executive directors in Y Ltd., both X Ltd. and Y Ltd. are deemed associated enterprises
g	Manufacture/processing of goods or business carried on by one is fully dependent on use of know-how, patents, copyrights, etc. owned by the other, or in respect of which other has exclusive rights
h	90% or more of raw materials required by one are supplied by the other or by persons specified by other, and prices and other conditions relating to the supply are influenced by the other enterprise
i	Goods manufactured/processed by one are sold to the other enterprise or to persons specified by other, and the prices and other conditions relating thereto are influenced by such other enterprise
j	Where one enterprise is controlled by an individual/HUF, the other enterprise is also controlled by such individual/HUF or his relative or jointly by such individual/HUF and such relative **Example:** Mr. A and Mr. B are relatives. Mr. A has control over X Ltd. and Mr. B has control over Y Ltd. Therefore, both X Ltd. and Y Ltd. will be deemed associated enterprises
k	One enterprise is a firm/ Association of Persons /Body of Individuals and other enterprise holds 10% or more interest in such firm/ Association of Persons /Body of Individuals
l	There exists between the two enterprises, any relationship of mutual interest, as may be prescribed

In Summary, two enterprises will be deemed as Associated Enterprises if

Quantum of Interest	Criteria applied for Associated Enterprises
26% or more	Shareholding with voting power – either direct or indirect
51% or more	Advancement of loan by one entity to other constituting 51% or more of the book value of the total assets of the other entity
51% or more	Based on the board of directors appointed by the governing board of the entity in the other
90% or more	Based on the quantum of supply of raw materials and consumables by one entity to the other
10% or more	Total Borrowing Guarantee by one enterprises for other

10% or more	Interest by a firm or association of Person (AOP) or by a Body of Individual (BOI) in other firm AOP or firm or BOI

★ SECTION 92BA: SPECIFIED DOMESTIC TRANSACTION

1	Any transaction referred in Sec. 80A
2	Any transfer of goods or service referred to in Section 80IA(8)
3	Any business transacted between the Assessee and other person as referred to in Section 80IA(10)
4	Any transaction, referred to in any Section under Chapter VI-A or Section 10AA, to which provision of Section 80IA(8) or (10) is applicable, or
5	Any other transaction as may be prescribed. And where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of Rs. 20 crore these two important concepts of chapter X of Income Tax Act, 1961."

★ INTERNATIONAL TRANSACTION [SEC. 92B]

Meaning	a	International Transaction means a transaction between two or more Associated Enterprises
	b	Either both or at least one of the enterprises should be a Non-Resident
	c	**It should be in the nature of –** • Purchase, Sale or Lease of tangible or intangible property, • Provision of Services • Lending or Borrowing of money Any other transaction having bearing on Profits/ Income/ Assets of such enterprises.
	d	**It includes a mutual agreement or arrangement between two or more Associated Enterprises for –** • **Allocation of, or** • **Apportionment of, or** • **Contribution to more of such enterprises** any cost or expenses in connection with a benefit, service or facility provided or to be provided to one or

Transaction between a Resident Assessee and its Foreign Branches or between its two or	•	One of the Parties to the International Transaction should be a Non-Resident
	•	When a company is resident in India, all its Foreign Branches will be deemed to be resident in India, and

more Foreign Branches		any transaction between Head Office and Branches or between branches inter-se will be considered as transaction between Residents.
	•	Hence this will not be considered as International Transaction.
Transaction between a Non-Resident Assessee and its Indian Branches or between its two or more Indian Branches	•	Indian Branch is considered to be a Permanent Establishment of a Foreign Assessee.
	•	Any transaction between Indian Branch with its Head Office abroad, or with any of the Branches of the foreign Assessee outside India shall be considered as International Transaction.

★ MEANING OF ARMS LENGTH PRICE

The relevant provisions of section 92C are as follows –

Arm's length price (ALP) means a price applicable in an uncontrolled transaction i.e. a transaction between non-associated enterprises, in uncontrolled conditions.

★ COMPUTATION OF ARM'S LENGTH PRICE

1	**The arm's length price in relation to an international transaction/specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely**	
	a	Comparable Uncontrolled Price Method (CUP)
	b	Resale Price Method (RPM)
	c	Cost Plus Method (CPM)
	d	Profit Split Method (PSM)
	e	Transactional Net Margin Method (TNMM)
	f	Such other method as may be prescribed by the Board
2	•	The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed.
	•	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 1% of the latter in respect of wholesale trading and 3% of latter in 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.
	•	Provided also that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction, shall be computed in such manner as may be prescribed
3	**Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that**	
	a	The price charged or paid in an international transaction or specified domestic transaction has not been determined in accordance with sub-sections (1) and (2); or
	b	Any information and document relating to an international transaction or specified domestic transaction have not been kept and maintained by the assessee in accordance with the provisions contained in section 92D(1) and the rules made in this behalf; or
	c	The information or data used in computation of the arm's length price is not reliable or correct; or
	d	The assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under section 92D(3), the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction or specified domestic transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him
	Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer	
4	•	Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined:
	•	Provided that no deduction under section 10AA or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section:
	•	Provided further that where the total income of an associated enterprise is computed under this sub-section on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XVIIB, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise

★	**METHOD 1: STEPS OF RESALE PRICE METHOD OF COMPUTATION OF ARM'S LENGTH PRICE**
1.	Identify the resale price at which property/services purchased from an associated enterprise are resold/ provided to an unrelated enterprise.
2.	Deduct normal gross profit margin earned by the assessee or an unrelated enterprise from purchase and resale/providing of similar property/services in comparable uncontrolled transaction(s).
3.	Deduct expenses incurred by assessee for purchase of property or obtaining of services.
4.	Adjust price so arrived at to consider differences between international transaction and comparable transaction, or between nature of enterprises, which could affect gross profit margin in open market.
5.	Arm's length price for property/services purchased from associated enterprise = Price arrived at (4).
★	**METHOD 2: STEPS OF COST PLUS METHOD FOR COMPUTATION OF ARM'S LENGTH PRICE**
a.	Determine direct and indirect costs of production incurred by assessee in respect of property or services provided to an associated enterprise.
b.	Determine normal gross profit mark-up arising from provision of similar property/services by the assessee or an unrelated enterprise in comparable uncontrolled transaction(s).
c.	Adjust normal gross profit mark-up in (2) above, to consider differences between international transaction and the comparable uncontrolled transactions, or between nature of enterprises, which could affect such profit mark-up in open market.
d.	Increase direct and indirect costs referred (1) by the adjusted profit mark-up arrived at in (3).
e.	Arm's length price = Price arrived at in (4) above.
★	**METHOD 3: STEPS OF 'PROFIT SPLIT METHOD' OF COMPUTATION OF ARM'S LENGTH PRICE**
	1st Approach: Relative Contribution Method –
a.	Determine combined net profit of all associated enterprises from the international transaction.
b.	Evaluate relative contribution of associated enterprises to earning of such combined net profit, on the basis of the functions performed, assets employed and risks assumed by each enterprise
c.	Split combined net profit amongst all enterprises in ratio of their relative contributions, as above.
d.	Arm's length price = Cost incurred by enterprise + Profit apportioned in c above.

	2nd Approach: Residual Split Method (Two Tier Method) -
a.	Determine combined net profit of all associated enterprises from the international transaction.
b.	Partially allocate the combined net profit so as to provide each enterprise it with a basic return appropriate for the type of international transaction, with reference to market returns.
c.	Split residual net profit amongst all enterprises in ratio of their relative contributions, as above.
d.	Arm's length price = Cost incurred + return and profit apportioned in (b) and (c) above.
★	**METHOD 4: STEPS OF TRANSACTIONAL NET MARGIN METHOD (TNMM)' OF COMPUTING ARM'S LENGTH PRICE**
1.	Compute net profit margin of assessee from international transaction entered into with associated enterprise having regard to costs incurred or sales effected or assets employed or other relevant base.
2.	Compute net profit margin of assessee or an unrelated enterprise from comparable uncontrolled transactions) [regard to the same base.
3.	Adjust net profit margin referred in (2) above to take into account differences between international transaction and the comparable uncontrolled transactions, or between nature of enterprises, which could materially affect the of net profit margin in the open market
4.	Cost in international transaction = (Price charged x 100) / (100 + net margin in (1) above).
5.	Arm's length price = Cost in international transaction + Net margin computed in (3) above.
★	**METHOD 5: COMPARABLE UNCONTROLLED PRICE METHOD**
1.	Identify the price charged or paid for property transferred or services provided.
2.	Adjust such price to account for difference if any between the international transaction and the CUPM.
3.	The adjusted price is ALP.
4.	Compare ALP with price charged in the international transaction. If the price charged in the international transaction is lower than the ALP then an adjustment is to be paid to the price charged in the international transaction by the amount of such variance.

★ WHO IS TRANSFER PRICING OFFICER (TPO)

For the purpose of Section 92CA "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorized by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.

★ SECTION 92CA: REFERENCE TO TRANSFER PRICING OFFICER

1	**Meaning of Transfer Pricing Officer:** Transfer Pricing Officer (TPO) means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorized by the Board to perform all or any of the functions of an Assessing Officer specified in Sections 92C and 92D in respect of any person or class of person
2	**Reference to Transfer Pricing Officer:** The Assessing Officer if he considers it necessary he may, with the previous approval of the Commissioner, refer the computation of the ALP in relation to the international transaction or specified domestic transaction to the Transfer Pricing Officer. (Inserted by Finance Act, 1012 w.e.f. 1-4-2013]
3	**Service of notice to the assessee to furnish evidences:** Where a reference is made to TPO, he shall serve a notice on the assessee requiring him to produce any evidence on which the assessee may rely in support of the computation made by him of the ALP
4	**TPO's power to determine ALP of international transactions not referred by AO:** Where any other international transaction, other than an international transaction referred by the Assessing Officer, comes to the notice of Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply as if such other international transaction is an international transaction referred to him by the Assessing Officer
5	**TPO's power to determine ALP of international transactions not reported u/s 92E:** Where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him. [Inserted by Finance Act, 2012 w.e.f. 1-6-2002.]
6	**Determination of ALP and order to be passed in writing:** On the date specified in the notice, or as soon thereafter as may be: Determine the arm's length price in relation to the international transaction or specified domestic transaction in accordance with Section 92C (3); and [Inserted by Finance Act, 2012 w.e.f. 1-4-2013] and Send a copy of his order to the Assessing Officer and to the assessee

	7	**Assessment to be as per ALP determined by TPO:** On receipt of such order of the Transfer Pricing Officer, the Assessing Officer shall proceed to compute the total income of the assessee under section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer
	8	**TPO to pass order at least 60 days before the time-limit for completion of assessment:** Where a reference under this section is made, an order under this section by the Transfer Pricing Officer may be made at any time before 60 days prior to the date on which the period of limitation referred to in Section 153 or Section 153B for making the order of assessment or reassessment or recompilation or fresh assessment expires
	9	Rectification of orders passed by TPO is possible within time limit

★ **STATE THE CONSEQUENCES THAT WOULD FOLLOW IF THE ASSESSING OFFICER MAKES ADJUSTMENT TO ARM'S LENGTH PRICE IN INTERNATIONAL TRANSACTIONS OF THE ASSESSEE RESULTING IN INCREASE IN TAXABLE INCOME. WHAT ARE THE REMEDIES AVAILABLE TO THE ASSESSEE TO DISPUTE SUCH ADJUSTMENT?**

The remedies available to the assessee to dispute such an adjustment are:

(i) In case the assessee is an eligible assessee under section 144C, he can file his objections to the variation made in the income within 30 days of the receipt of draft order by him to the Dispute Resolution Panel and Assessing Officer. Appeal against the order of the Dispute Resolution Panel can be made to the Income-tax Appellate Tribunal.

(ii) In any other case, he can file an appeal under section 246A to the Commissioner (Appeals) against the order of the Assessing Officer within 30 days of the date of service of notice of demand.

(iii) The assessee can opt to file an application for revision of order of the Assessing Officer under section 264 within 1 year from the date on which the order sought to be revised is communicated, provided the time limit for appeal to the Commissioner (Appeals) or the Income-tax Appellate Tribunal has expired or the assessee has waived the right of such an appeal. The eligibility conditions stipulated in Section 264 should be fulfilled.

★ **SECTION 92CD: EFFECT OF ADVANCE PRICING AGREEMENT**

	1	**Modified return to be furnished in accordance with APA:** Where any person has entered into APA prior to the date of entering into the APA, he has furnished a return under section 139 for any assessment year to which APA applied such person shall furnish, within period of 3 months from the end of the

		month in which the said APA was entered into, a modified return in accordance with limited to the APA. i.e. modification can only be made shall on account of such APA in the return to be filed. The modified return so furnished shall be a return filed under section 139.
	2	**Modified order to be made in accordance with modified return [Amended by Finance (No. 2) Act, 2019 w.e.f. 01-09-2019] :** If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the APA applies have been completed before the expiry of period allowed for furnishing of modified return, the Assessing Officer shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, as the case may be, having regard to and in accordance with the APA. **Time-limit for making of modified order:** Notwithstanding anything contained in Section 153 or Section 153B or Section 144C, such order shall be passed within a period of 1 year from the end of the financial year in which the modified return is furnished. [Omittted by Finance (No. 2) Act, 2019 w.e.f. 01-09-2019].
	3	**Time-limit for completion of assessment/reassessment:** Notwithstanding anything in section 153 or section 153B or section 144c, such order of assessment, reassessment or recomputation of total income shall be passed within a period of 1 year from the end of the financial year in which the modified return is furnished.
	4	**Pending assessment to be completed in accordance with modified return:** Where the assessment or reassessment proceeding for an assessment year relevant to the previous year to which the APA applies are pending on the data of filing of modified return, the Assessing officer shall proceed to complete the assessment or reassessment proceeding in accordance with the APA taking into consideration the modified return so furnished.
	5	**Extension by 12 months:** Notwithstanding anything contained in section 153 or section 153B or section 144C, the period of limitation as provided in section 153 or section 144C for completion of such pending assessment proceeding shall be extended by a period of 12 months.

★ SECTION 92D: RECORDS TO BE MAINTAINED

	1	**Documents required to be maintained:** Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed. As per Rule 10D (1), **Prescribed Documents required to be maintained: Every person, -**
		i Who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof as may be prescribed;

		ii	Being a constituent entity of an international group, shall keep and maintain such information and document in respect of an international group as may be\ prescribed.
		Explanation:	
		i	"Constituent entity" shall have the meaning assigned to it in Section 286(9)(d);
		ii	"International group" shall have the meaning assigned to it in Section 286(9)(g);
		The constituent entity is required to keep and maintain the information and document irrespective of the fact whether or not any international transaction is undertaken by such constituent entity. The constituent entity has to furnish the information and document to the authority prescribed u/s. 286(1), i.e., Director General of Income-tax [Risk Assessment] in the prescribed manner, on or before prescribed date.	
	2	**Information and documents to be maintained for prescribed period:** Without prejudice to the provisions contained in section 92D(1), the Board may prescribe the period for which the information and document shall be kept and maintained under the said sub-section.	
	3	**Furnishing of records:** The Assessing Officer or the Commissioner [Appeals] may, in the course of any proceeding under this Act, require any person referred to in Section 92D(1)(i) to furnish any information or document referred therein, within a period of thirty days from the date of receipt of a notice issued in this regard. However, the Assessing Officer or the Commissioner [Appeals] may, on an application made by such person, extend the period of thirty days by a further period not exceeding 30 days.	
	4	**Furnishing of records by constituent entity of an international group to prescribed authority:** The person, referred to in Section 92D(1)(ii) shall furnish the information and document referred therein to the authority prescribed u/s. 286(1), in such manner, on or before such date, as may be prescribed.	
	5	i	Enterprise – wise documents: These are documents that describe the enterprise, the relationships with other associated enterprise, the nature of business carried out etc. This information is, largely, descriptive.
		ii	Transaction – specific documents: These are documents that explain the international transaction in a greater detail. It includes information with regard to each transaction like nature and terms of the contract, description of the functions performed, asset employed and risks assumed by each party to the transaction, economic and market analyses, etc. This information is both descriptive and quantitative in nature.
		iii	Computation related documents: These are documents which describe and detail the methods considered, actual working assumptions, policies etc., adjustments made to transfer prices and any other relevant information, data; document relied for determination of ALP.
	6	**Relief from maintenance of specified records:** If total value of international transactions (as per books of account of assesse) is upto Rs.1 core, the assesse need not to maintain specified information and documents, but he will have to substantiate that income from international transactions was computed as per Section 92.	

7	**Information and documents specified should be contemporaneous:** The information and documents specified above, should as far as possible, be contemporaneous and should exist latest by the due date mentioned under section 139(1). However, where an international transaction continues to have effect over more than one previous year, fresh documentation need not be maintained separately in respect of each previous year, unless there is any significant change in the nature of terms of the international transaction, in the assumptions made, or in any other factor which could influence the transfer price, and in case of such significant change, fresh documentation as may be necessary shall be maintained bringing out the impact of the change on the pricing of the international transaction.
8	**Period for which records to be maintained:** The specified information and documents are to be maintained for a period of 8 years from the end of the relevant Assessment Year.
9	**Furnishing of records:** The Assessing Officer or the Commissioner (Appeals) may require such person who has entered into an international transaction or specified domestic transaction to furnish specified information / documents within 30 days from date of receipt of notice issued in this regard. The said period of 30 days may be extended by a further period not exceeding 30 days.

★ SAFE HARBOUR RULES (SECTION 92CB)

The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules as prescribed under section 92CB of the Act. The term "Safe Harbour means "circumstances under which the income-tax authorities shall accept the transfer pricing declared by the assessee." The Rule provides minimum operating profit margin in relation to operating expenses a taxpayer is expected to earn for certain categories of international transactions or specified domestic transfer pricing, that will acceptable to the income tax authorities as arm's length price (ALP). The rule also provides acceptable norms for certain categories of financial transactions such as intra-group loans made or guarantees provided to non- resident affiliates of an Indian tax payers. The safe harbor rules, optional for a taxpayer, contains the conditions and circumstances under which norms / margins would be accepted by the tax authorities and the related compliance obligations.

Safe harbors carry certain benefits which are described below

1	**Compliance Simplicity:** Safe harbours tend to substitute simplified requirements in place of existing regulations, thereby reducing compliance burden and associated costs for eligible taxpayers, who would otherwise be obligated to dedicate resources and time to collect, analyze and maintain extensive data to support their inter-company transactions
2	**Certainty & Reduce Litigation:** Electing safe harbours may grant a greater sense of assurance to taxpayers regarding acceptability of their transfer price by the tax authorities without onerous audits. This conserves administrative and monetary resources for both the taxpayer and the tax administration

3	**Administrative Simplicity:** Since tax administrations would be required to carry out only a minimal examination in respect of taxpayers opting for safe harbours, they can channelize their efforts to examine more complex and high-risk transactions and taxpayers

★ FILLING OF FORM 3CEFA/ 3CEFB

Any taxpayer who has entered into an eligible international transaction or specified domestic transaction and who wishes to exercise the option to be governed by the safe harbour rules is required to file a specified form (Form 3CEFA for International Transaction or Form 3CEFB for SDT). Form 3CEFA / 3CEFB requires the taxpayer to declare the following

1	Transaction entered with an AE is an eligible international transaction or specified domestic transaction
2	Quantum of the international transaction specified domestic transaction
3	Whether the AEs country or territory is a no tax or low tax country or territory; and
4	Operating profit margin/transfer price

★ THE PENAL PROVISIONS IN CONTEXT OF TRANSFER PRICING

Section	Particulars		Amount of penalty
271(1)(c)	Penalty for concealment of income (Explanation 7 to Section 271 (1)(c)): Any amount added / disallowed in computing total income of an assessee u/s 92C(4) by substitution of ALP determined by Assessing Officer) shall be regarded as concealed income. However, the same will not be regarded as concealed income if the assesse proves that price charged in international transaction was computed as per section 92C, in good faith and with due diligence.		Minimum penalty: 100% of tax sought to be evaded Maximum penalty: 300% of tax sought to be evaded.
271AA	Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions: Where any person in respect of an international transaction or specified domestic transaction,		2% of value of each such international transaction or specified domestic transaction.
	a	Fails to keep and maintain any information and document as required by Section 92D (1) and 92D (2), or	
	b	Fails to report such transaction as he required to do, or	
	c	Maintains or furnishes an incorrect information and document.	

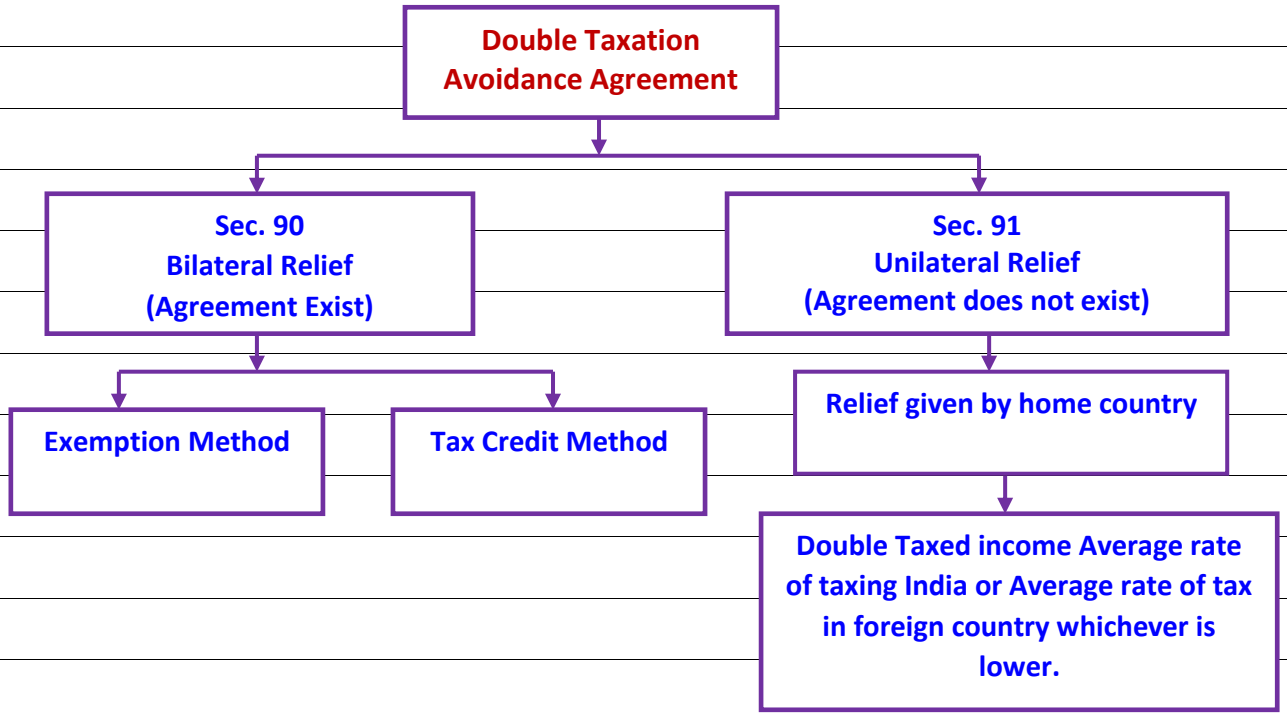
271AA(2) w.e.f. AY 2017-18	92D(4): Failure to furnish the information and the document as required u/s 92D(4)	Prescribed IT authority Rs. 5,00,000
271BA	Penalty for failure to furnish report from an Chartered Accountant as required u/s 92E.	Rs.1 lakh
271G	Penalty for failure to furnish information or document u/s 92D: Where any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by section 92D(3).	2% of value of international transaction or specified domestic transaction.

Note: As per section 273B, the penalties under section 271AA, 271BA and 271G shall not be imposable if the assesse proves that there was reasonable cause for such failure.

★ **DISTINGUISH BETWEEN 'INTERNATIONAL TRANSACTION' AND 'CROSS BORDER TRANSACTIONS'**

International Transaction	As per Section 92B, international transaction means a transaction entered into between two or more associated enterprises (at least one of which is a non-resident) for purchase/sale/ lease of tangible/intangible property or provision of services or lending/borrowing money or any other transaction (including sharing agreements for common costs) having bearing on income and assets
Deemed associated transaction	If an associated enterprise and a third person determine the terms of a transaction between third person and another associated enterprise, such transaction shall be regarded as having being entered into between two associated enterprises. E.g. A and B are associated enterprise and Z is not associated either A or B. A and Z agree to determine the terms of transaction between Z and B. Such a transaction shall be deemed to be a transaction between two associated enterprises
Cross-Border Transaction	A transaction is considered as cross-border transaction if it originates in one country and gets concluded in another country. Thus, it is not necessary that every international transaction within the meaning of section 92B is a cross-border transaction or vice-versa

★ DOUBLE TAXATION RELIEF [Sections 90 to 91]



S R	CONDITIONS	EXPLANATION	
1	Meaning of Double Taxation	Income of a person is taxed in more than one country	
2	Reason for Double Taxation	Source of Income Rule Residence Rule	
3	Relief when Agreement exist between two countries [Sec 90]	Bilateral relief	
		a	Exemption Method: Pay tax in either of country.
		b	Tax Credit Method: Pay tax in one country and take credit of tax pain in another country.
4	Relief when Agreement does not exist between two countries [Sec 91]	Unilateral relief unilateral relief will be available, if the following conditions are satisfied:	
		1	The assessee in question must have been resident in India in the previous year.
		2	The same income must have accrued or arisen to him outside India during the previous year and it should also be received outside India.
		3	Before any such relief is computed, the assessee has to prove that such income is not deemed to accrue or arise in India during the previous year.
		4	The income should be taxed both in India and in a foreign country.

5	There should be no reciprocal arrangement for relief or avoidance from double taxation with the country where income has accrued or arisen.
6	In respect of that income, the assessee must have paid by deduction or otherwise tax under the law in force in the foreign country in question in which the income outside India has arisen.
a	at the average Indian rate of tax or the average rate of tax of the said country; whichever is the lower, or
b	At the Indian rate of tax if both the rates are equal.

Chapter 6

INCOME TAX IMPLICATION ON SPECIFIED TRANSACTION

★ CAPITAL GAINS IN THE CASE OF SLUMP SALE [SECTION 50B]

1	Meaning	Slump sale means the transfer of one or more undertakings for a lump sum consideration without assigning values to the individual assets and liabilities in such sales. Undertaking shall include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities or any combination thereof not constituting a business activity.	
2	Tax treatment	**Sale consideration**	**As usual**
		Cost of Acquisition or improvement	Net worth of the undertaking
		Indexation Benefit	Not available
		Nature of gain whether short term or long term.	If undertaking is owned and held by the assessee for not more than 36 months, then capital gain shall be deemed to be short-term capital gain otherwise long-term capital gain. **Note:** Where an undertaking is owned and held by an assessee for more than 36 months immediately preceding the date of its transfer, then it shall be treated as a long-term capital asset. It makes no difference that few of the assets of the undertaking are newly acquired (i.e. for less than 36 months)
		Income Tax	
		Net worth shall be the:	
		Aggregate value of total assets of the undertaking	**xxxx**
		Less: Value of liabilities of such undertaking as appearing in the books of account.	**xxxx**
		Net worth	**xxxx**

Notes				
1	Effect of revaluation	If any change has been made in the value of assets on account of revaluation of assets etc. then such change in value shall be ignored.		
2	The aggregate value of total assets	In case of		
		•	Depreciable assets -	WDV of block of assets
		•	Capital assets in respect of which the whole of the expenditure has been allowed as a -	Nil
		•	Deduction under section 35AD Other assets -	Book value of all such assets.
3	Treatment of stock	In case of slump sale, no profit under the head 'Profit & gains of business or profession' shall arise even if the stock of the said undertaking is transferred along with other assets.		
4	Carry-forward of losses	In case of slump sale, benefit of unabsorbed losses and depreciation of the undertaking transferred shall be available to the transferor company and not to the transferee company.		
		•	Report of an Accountant	The assessee is required to furnish along with the return of income, a report of a chartered accountant in Form 3CEA indicating the computation of the undertaking or division has been correctly arrived at in accordance with the provisions of this section.

BUY BACK OF SHARES

special provisions relating to tax on distributed income of domestic company for buy back of shares.

★ **TAX ON DISTRIBUTED INCOME TO SHAREHOLDERS [SECTION 115QA]**

1. Tax on distribution income on buy back of shares to be charged @ 23.296% [Section 115QA(1)]: A domestic company shall in addition to the income-tax chargeable in respect of the total income be liable to pay additional income-tax at the rate of 20% [plus surcharge @ 12% and health and education cess @ 4% i.e. 23.2960% on any amount of distributed income on buy- back of shares from a shareholder. **[Omitted by Finance (No. 2) Act, 2019 w.e.f. 5-07-2019]**

Taxable in case of buyback of shares and other specified securities can be summarized as under:

Taxable in the hands of the	Buyback of shares by domestic companies	Buyback of shares by a company, other than a domestic company	Buyback of specified securities by any company.
Company	Subject to additional income-tax @ 23.296% [Listed companies are liable to pay tax u/s. 115QA w.e.f. 05-07-2019]	Not subject to tax in the hands of the company.	Not subject to tax in the hands of the company.
Shareholder/ holder of specified securities	Income arising to shareholders of listed / unlisted companies is exempt under section 10(34A) [Amended w.e.f. 05-07-2019]	Income arising to shareholder taxable as capital gains u/s. 46A.	Income arising to holder of specified securities taxable as capital gains u/s. 46A.

Explanation:

	Term	Meaning
a	Buy-back	Purchase by a company of its own shares in accordance with the provisions of any law for the time being in force relating to companies.
b	Distributed income	The consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed.

ISSUE OF SHARES AT PREMIUM

★ **SECTION 56(2)(VIIB) OF THE INCOME TAX ACT, 1961 COVERS TAXATION ON SHARE PREMIUM AMOUNT, THE RELEVANT PART READS AS FOLLOWS -**

Where a company, not being a company in which the public are substantially interested, receives in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares

★ **SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF SHARE OTHER THAN QUOTED SHARE [SECTION 50CA]**

Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of section 48, be deemed to be the full value of consideration received or accruing as a result of such transfer.

Explanation:

For the purposes of this section, "quoted share" means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

Hence, shares will be treated as Short Term Capital Assets.

★ **CASH CREDIT [SECTION 68]**

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any

explanation offered by such assessee-company shall be deemed to be not satisfactory, unless –

the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

In order to satisfy the condition for Cash Credit following conditions must be satisfied –

Sum found credited in the books of an assessee maintained must be for any previous year,

1	The assessee offers no explanation about the nature and source thereof,
2	If the assessee offers explanation then in the opinion of the Assessing Officer it is not satisfactory
3	Then is above cases the sum so credited may be charged to income-tax as the income of the assessee of that previous year

Cash Credit and Companies incorporated under Companies Act

Normally, Section 68 regarding Cash Credit are invoked in case of Companies in following cases subject to fulfillment of conditions discussed above –

1	Receipt of Share application money in Cash,
2	Share application money from bogus shareholders,
3	Converting black money into white money buy issuing shares with the help of formation of an investment companies,
4	Source of share application money were found doubtful,
5	Share application money shown without actual allotment to be treated as unsecured loan,
6	Transaction between group companies relating to share application in order to improve debt equity ratio,
7	Issue of shares at very high premium without sufficient justification

Illustration 1

Certain people from Mumbai slum deposited cash of Rs. 50,00,000 in their bank account and gave cheque of same amount to a closely held company ABC Private Limited as share application money. The slum people were not able to prove the source of cash which they deposited in their hands to the Assessing Officer or explanation offered by them is found to be unsatisfactory by the Assessing Officer.

Solution

Now, does above example attracts proviso to Section 68: Answer is Yes, because -

- It is a closely held company,
- An amount is found credited in the books of accounts as share application money, share capital, share premium or any such amount by whatever name called in ABC Private Limited
- The person being a resident in whose name such credit is recorded in the books of account (slum people) do not offer to the Assessing Officer an explanation about the nature and source of the sum so credited
- Thus, the amount will attract Section 68.

★ **UNEXPLAINED MONEY [SECTION 69A]**

Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

In order to satisfy the condition for Cash Credit following conditions must be satisfied –

1. The assessee must be found to be the owner of any money, bullion, jewellery or other valuable article,
2. Such money, bullion, jewellery or valuable article is/are not recorded in the books of account, if any, maintained by him for any source of income,
3. The assessee offers no explanation about the nature and source of acquisition of the

	money, bullion, jewellery or other valuable article,
4.	In case the assessee provides explanation, the same offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.
	From above we can understand that in order to attract Section 69A above conditions must be satisfied.
★	**UNEXPLAINED INVESTMENTS [SECTION 69B]**
	Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.
	In order to satisfy the condition for unexplained investment following conditions must be satisfied –
1.	In any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article,
2.	The Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income,
3.	The assessee offers no explanation about such excess amount or
4.	The explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory.
	From above we can understand that in order to attract Section 69B above conditions must be satisfied, The conditions in are cumulative in nature. Further no addition can be made in the income of assessee without any supporting evidence.

★	**GIFT [SEC. 56(2) (vii)**
	Conditions:
•	Receipts by any assessee.
•	It is received after 1st October 2009.
•	It does not fall in exempted category.
•	property includes –
a.	Immovable property being land or building or both;
b.	Share and securities
c.	Jewellery
d.	Archaeological collections;
e.	Drawings
f.	Paintings
g.	Sculptures;
h.	Any work of art; or
i.	Bullion

Category	Nature of Receipt		Conditions to be satisfied for considering Income	Extent of Income	Remarks
A	Any sum of money	a	During the previous year, assessee has received any sum of money (cash, cheque, draft, etc.) from one or more persons.	The whole of the aggregate value of such sum shall be considered as income of that previous year.	Aggregate amount of cash gift received during the period shall be considered.
		b	Such sum is received without consideration.		
		c	The aggregate value of such receipt during the previous year exceeds Rs 50,000		
B	Any immovable property	a	During the previous year, Assessee has received immovable property.	The stamp duty value of such property shall be considered as income of that previous year.	The limit of Rs. 50000/- is applicable per incidence.
		b	Such immovable property is received without consideration.		
		c	The stamp duty value of such property exceeds Rs. 50000.		

		d	Such asset is a capital asset in hands of recipient.		
C	Any immovable property	a	During the previous year, Assessee has received immovable property.	Then difference between stamp duty value and consideratio ns is chargeable to tax.	The limit of Rs. 50000/- is applicable per incidence.
		b	Such immovable property is received for inadequate consideration.		
		c	Stamp duty value exceeds 110% of consideration.		
		d	Difference between stamp duty value and consideration exceeds Rs 50,000		
D	Any movable property	a	During the previous year, Assessee has received movable property from one or more persons.	The whole of the aggregate fair market value of such property shall be considered as Income of the previous year.	Aggregate amount of gift received during the period shall be considered.
		b	Such movable property is received without consideration.		
		c	The aggregate fair market value of such receipts during the previous year exceeds Rs. 50000.		
		d	Such asset is a capital asset in hands of recipient.		
E	Any movable property	a	During the previous year Assessee has received movable property from one or more persons.	The aggregate fair market value of such property Less consideratio n paid shall be considered as income of the previous year.	Aggregate amount of gift received during the period shall be considered.
		b	Such movable property is received for a consideration.		
		c	Such consideration is less than the aggregate fair market value of the property by an amount exceeding Rs. 50000.		

Note:
The limit of Rs. 50000/- is also for per category. In other words, one may receive cash gift of Rs. 35000 and gift in kind of Rs. 36000 without attracting any tax.

Exceptions:		
This section shall not apply to any sum of money or any property received:		
1	From any relative	
	Relative here means	
	a	Spouse of the individual
	b	Brother or sister of the individual
	c	Brother or sister of the spouse of the individual
	d	Brother or sister of either of the parents of the individual
	e	Any lineal ascendant or descendant of the individual
	f	Any lineal ascendant or descendant of the spouse of the individual
	g	Spouse of the person referred to in clauses (ii) to (vi)
2	On the occasion of the marriage of the individual (whether gift is received from relative or outsiders).	
3	Under a will or by way of inheritance	
4	From local authority	
5	From any fund or foundation or university or other educational institutions or hospital or other medical institutions or any trust or institution referred u/s. 10(23C)	
6	W.e.f. 01/04/2017 Any gift received by way of transaction not regarded as transfer u/s 47(vicb) or (vid) or (vii)	

Chapter 7

BASIC CONCEPTS & TAXATION OF INDIVIDUAL

★ CHARGING SECTION 4

1	Charging section	Sec. 4 of the Income Tax Act provides that the shall be charged –	
		a	For any assessment year (AY), at the rate(s) specified in the annual Finance Act for that year, and
		b	In respect of the total income of the previous year of every person.
		It lays down the rates for charging income – tax in certain cases, rates for deducting income tax from income chargeable under the head 'Salaries' and the rates for computing advance – tax for the financial year 2021 – 22 i.e. AY 2022 – 23.	
First Schedule to Annual Finance Act: It contains four parts, which, as applicable for the Finance Act, 2021 are as follows:			
2	Part I	It specifies the rates at which income tax is to be levied on income chargeable to tax for the PY 2021 – 22.	
3	Part II	It lays down the rate at which tax is to be deducted at source during the financial year 2021 – 22 i.e. AY 2022 – 23.	
4	Part III	It lays down the rates for charging income – tax in certain cases, rates for deducting income tax from income chargeable under the head 'Salaries' and the rates for computing advance – tax for the financial year 2021 – 22 i.e. AY 2022 – 23.	
5	Part IV	It lays down the rules for computation of net agricultural income.	

★ TAX RATES FOR PY 21-22 AND AY 22-23

Tax rate	Resident Individual age < 60 during PY (Male & Female), HUF, AOP, BOI & AJP	Resident Individual (Age >= 60 during PY) Senior citizen (Male & Female)	Resident Individual (Age >=80 during PY) Super senior citizen (Male & Female)
NIL	2,50,000	3,00,000	5,00,000
5%	2,50,001 to 5,00,000	3,00,001 to 5,00,000	NA
20%	5,00,001 to 10,00,000	5,00,001 to 10,00,000	5,00,001 to 10,00,000
30%	Above 10,00,000	Above 10,00,000	Above 10,00,000

Add: Surcharge	Income	Rate
	5,00,001 to 1,00,00,000	10%

	10,00,001 to 2,00,00,000	15%
	20,00,001 to 5,00,00,000	25%
	Above 5,00,00,000	37%
Health & Education Cess	4% on Tax plus Surcharge	

★ REBATE U/ 87A

1	**Conditions**	
	i	A resident individual whose net income does not exceed Rs. 5,00,000 can avail rebate u/s. 87A.
	ii	The amount of rebate is 100% of income tax or Rs. 12,500 whichever is less.
2	**Key notes**	
	a	Net income = GTI – Deduction u/s 80C to 80U
	b	It is to be deducted before H & EC.

★ NON-RESIDENT ASSESSEE

a	For Non-Resident individual exempted income shall be upto Rs. 2, 50,000 irrespective of Age
b	**Surcharge:** as per table given above
c	Health & Education Cess @ 4% on Tax + SC
d	Rebate u/s 87A is not available.

Illustration 1

Compute tax if income of Mr. X age 26 years is Rs.7 lac.

Solution

Income range	Detail	Rate	Tax
Up to Rs.250000			
250000 to 500000	250000	5%	12500
500000 to 700000	200000	20%	40000
Tax liability before cess			52500
Add: Health & Education cess @ 4%			2100
Tax liability after H & EC			54,600

Illustration 2

Compute tax if income of Mrs. X age 26 years, is Rs.3.3 lakhs

Solution

Income range	Detail	Rate	Tax
Upto Rs.250000			
2,50,000 to 3,30,000	80000	5%	4000
Tax liability before surcharge			4000
Less: Rebate u/s 87 A			4000
Tax liabilities after rebate			0
Add: Health and Education cess @ 4%			0
Tax Liability			0

Illustration 3

Compute the tax liability in the following cases:

Assessee		Status	Rebate u/s 87A (y/n)	Total Income (in Rs.)
a	Mr. Mohan	Resident Individual of 40 years		2,60,000
b	Mrs. Swati	Non-resident Individual of 65 years		2,75,000
c	Mr. Bansal	Resident Individual of 25 years		4,50,000
d	Mrs. Priyanka	Resident Individual of 21 years		5,10,000
e	Mrs. Resham	Resident individual of 60 years		12,00,000
f	Mrs. Radhika	Resident Individual of 80 years		18,00,000
g	Ms. Madhuri	Resident Individual of 21 years		2,65,500

Solution

The computation of tax liability is given below:

Assessee		Total Income	Income-tax	Rebate u/s. 87A	Income tax after rebate	H&EC @4%	Total Tax	Total Tax (rounded off)
a	Mr. Mohan	260000	500	500	-	-	-	-
b	Mrs. Swati	275000	1250		1250	50	1300	1300
c	Mr. Bansal	450000	10000	10,000	-	-	-	-

d	Mrs. Priyanka	510000	14,500	-	14500	580	15080	15080
e	Mrs. Resham	1200000	170000		170000	6800	176800	176800
f	Mrs. Radhika	1800000	340000		340000	13600	353600	353600
g	Ms. Madhuri	265500	775	775	-	-	-	-

Illustration 4

Compute tax if income of Mrs. X, a resident in India, aged 60 years is Rs.115 lakhs

Solution

Computation of tax liabilities:

Income range	Detail	Rate	Tax
Upto Rs.300000			
300000 to 500000	200000	5%	10000
500000 to 1000000	500000	20%	100000
Above 1000000	10500000	30%	3150000
Tax liabilities before surcharge			3260000
Add: surcharge	3260000	15%	489000
Tax liability after surcharge			3749000
Add: health & Education Cess @ 4%	3749000	4%	149960
Tax Liability			3898960

★ **CONCEPT OF MARGINAL RELIEF**

Why Relief is given?

Increase in income by Rs 1,00,000

Particulars	Difference	Rate	Tax on 50,00,000	Tax on 51,00,000
Up to 2,50,000	2,50,000	Exempt	-	-
2,50,000 to 5,00,000	250000	5%	12500	12500
5,00,000 to 10,00,000	500000	20%	100000	100000
Above 10,00,000	4000000	30%	1200000	

	4100000	30%		1230000
Total Tax			1312500	1342500
Add: Surcharge	13,42,500	10%		134250
Tax plus Surcharge			13,12,500	14,76,750
Add: Health & Education Cess @ 4%	14,76,750	4%	52,500	59,070
Tax liability			13,65,000	15,35,820

Tax is increased by Rs 1,70,820

To remove above defect Marginal relief is given as under

1	Meaning	Marginal relief in provided to insure that the additional income tax payable including surcharge on excess of income over Rs. 50,00,000 / 1,00,00,000/ 2,00,00,000/ 5,00,00,000 is limited to the amount by which the income is more than Rs.50,00,000 /1,00,00,000/ 2,00,00,000/ 5,00,00,000
2	Applicable to	All assesse
3	How to calculate Marginal relief	Step 1: Compute Tax + SC Step 2: Marginal Relief = [Difference in Tax – Difference in Income] Step 3: Deduct marginal relief computed above [if positive] from Tax + Surcharge on actual income Step 4: Add: H&EC
4	Key Note	When increase in income is more than increase in tax Marginal relief shall not be given. [when step 2 is negative]

Illustration 5

Compute the amount of marginal relief available if the income of Mr. Apple is Rs. 51 lakhs and tax payable

Solution

Particulars	Difference	Rate	5000000	5100000
Up to 2,50,000				
2,50,000 to 5,00,000		5%	12500	12500
5,00,000 to 10,00,000		20%	100000	100000
Above 10,00,000	400000	30%	1200000	1230000

Total Tax			1312500	1342500
Add: SC @ 10% on Tax			NIL	134250
= TAX + SC			1312500	1476750

Marginal Relief	[(Income tax + surcharge on actual income) – (Income tax on 50L / 11 crore as the case may be)] – [actual income – 50 L / 1 crore]
	[1476750 - 1312500] - [5100000 - 5000000]
	164250 - 100000
	64250

Calculation of Tax Liability after Marginal Relief

Particulars	Amount
= Tax plus surcharge on actual income	1476750
Less: Marginal relief computed above	64250
= Tax	1412500
Add: Health & Education Cess @ 4%	56500
Tax Liability	1469000