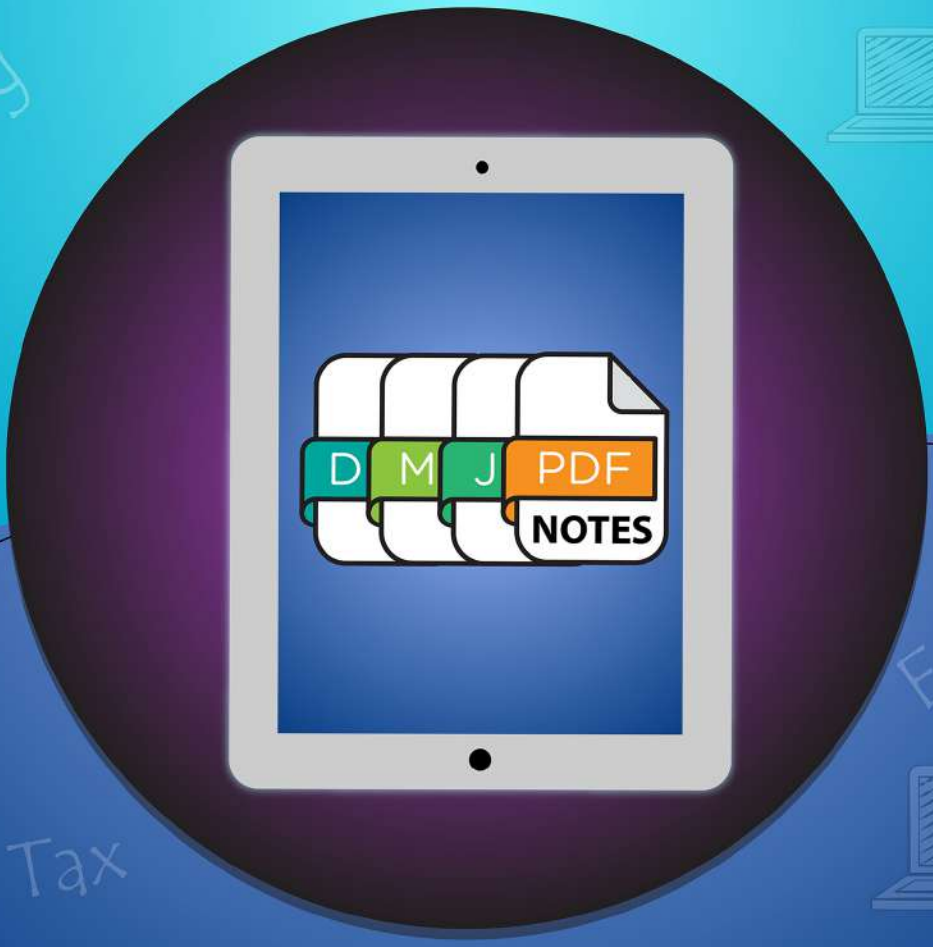
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PART A
DIRECT TAX

Lesson 1 & 2 : Direct Taxes at a Glance & Basic Concepts

1.1 Introduction

Taxes	
Meaning	For the payer – Contribution to his own nation For the payee – Source of revenue
Why levied	Meeting the expenses of Government like defence, provision of education, health care, infrastructure facilities like roads, dams etc.

1.2 Direct & Indirect Taxes

Types of taxes and differentiation between them	Direct taxes	Indirect taxes
	Tax on income	Tax on Goods and services
	Borne by the person who earns the income	Borne by the ultimate consumer of goods & services.
	Burden of tax is felt by the person paying it	Burden is not felt as it is inbuilt in the price.
	Administration is difficult for the government	Comparatively easy
	Progressive nature i.e. The one who earns more pays more	Regressive nature – Same amount is payable irrespective of the financial status of the person.
	E.g. Income tax	E.g. GST and Customs act

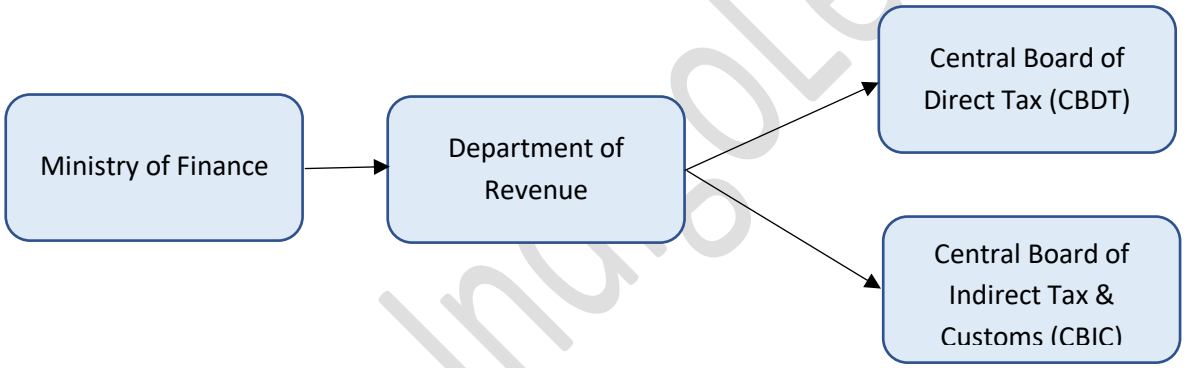
1.3 Constitutional Validity of Taxes

Power to levy taxes	★ Constitution of India gives the power to levy and collect taxes, whether director indirect, to the Central and State Government. ★ Seventh Schedule to Article 246 contains three lists ➢ Union List: Parliament has the exclusive power to make laws on the matters contained in Union List

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	➢ State List: The Legislatures of any State has the exclusive power to make laws on the matters contained in the State List ➢ Concurrent List: Both Parliament and State Legislatures have the power to make laws on the matters contained in the Concurrent list. ★ Entry 82 of the Union List i.e., List I in the Seventh Schedule to Article 246 of the Constitution of India has given the power to the Parliament to make laws on taxes on income other than agricultural income.

1.4 Administration of Tax laws



1.5 Sources of Income Tax Law in India

Components of Income tax law	
Income-tax Act, 1961	★ It came into force on 1st April 1962. ★ It contains 298 sections and XIV schedules. ★ The Income-tax Act, 1961 undergoes change every year with additions and deletions brought out by the Annual Finance Act passed by Parliament.
Income-tax Rules, 1962	★ The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT) ★ For the proper administration of the Income-tax Act, 1961, the CBDT frames rules from time to time. These rules are collectively called Income-tax Rules, 1962.

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The Finance Act	★ Every year, the Finance Minister of the Government of India introduces the Finance Bill in the Parliament's Budget Session. ★ It is laid in both the houses of the Parliament and gets the assent of the President, it becomes the Finance Act.
Circulars and Notifications	★ Circulars are issued by the CBDT from time to time to deal with certain specific problems and to clarify doubts regarding the scope and meaning of certain provisions of the Act. ★ Circulars are issued for the guidance of the officers and/or assesses. The department is bound by the circulars. While such circulars are not binding on the assessees, they can take advantage of beneficial circulars. ★ Notifications are issued by the Central Government to give effect to the provisions of the Act. The CBDT is also empowered to make and amend rules for the purposes of the Act by issue of notifications.
Judicial decisions	★ The judiciary will hear the disputes between the assessees and the department and give decisions on various issues. ★ The Supreme Court is the Apex Court of the Country and the law laid down by the Supreme Court is the law of the land. ★ The decisions given by various High Courts will apply in the respective states in which such High Courts have jurisdiction.

1.6 Basic Principles for charging Income Tax Act (Sec. 4)

Section 4 of the Income-tax Act, 1961 is the charging section which provides that:

★ Tax shall be charged at the rates prescribed for the year by the Annual Finance Act. New section 115BAC provides an option for concessional slab rates to individual and HUF subject to certain conditions, which have been discussed later

★ The charge is on every person specified under section 2(31)

★ Tax is chargeable on the total income earned during the previous year and not the assessment year.

★ Tax shall be levied in accordance with and subject to the various provisions contained in the Act.

1.7 Person [Sec. 2(31)]

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Sec. 2 (31) – Person	
Category	Particulars
Individual	➢ Natural person, i.e., a human being ➢ Including minor and lunatics. (In such case the legal representative is assessed.)
HUF	➢ Defined under the Hindu Law as a family, which consists of all males lineally descended from a common ancestor and includes their wives and daughters. ➢ Head of the family is called Karta and other male members and daughters are called co-parceners who have right to demand partition. ➢ Jain undivided families and Sikh undivided families are included.
Company	➢ Any Indian company ➢ Any foreign company ➢ Any institution, association or body which is assessable or was assessed as a company for any assessment year ➢ Any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by a general or special order of the CBDT to be a company
Firm	➢ As defined under the Partnership Act,1932 ➢ As defined under the Limited Liability Partnership Act, 2008
Association of Persons (AOP)	➢ When persons combine together for promotion of joint enterprise, they are assessable as an AOP, when they do not in law constitute a partnership. Common purpose and common income are necessary. ➢ Co-heirs, co-legatees or co-donees are included.
Body of Individuals (BOI)	➢ It denotes the status of persons like executors or trustees who merely receive the income jointly and who may be assessable as such ➢ co-executors or co-trustees are assessable as a BOI
Local Authority	➢ Means a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund.
Artificial Juridical Persons	Residuary category. Temples, churches, mosques and charitable institutions come under this category.

1.8 Assessee [Sec. 2(7)]

Sec 2(7) – Assessee

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- Assessee" means a person by whom any tax or any other sum of money is payable under this Act
- Every person in respect of whom any proceeding under this Act has been taken for the assessment of
  - his income; or
  - assessment of fringe benefits; or
  - the income of any other person in respect of which he is assessable; or
  - the loss sustained by him or by such other person; or
  - the amount of refund due to him or to such other person.
- Every person who is deemed to be an assessee under any provision of this Act.
- Every person who is deemed to be an assessee-in-default under any provision of this Act.

Section 2(8) – Assessment
This is the procedure by which the income of an assessee is determined by the Assessing Officer. It may be by way of a normal assessment or by way of reassessment of an income previously assessed.

1.10 Assessment Year (A.Y.) [Sec. 2(9)]

Section 2(9) – Assessment year
➢ A period of 12 months commencing on 1st April every year.

1.9 Previous Year or Uniform Previous Year [Sec. 3]

Section 3 – Previous year
➢ The financial year immediately preceding the assessment year. ➢ The year in which income is earned is the previous year and such income is taxable in the immediately following year which is the assessment year. ➢ Business or profession newly set up during the financial year - previous year shall be the period beginning on the date of setting up of the business or profession and ending with 31st March of the said financial year. ➢ If a source of income comes into existence in the said financial year, then the previous year will commence from the date on which the source of income newly comes into existence and will end with 31st March of the financial year.
★ **PY in case of undisclosed income** 1. Cash Credits [Section 68] – PY is year in which such amount is credited

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2. Unexplained Investments [Section 69] – PY is year in which investments are made.
3. Unexplained money etc. [Section 69A] – PY is the financial year in which the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and the same is not recorded in the books
4. Amount of investments etc., not fully disclosed in the books of account [Section 69B] – PY is the financial year in which 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 spent on making such investments or in acquiring such articles exceeds the amount recorded in the books of account.
5. Unexplained expenditure [Section 69C] –PY is the financial year in which the assessee has incurred any expenditure.
6. Amount borrowed or repaid on hundi [Section 69D] - PY in which the amount was borrowed or repaid, as the case may be.

   where any amount borrowed on a hundi has been deemed to be the income of any person, he will not be again liable to be assessed in respect of such amount on repayment of such amount.

★ **Other consequences of such income -**

- Section 115BBE - tax@60% plus surcharge @25% of tax. Thus, the effective rate of tax (including surcharge@25% of tax and cess@4% of tax and surcharge) is 78%.
- No basic exemption or allowance or expenditure shall be allowed to the assessee under any provision of the Income-tax Act, 1961 in computing such deemed income.
- Further, no set off of any loss shall be allowable against income brought to tax under sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

★ **Exceptions to PY rule** - cases when income of a previous year will be assessed in the previous year itself

1. Shipping business of non-resident [Section 172] (provided he does not have any agent in India, and he does not make any arrangement to pay tax @7.5%
2. Persons leaving India [Section 174] (without an intention to come back)
3. AOP/BOI/Artificial Juridical Person formed for a particular event or purpose [Section 174A] (The purpose is accomplished and the AOP/BOI is dissolved)
4. Persons likely to transfer property to avoid tax [Section 175]
5. Discontinued business [Section 176] – (The AO has a discretionary power in this case).

1.11 Income [Sec. 2(24)]

Sec.2(24) – Income

★ **Definition of Income**- It is an inclusive definition and not an exhaustive one. The components are given under each head of income

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★ **Concept of Income under the Income-tax Act, 1961**

- It includes not only a regular receipt but also a casual receipt
- Normally refers to revenue receipts but certain provisions are including capital receipts also
- Normally refers to net receipt i.e. Excess of income over expenditure. Income from certain eligible businesses/professions is also determined on presumptive basis i.e., as a certain percentage of gross receipts
- Includes both earned in cash also in kind
- Income from both legal source and illegal source is subject to tax
- It can be received as a lumpsum payment or in instalments.

★ **Concept of revenue and capital receipts**

- Fixed capital or Circulating capital: A receipt referable to fixed capital would be a capital receipt whereas a receipt referable to circulating capital would be a revenue receipt. The former is not taxable while the latter is taxable.
- Income from transfer of capital asset or trading asset: Profits arising from the sale of a capital asset are chargeable to tax as capital gains under section 45 whereas profits arising from the sale of a trading asset being of revenue nature are taxable as income from business under section 28
- Profits arising from transactions which are entered into in the course of the business regularly carried on by the assessee, or are incidental to, or associated with the business of the assessee would be revenue receipts
- In the case of profit arising from the sale of shares and securities the nature of the profit has to be ascertained from the motive, intention or purpose with which they were bought
- Even a single transaction may constitute a business or an adventure in the nature of trade even if it is outside the normal course of the assessee's business depending on the case.
- Liquidated damages pertaining to capital assets is a capital receipt.
- Compensation on termination of agency is a capital receipt however it is taxable u/s 28. In case of employee it is taxable u/s 17(3)

1.12 Heads of Income [Sec. 14]

According to Sec.14 of the Act, all income of a person shall be classified under the following five heads:

1. Salaries
2. Income from house property
3. Profits and gains of business or profession
4. Capital gains

5. Income from other sources.

For computation of income, all taxable income should fall under any of the five heads of income as mentioned above. If any type of income does not become part of any one of the above mentioned first four heads, it should be part of the fifth head, i.e. Income from other sources, which may be termed as the residual head.

1.13 Gross Total Income (GTI) [Sec. 80B (5)]

Gross total income is the aggregate of income under all the five heads of income after adjusting the set-off & carry forward of losses. Deductions under chapter VIA is provided from GTI, to arrive at Total income or taxable income.

Computation of Total Income for the A.Y.___

Particulars	Amount
1. Salaries	XXX
2. Income from house property	XXX
3. Profits and gains of business or profession	XXX
4. Capital gains	XXX
5. Income from other sources	XXX
Gross Total Income	XXXX
Less: Deduction u/s 80C to 80U	XXX
Total Income	XXXX

1.14 Rounding-Off of Total Income [Sec. 288A]

The total income so computed will have to be rounded off to the nearest multiple of Rs.10, i.e., if the last figure in the 'rupee element' is Rs.5 or more, it should be rounded off to the next higher amount, which is a multiple of Rs.10. The 'paise' element should be ignored.

Thus, if the total income works out to Rs.41,645, it should be rounded off to Rs.41,650, but if it works out to Rs.41,644.98, it should be rounded off to Rs.41,640.

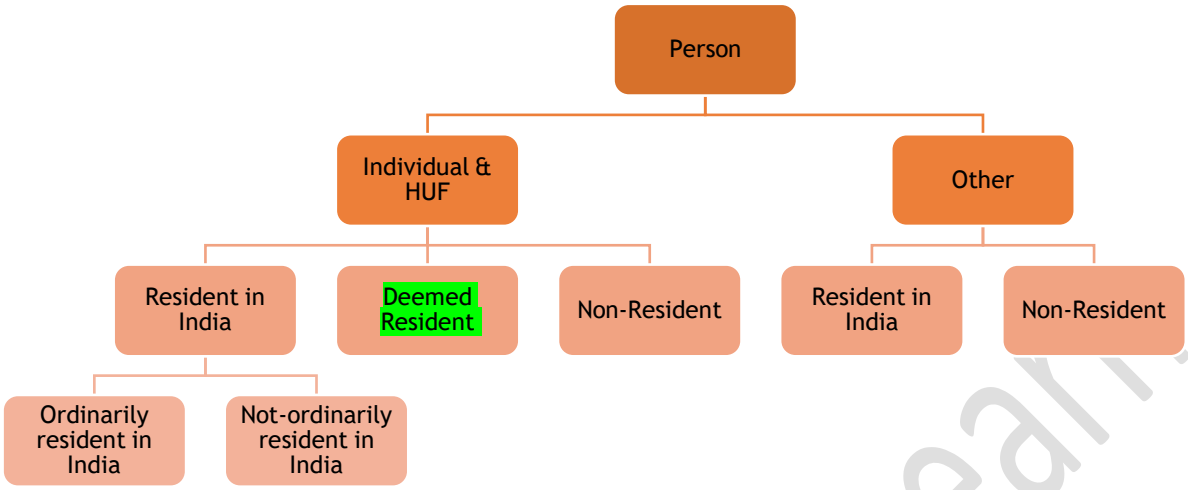
1.15 Rounding-Off of Tax [Sec. 288B]

The tax calculated on the total income should be rounded off to the nearest Rs.10. Amount of tax (including TDS or advance tax), interest, penalty, etc. and refund shall be rounded off to the nearest Rs.10.

1. Residence status

2.1 Introduction

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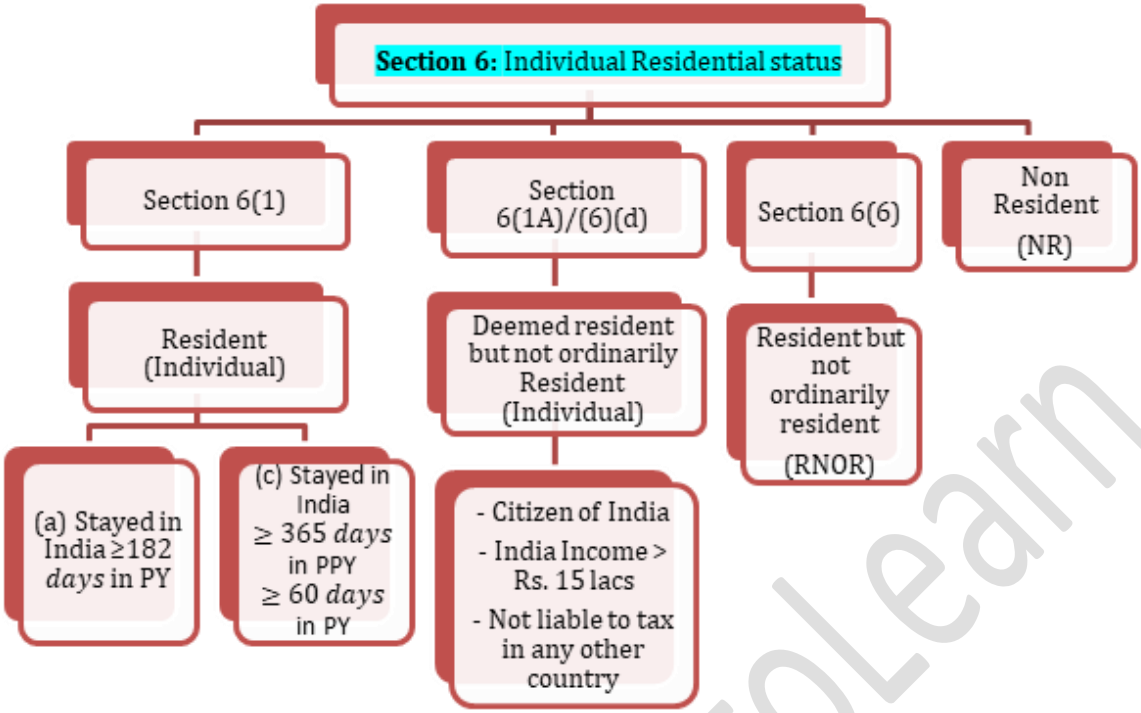


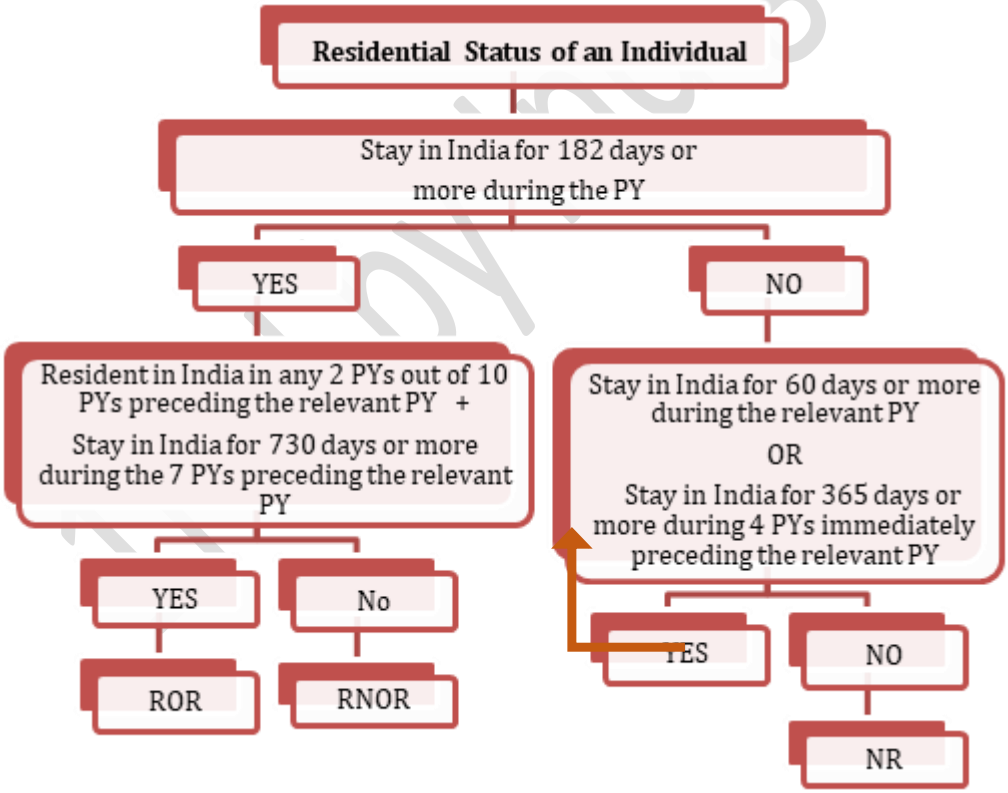
2.2 General Points to be kept in mind regarding Residential Status of a Person

Different for each previous year	Residential status is determined in respect of each previous year. In other words, residential status of a person may vary from one previous year to another previous year.
Single Status for each source of income	A person can have only one residential status for a previous year i.e. he cannot be a resident for one source of income and non-resident for another source.
Impact of citizenship	Citizenship and residential status are two different concepts. A citizen of India may not be a resident in India for the purpose of income-tax.
Country Specific	A person can have same residential status in more than one country.

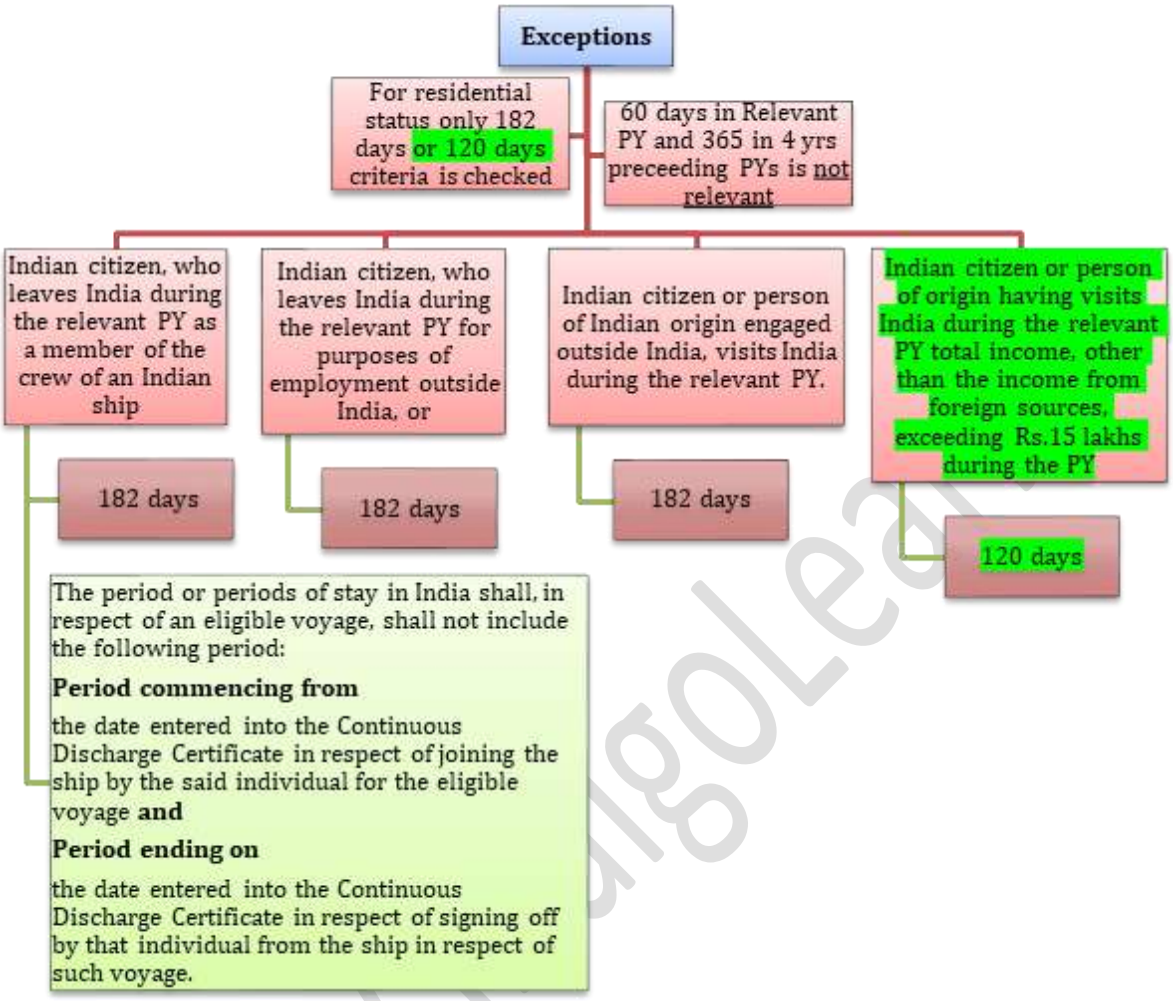
2.3 Determination of Residential Status

Sec 6(1) and 6(6)	Sec 6(1)	Sec 6(2)	Sec 6(3)	Sec 6(4)
Individuals 6(1) - Basic conditions 6(6) - Additional conditions	Individuals (Citizens of India) - Deemed Resident	HUF	Company	Firm, AOP, BOI and others

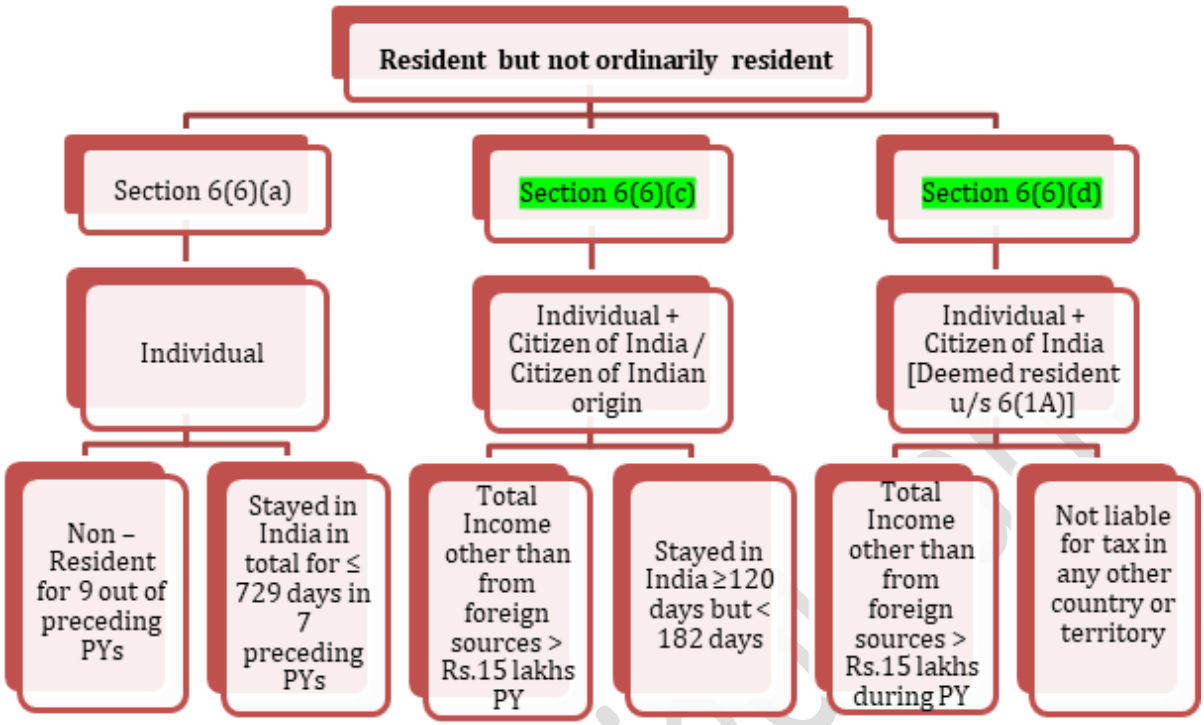


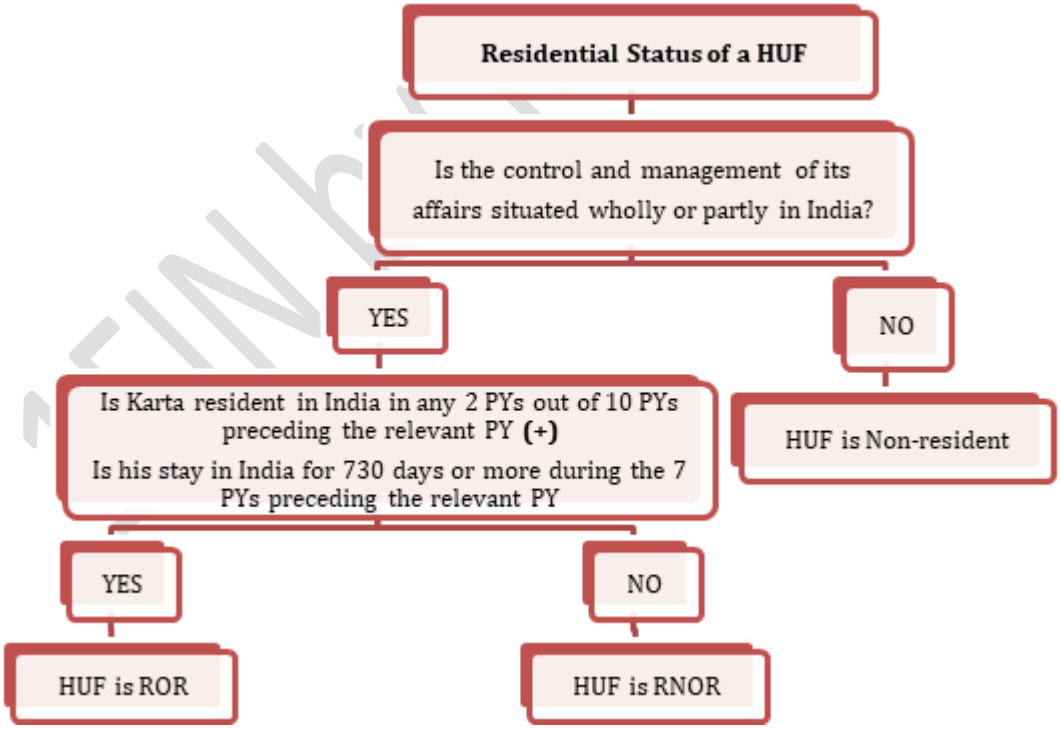


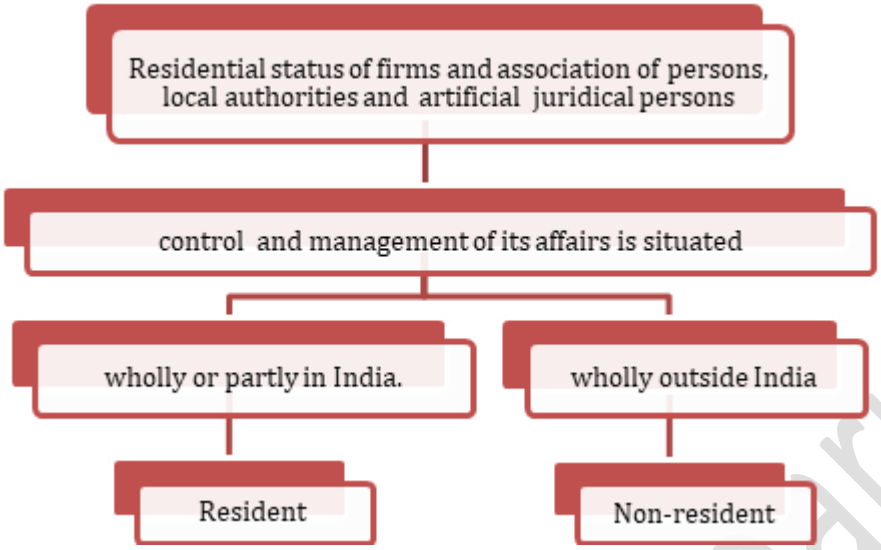
- Stay in India includes stay in territorial waters of India.
- Period of stay need not be continuous.
- Date of arrival and date of departure is considered as stay days.



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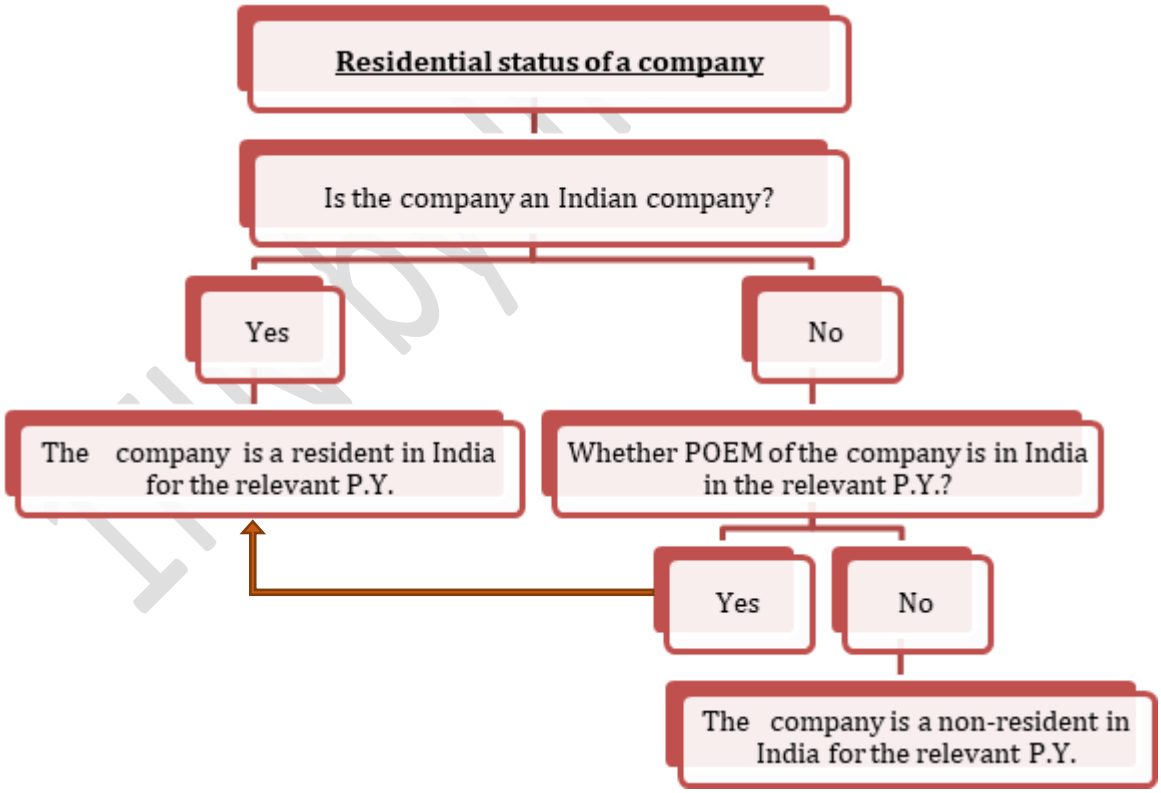

Resident but not ordinarily resident
Section 6(6)(a)
Section 6(6)(c)
Section 6(6)(d)
Individual
Individual + Citizen of India / Citizen of Indian origin
Individual + Citizen of India [Deemed resident u/s 6(1A)]
Non – Resident for 9 out of preceding PYs
Stayed in India in total for ≤ 729 days in 7 preceding PYs
Total Income other than from foreign sources > Rs.15 lakhs PY
Stayed in India ≥120 days but < 182 days
Total Income other than from foreign sources > Rs.15 lakhs during PY
Not liable for tax in any other country or territory


Residential Status of a HUF
Is the control and management of its affairs situated wholly or partly in India?
YES
NO
HUF is Non-resident
Is Karta resident in India in any 2 PYs out of 10 PYs preceding the relevant PY (+)
Is his stay in India for 730 days or more during the 7 PYs preceding the relevant PY
YES
NO
HUF is ROR
HUF is RNOR



Expression 'control and management' refers

- To the central control and management and not to the carrying on of day-to- day business by servants, employees or agents.
- A place where the head and brain of the adventure is situated.
- Need not necessarily be done from the place of business or from the registere d office of the assesse.



Place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

Sec.9 – Income deemed to accrue or arise in India							
Sec. 9(1)(i)	Sec. 9(1)(ii)	Sec. 9(1)(iii)	Sec. 9(1)(iv)	Sec. 9(1)(v)	Sec. 9(1)(vi)	Sec. 9(1)(vii)	Sec 9(1)(viii)
Income from connec t-ion in India	Salary earned in India	Salary from Govt. by an Indian citizen for services rendere d outside India	Income from dividend paid by an Indian company	Income from interest payable by specifie d person	Income from royalty	Income from technical services	Specified income arising outside India

Income from connection in India [Sec. 9(1)(i)]

All income accruing or arising, whether directly or indirectly,

a) through or from any business connection in India; or

b) through or from any property/asset or source of income in India; or

c) through the transfer of a capital asset situated in India.

* Income, which arises outside India because of business connection (or Professional connection) in India is deemed to accrue or arise in India and shall be taxable in hands of all assesse irrespective of his residential status.
* Business connections may be in several forms, e.g. a branch office in India or an agent/ organization of a non-resident in India.
* Business connection shall include any business activity carried out through a person who, acting on behalf of the non-resident:
  - has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—
    - in the name of the non-resident; or

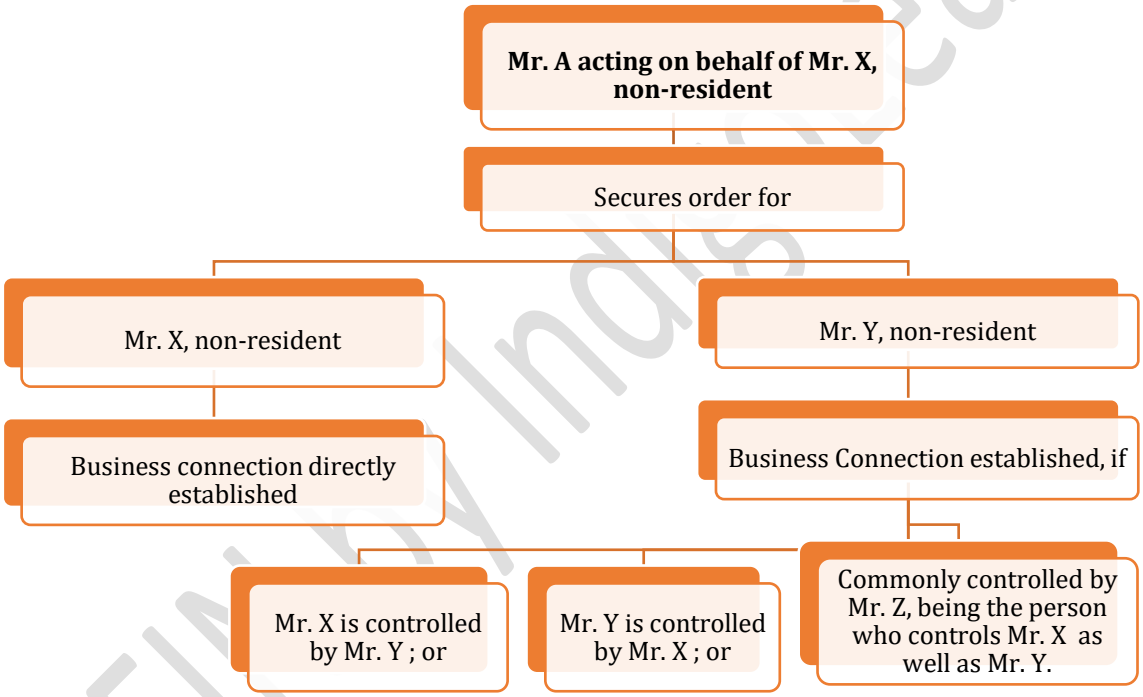
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- for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or
- for the provision of services by the non-resident; or

➢ has no such authority, but he maintains in India habitually a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or

➢ habitually secures orders in India mainly for the non-resident.

Further, there may be situations when the person acting on behalf of the non-resident secure order for other non-residents. In such situation, business connection for other non-residents is established as follows:



Significant economic presence of a non-resident in India shall also constitute business connection in India.

Significant economic presence means

Nature of transaction	Condition
in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India,	Aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed
systematic and continuous soliciting of business activities or engaging in	The users should be of such number as may be prescribed.

interaction with users in India through digital means.	

The threshold of "revenue" and "users" in India would be prescribed. Further, the above transactions or activities shall constitute significant economic presence in India, whether or not—

(i) the agreement for such transactions or activities is entered in India

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India:

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

Exceptions to business connection

- **Business activity through a broker**: Business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status and acting in the ordinary course of his business.
- **Business activity confined to purchase of goods:** In the case of a non-resident, no income shall be deemed to accrue or arise in India to him from operations, which are confined to the purchase of goods in India for the purpose of export
- **Business activity of a news agency confined to collection of news, etc**.: In the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspaper, 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 for transmission out of India.
- **Business of mining of diamonds:** 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 the display of uncut and unasserted diamond in any special zone notified by the Central Government
- **Business activity confined to shooting**: In the case of a non-resident, being –
  - An individual who is not a citizen of India; or
  - A firm which does not have any partner, who is a citizen of India or who is resident in India; or
  - A company, which does not have any shareholder who is a citizen of or resident in India.

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no income shall be deemed to accrue or arise in India through or from operations, which are confined to the shooting of any cinematography film in India.

Salaries earned in India [Sec. 9(1)(ii)]

Salary payable for –

a) Services rendered in India; and

b) The rest period or leave period which is preceded and succeeded by the period during which services were rendered in India and forms part of the service contract of employment,

- shall be deemed to accrue or arise in India.

Salary payable by the Government [Sec. 9(1)(iii)]

* Any salary -
  - ➢ payable by the Government of India.
  - ➢ to a citizen of India.
  - ➢ for services rendered outside India.
    - shall be deemed to accrue or arise in India.
* Any allowances or perquisites paid by the Government to a citizen of India for services rendered outside India shall be exempted [Sec. 10(7)]

Income from dividend [Sec. 9(1)(iv)]

Any dividend paid by an Indian company outside India is deemed to accrue or arise in India

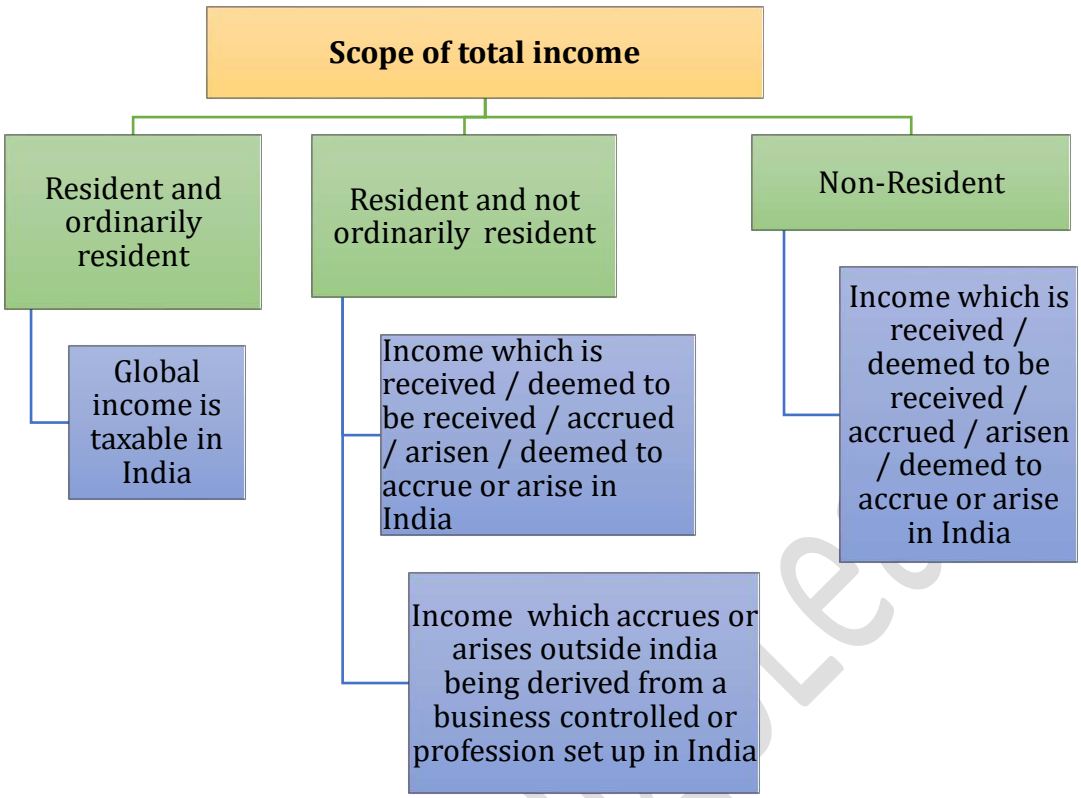
Income from Interest, royalty, technical services [Sec. 9(1)(v), (vi), (vii)

Amount payable by	The Government	A resident person	A non-resident person
Income from Interest, [Sec. 9(1)(v)	No condition	Money borrowed is not used for the purpose of - ➢ Business or Profession carried on by such person outside India; or ➢ Earning any income from any source outside India.	➢ Money borrowed is used for the purpose of busi. Or profes. carried on by such person in India. ➢ In case money borrowed and used for the purpose of earning an income from any other source in India, interest shall not be treated as deemed

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			to accrue or arise in India.
Income from royalty, Sec. 9(1)(vi) **Note:** Consideration for sale, distribution or exhibition of cinematographic films is covered within the scope of royalty w.e.f. A.Y.2021-22.	No condition	The right, property, information or services are not utilized for the purpose of - ➢ Business or Profession carried on by such person outside India; or ➢ Earning any income from any source outside India.	The right, property, information or services must be utilised for the purpose of - ➢ Business or Profession carried on by such person in India; or ➢ Earning any income from any source in India.
Income from technical services [Sec.9(1)(vii)	No condition	Such services are not utilized for the purpose of - ➢ Business or Profession carried on by such person outside India; or ➢ Earning any income from any source outside India.	Such services must be utilised for the purpose of - ➢ Business or Profession carried on by such person in India; or ➢ Earning any income from any source in India.
Income arising outside India related to any sum of money or value of property referred to in clause (x) of sub-section (2) of section 56 [Income from other sources]		➢ Paid on or after 5th July 2019 ➢ By a resident ➢ To a non-resident, not being a company ➢ To a foreign company	

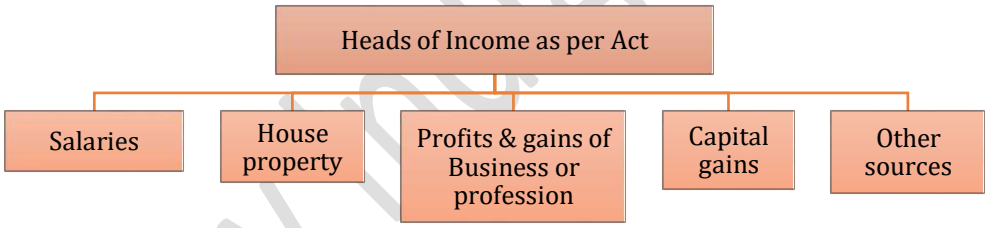
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Nature of Income	Tax incidence in the case of		
	Resident & ordinarily resident	Resident but not ordinarily resident	Non resident
Income accrued or deemed to be accrued and received or deemed to be received in India	Taxable	Taxable	Taxable
Income accrued outside India but received or deemed to be received in India.	Taxable	Taxable	Taxable
Income accrued or deemed to be accrued in India but received outside India	Taxable	Taxable	Taxable
Income accrued and received outside India from a business controlled in or profession set-up in India.	Taxable	Taxable	Not Taxable
Income accrued and received outside India from a business controlled or profession set-up outside India.	Taxable	Not Taxable	Not Taxable

Income accrued and received outside India in the previous year (it makes no difference if the same is later remitted to India).	Taxable	Not Taxable	Not Taxable
Income accrued and received outside India in any year preceding the previous year and later on remitted to India in current financial year.	Not Taxable	Not Taxable	Not Taxable

2.5 Steps for computing Total Income and tax liability

Steps for computing total income and tax liability	
Step 1	Determination of residential status The residential status of a person has to be determined to ascertain which income is to be included in computing the total income.
Step 2	Classification of income under different heads 
Step 3	Computation of income under each head Compute in accordance with the provisions governing a particular head of income. Exempt income is not considered.
Step 4	Clubbing of income of spouse, minor child etc. Under which income arising to certain persons (like spouse, minor child etc.) have to be included in the income of the person who has diverted his income for the purpose of computing tax liability.
Step 5	Set-off or carry forward and set-off of losses Loss from one head of income is set off with the income under another head subject to conditions
Step 6	Computation of Gross Total Income Aggregate of the all the above steps will lead to this
Step 7	Deductions from Gross Total Income

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Step 8	Application of the rates of tax on the total income. After reducing deductions from gross total income, we arrive at total taxable income
Step 9	Application of Surcharge / Rebate under section 87A
Step 10	Health and education cess on income-tax The income-tax, as increased by the surcharge or as reduced by the rebate under section 87A , if applicable, is to be further increased by an additional surcharge called health and education cess on income-tax @ 4% of income-tax plus surcharge, if applicable.
Step 11	Advance tax and tax deducted at source Any tax paid in advance or deducted at source and remitted to government on behalf of the assessee, during the previous year should be deducted from the tax liability.
Step 12	Tax Payable/Tax Refundable After adjusting the advance tax and tax deducted at source, the assessee would arrive at the amount of net tax payable or refundable. Such amount should be rounded off to the nearest multiple of Rs.10. The assessee has to pay the amount of tax payable (called self-assessment tax) on or before the due date of filing of the return. Similarly, if any refund is due, assessee will get the same after filing the return of income.

2.6 Tax Rates

Tax rates (Per Finance Act, 2020)

(Old Scheme)

Individual/ HUF/ AOP/ BOI/ Artificial Juridical Person		Resident individuals of the age of 60 years or more but less than 80 years		Resident individuals of the age of 80 years or more at any time during the previous year	
Total income (Rs.)	Tax rate	Total income (Rs.)	Tax rate	Total income (Rs.)	Tax rate
0-2,50,000	Nil	0-3,00,00	Nil	0-5,00,000	Nil
2,50,001 - 5,00,000	5% On excess over 2,50,000	2,50,001 - 5,00,000	5% On excess over 3,00,000	5,00,001 - 10,00,000	20% On excess over 5,00,000

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5,00,001 – 10,00,000	20% On excess over 5,00,000 + Rs. 12,500	5,00,001 – 10,00,000	20% On excess over 5,00,000 + Rs. 10,000	> 10,00,000	30% On excess over 10,00,000 lacs + Rs. 1,00,000
> 10,00,000	30% On excess over 10,00,000 lacs + Rs. 1,12,500	> 10,00,000	30% On excess over 10,00,000 lacs + Rs. 1,10,000		

CBDT clarification – A resident individual whose 60th birthday falls on 1st April, 2021, would be treated as having attained the age of 60 years (or 80 years) in the P.Y.2020-21, and would be eligible for higher basic exemption limit of Rs.3 lacs (or 5 lacs) in computing his tax liability for A.Y.2021-22.

Tax rates - New Scheme u/s 115BAC

Note – As per section 115BAC, individuals and HUFs have an option to pay tax in respect of their total income (other than income chargeable to tax at special rates under Chapter XII) at following concessional rates, if they do not avail certain exemptions/deductions like LTC, standard deduction under the head "Salaries", interest on housing loan on self-occupied property, deductions under Chapter VI-A (other than 80CCD(2) or section 80JJAA) etc.

Category - Individual / HUF

Total income (Rs.)	Tax rate	Tax Amount (Rs.)
0-2,50,000	Nil	Nil
2,50,001 – 5,00,000	5%	5% On excess over 2,50,000
5,00,001 – 7,50,001	10%	Rs.12,500 + 10% On excess over 5,00,000
7,50,001 – 10,00,000	15%	Rs.37,500 + 15% On excess over 7,50,000
10,00,001 – 12,50,000	20%	Rs.75,000 + 20% On excess over 10,00,000
12,50,001 – 15,00,000	25%	1,25,000 + 25% On excess over 12,50,000
> 15,00,000	30%	1,87,500 + 30% On excess over 15,00,000 lacs

Individuals and HUFs exercising option u/s 115BAC are not liable to alternate minimum tax u/s 115JC.

Firms & LLP = Flat rate of 30%

Local authority = Flat rate of 30%

	Total income (Rs)	Tax rate
Co-operative society	Up to 10,000	10%
	10,001 – 20,000	20% On excess over 10,000 + Rs. 1,000

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	> 20,000	30% On excess over 20,000 + Rs. 3,000

2.7 Tax Rates applicable for Companies

Category	Tax Rate
Other than Domestic Companies	40%
Domestic Companies ➢ General ➢ Turnover <= Rs. 400 Crores in FY 2018-19 ➢ Subject to 115BAA ➢ Subject to 115BAB	 30% 25% 22% 15%

Surcharge applicable on various categories

Individual/HUF/BOI/AOP/AJP (Total Income- Rs.)	Surcharge
> 50 lakhs up to 1 Crore	10%
> 1 crore up to 2 crores	15%
> 2 Crore up to 5 crores	25%
> 5 crores	37%

The surcharge on total income to the extent of income under 111A and 112A will not exceed 15%.

Companies (Total Income)	Surcharge
General > 1 Crore > 10 Crore	 7% 12%
115BAA and 115BAB (> 1 Crore)	10%

Firm/LLP/Co-Op Societies/Local Authority	Surcharge
> 1 Crore	12%

Marginal relief is available to all the above categories if the tax payable including surcharge is greater than the excess of income over the threshold limit.

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Lesson 3 : Income which do not form part of Total Income

3.1 Agricultural Income

Sec 10(1) - Agricultural income

★ **Meaning**

➢ By virtue of sec. 2(1A), agricultural income means
"Any rent or revenue derived from a land, which is situated in India & is used for agricultural purposes"

1. Rent may be in cash or in kind.
2. Assessee may be the owner or tenant of such land.
3. Any income derived from such land by
   - Agriculture or
   - Any process ordinarily employed by a cultivator or receiver of rent to render the

     produce fit to be taken to market or
   - Sale of such agriculture produce in the market.
4. The process must be employed only to convert 'the produce or rent in kind' in marketable form. If marketing process is performed on the 'produce or rent in kind', which can be sold in its raw form in market, then income derived from such product is partly agricultural & partly non-agricultural income.
5. The land must be situated in India.
6. Any income derived from a farm building is exempt subject to fulfilment of the following conditions

a) The building should be occupied by the cultivator or receiver of rent in kind.

b) The building should be on or in the immediate vicinity of the land, being situated in India and used for agricultural purposes.

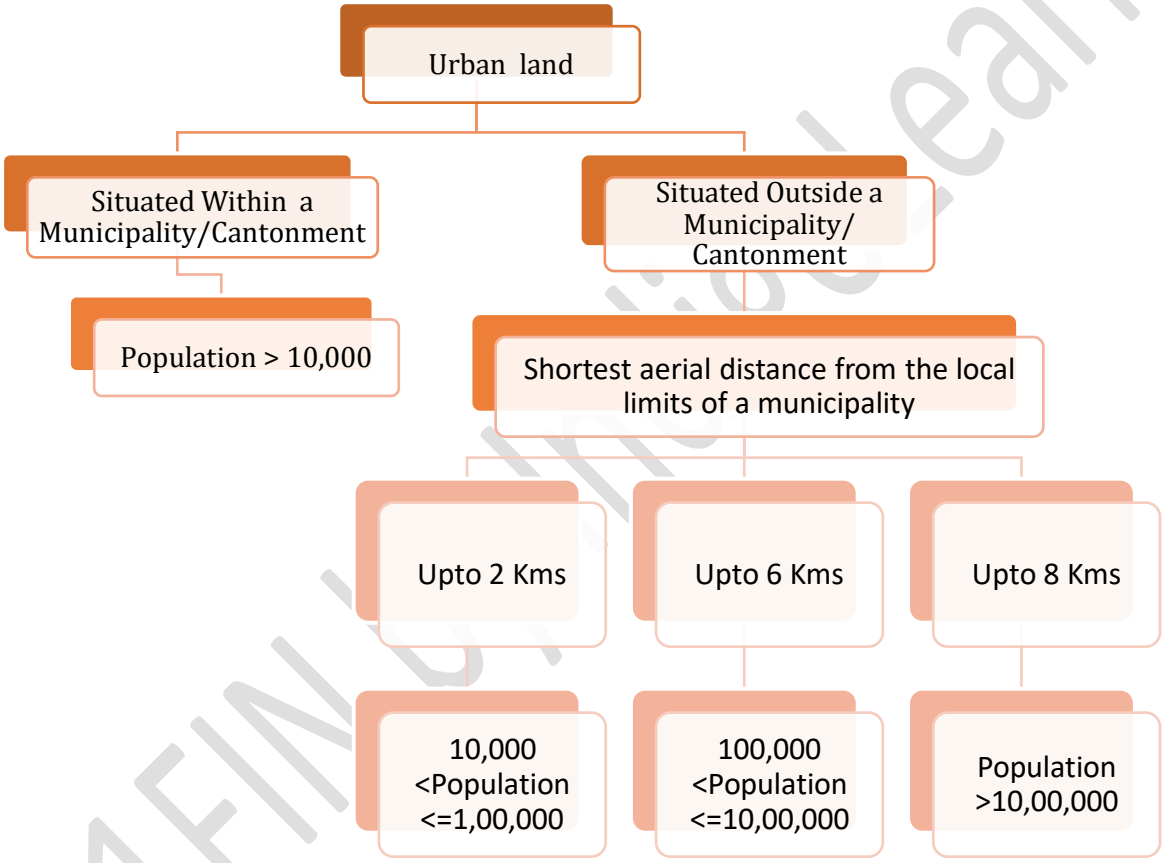
c) The building should be used as dwelling house or store-house or other outbuilding.

d) The land is either situated in -

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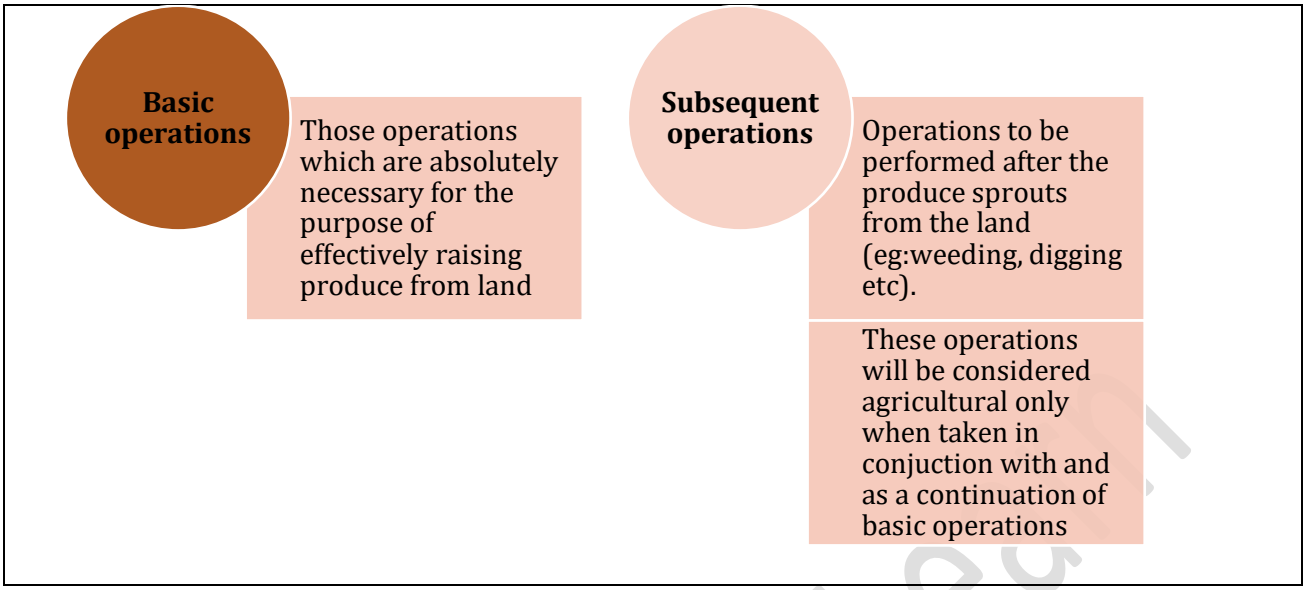
- Rural area; or
- Urban area and assessed to land revenue or local rates.

7. Income derived from land being let out for storing crop shall not be agricultural income.
8. Building should be owned and occupied by the landholder if he receives rent or revenue from the land. On the other hand, in case of cultivator or receiver of rent in kind, it is enough that the building is occupied by him.
9. **Profit on transfer of agricultural land:** Profit on transfer of agricultural land shall not be treated as agricultural income.



10. **Agriculture** - Cultivation of a field involving human skill and labour on the land can be broadly termed as agriculture. It primarily involves basic operations and subsequent operations.

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3.2 Instances of Agricultural (Agro) Income

Instances of agricultural (agro) income

- Income from growing trade or commercial products like jute, cotton, etc.
- Income from growing flowers and creepers.
- Plants sold in pots are an agro income provided basic operations are performed.
- **Remuneration and interest to partner:** Any remuneration (salary, commission, etc.) received by a partner from a firm engaged in agricultural operation)
- Interest on capital received by a partner from a firm, engaged in agricultural operation.
- Any fee derived from land used for grazing of cattle, being used for agricultural operation,
- Any income derived from saplings or seedlings grown in a nursery.

3.3 Instances of Non-Agricultural (Non-Agro) income

Instances of non-agricultural (non-agro) income

- Salary received by an employee from any business (having agricultural income)
- Dividend received from a company engaged in agricultural operation.
- Income from fisheries, poultry farming, dairy farming, butter & cheese making, etc.

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- Breeding & rearing of livestock is non-agro income.
- Royalty income from mines.
- Remuneration to a Director or Managing Director from a company engaged in agricultural business.
- Interest on arrears of rent receivable in respect of agricultural land is non-agro income.
- Income from a land situated outside India.
- Annuity received by a person in consideration of transfer of agricultural land.
- Income from sale of trees and grasses grown spontaneously (without any human effort)

3.4 Treatment of Partly Agricultural & Partly Non-Agricultural Income [Rule 7]

Treatment of partly agricultural & partly non-agricultural income [Rule 7]

In case assessee is engaged in an integrated activity, comprising of agricultural activity as well as non- agricultural activity, then profit of such integrated activity shall be segregated into agricultural income and non-agricultural income in the following manner -

Rule	Case	Agriculture income	Non-agro - income
8	Business of **growing and manufacturing** tea in India	60%	40%
7A	Business of growing and manufacturing rubber in India	65%	35%
7B	Coffee grown and cured by the seller in India	75%	25%
7B	Coffee grown, cured, roasted and grounded by the seller in India, with or without mixing chicory or other flavouring ingredients	60%	40%

Salary and interest received by a partner from a firm growing and manufacturing tea, coffee or rubber: Such remuneration or interest shall be treated as partly agricultural income and partly business income as stated above.

For computing agricultural income from a business having both agricultural as well as non-agricultural income,

1. Assessee is required to prepare two Profit or Loss statements, one for agro-business & another for non-agro business

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2. Agro expenses debited to Agro Profit or Loss and non-agro expenses shall be debited to Non agro-business Profit or Loss

Note: Non-apportionable expenditure, related to composite business of agriculture and non-agriculture, is fully charged to non-agricultural business.

3. Market value of any agricultural produce, which is utilised as raw material in such business, is to be treated as income for agro-business and expenditure for non agro-business.

Determination of market value - There are two possibilities here:

(I) The agricultural produce is capable of being sold in the market either in its raw stage or after application of any ordinary process to make it fit to be taken to the market. In such a case, the value calculated at the average price at which it has been so sold during the relevant previous year will be the market value.

(II) It is possible that the agricultural produce is not capable of being ordinarily sold in the market in its raw form or after application of any ordinary process. In such case the market value will be the total of the following—

- The expenses of cultivation
- The land revenue or rent paid for the area in which it was grown; and
- Such amount as the Assessing Officer finds having regard to the circumstances in each case to represent at reasonable profit

Partial integration of agricultural income with non-agricultural income

- Sec. 10(1) of the Act exempts agricultural income from tax as our Constitution does not provide power to the Parliament to levy tax on agro-income.
- However, agriculture income is considered to apply higher rate of tax-slab on non-agricultural income. This method is called partial integration.

3.5 Impact of agricultural income on tax computation

Conditions for including agricultural income in the total income of the assessee

1. The assessee is an individual, a Hindu-undivided family, a BOI, an AOP or an AJP. (These provisions do to apply to company, LLP, firm, co-operative society and local authority)
2. The assessee has non-agricultural income exceeding the maximum amount of exemption (i.e. in case of Senior citizen Rs. 3,00,000, Super Senior citizen Rs. 5,00,000 and in case of other individual/ HUF/AOP / BOI /artificial juridical person Rs. 2,50,000)
3. The agricultural income of the assessee exceeds Rs. 5,000.

Method of computation

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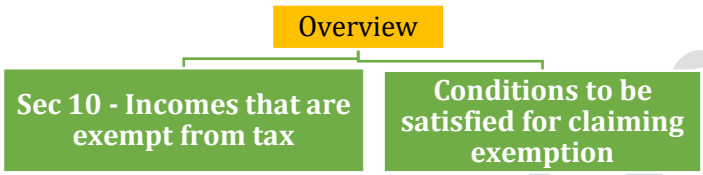
Step 1: Compute income tax on total income of assessee including Agro-income.

Step 2: Compute income tax on (Agro-income + Maximum exempted limit)

Step 3: Tax liability before cess = (Tax as per step 1) - (Tax as per step 2)

Step 4: Provide rebate u/s 87A (if applicable) and add H&E cess@4%

Incomes which do not form part of total income (Other than Agricultural Income)



Sec. 10(2) - Member's Share in Income of HUF

- Any sum received by an individual as a member of a Hindu undivided family is exempt where such sum is received –
  - out of the income of the family; or
  - out of the income of an impartible estate belonging to the family.

Sec. 10(2A) - Share of Profit from a Firm

- Share in the total income of the firm is exempt in the hands of partner.

Sec. 10(4)/(4B) - Interest Income of Non-resident

- **Sec. 10(4)(i)** - Interest on specified securities or bonds, including premium on redemption of such bonds is exempted in the hands of a non-resident.
- This exemption will no more be available in respect of any further issue of bonds or securities on or after 1.6.2002
- **Sec. 10(4)(ii)** - Interest on Non-Resident (External) Account in any bank in India to a person who is a resident outside India as defined in sec. 2(w) of the FEMA, 1999 or is a person who has been permitted by the Reserve Bank of India to maintain the aforesaid Account.

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- The joint holders of the NRE Account do not constitute an AOP by merely having these accounts in joint names.
- The benefit of exemption under section 10(4)(ii) will be available to such joint account holders, subject to fulfilment of other conditions contained in that section by each of the individual joint account holders.
- **Sec. 10(4B)** - Interest on notified savings certificates issued before 1-6-2002 by the Central Government to a non-resident, being a citizen of India or a person of Indian origin is exempt provided it is subscribed in convertible foreign exchange remitted from a country outside India in accordance with the provisions of the FEMA, 1999.
- **Sec.10 (4C)** - Interest payable to a non-resident, not being a company, or to a foreign company, by any Indian company or business trust in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond, as referred to in section 194LC (2)(ia), during the period beginning from the 17/9/18 to 31/3/19;
- **Sec. 10(4D)** Income from transfer of capital asset referred to in section 47(viiab), on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in convertible foreign exchange, related to units held by a non-resident

Sec. 10(6)- Remuneration to Person who is not a Citizen of India in certain cases

★ Following remuneration to an individual who is not a citizen of India shall be exempt -

- **Sec. 10(6)(ii)** - Remuneration received by him as an official of an embassy, high commission, legation, commission, consulate, or the trade representation of a foreign state or as a staff of any of these officials provided corresponding Indian officials in that foreign country enjoy similar exemptions in their country.
- The above-mentioned officials should be the subjects of the respective countries represented and should not be engaged in any other business or profession or employment in India.
- **Sec. 10(6)(vi) -** Remuneration received as an employee of a foreign enterprise for services rendered by him during his stay in India provided -
  - The foreign enterprise is not engaged in any business or profession in India
  - His stay in India does not exceed 90 days in aggregate and
  - Such remuneration is not liable to be deducted from the income of the employer
- **Sec. 10(6)(viii)** - Remuneration for services rendered in connection with his employment on a foreign ship provided his total stay in India does not exceed 90 days in the previous year
- **Sec. 10(6)(xi)** - Remuneration received as an employee of the Government of a foreign State during his stay in India in connection with his training in any undertaking

owned by Government, Government company, subsidiary of a Government company, corporation established by any Central, State or Provincial Act and any society wholly financed by the Central or State Government .

Sec. 10(6D) - Income from service provided to National Technical Research Organisation

- Any income arising to a non-resident or to a foreign company, by way of royalty from, or fees for technical services rendered in or outside India to, the National Technical Research Organisation is exempt.

Sec. 10(10BB) - Compensation under Bhopal Gas Leak Disaster Act, 1985

- Any payment made to a person under Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and any scheme framed thereunder will be fully exempt.
- However, payments made to any assessee in connection with Bhopal Gas Leak Disaster to the extent he has been allowed a deduction under the Act on account of any loss or damage caused to him by such disaster will not be exempted.

Sec. 10(10BC) - Compensation for any Disaster

- Any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster is exempt.
- However, exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act

Sec. 10(11A) - Payment from Sukanya Samriddhi Account

- Any payment from an account, opened in accordance with the Sukanya Samriddhi Account Rules, 2014 made under the Government Savings Bank Act, 1873 in exempt.
- The interest accruing on deposits in, and withdrawals from any account under the said scheme would be exempt.

Sec. 10(16) - Scholarship

- Scholarships granted to meet the cost of education is exempt.
- Cost of education also includes incidental expenses incurred for education.
- The exemption is irrespective of actual expenditure.

Sec. 10(17) - Daily Allowance, etc. to MP and MLA

- The following incomes of Members of Parliament or State Legislatures will be exempt:
  - Daily Allowance of MPs and MLAs

- Constituency Allowance of MPs and MLAs

Sec. 10(17A) - Awards and Rewards

➢ Any payment made, whether in cash or in kind

a. in pursuance of any award instituted in the public interest or for approved purpose

b. by the Central Government or any State Government or by any other approved body; is exempt

Sec. 10(18) - Pension to receiver of Gallantry Awards

➢ Any income by way of Pension received by an individual

- who has been in the service of the Central or State Government and?
- has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or such other notified gallantry award; or
- family pension received by any member of the family of such individual.

➢ Family means - spouse, children, parents or siblings (if wholly or mainly dependent on the assessee)

➢ Disability pension granted to disabled personnel of armed forces who have been invalidated on account of disability attributable to or aggravated by such service is exempt. (Circular No. 13/2019, dated 24.06.2019)

Sec. 10(26) - Income of Scheduled Tribe

➢ Following income of member of a Scheduled Tribe is exempt –

- from any source in specified areas or States; or
- by way of dividend or interest on any securities.

provided he resides in specified area or States.

➢ **Specified area** –

- The North Cachar Hills District, The Karbi Anglong District, The Bodoland Territorial Areas District, Khasi Hills District, Jaintia Hills District or The Garo Hills District
- States of Manipur, Tripura, Arunachal Pradesh, Mizoram and Nagaland, or
- Ladakh region of the state of Jammu and Kashmir

Sec. 10(26AAA) - Income of Sikkimese

➢ Following income of an individual, being a Sikkimese, is exempt:

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- from any source in the State of Sikkim; or
- by way of dividend or interest on securities:

➢ The exemption is not available to a Sikkimese woman who, on or after 1/4/2008, marries an individual who is not a Sikkimese.

Sec. 10(30) - Subsidy received from Tea Board

➢ Any subsidy received from or through the Tea Board under any scheme for replantation or replacement of tea bushes or for rejuvenation or consolidation of areas used for cultivation of tea as the Central Government may specify, is exempt.

➢ The assessee should furnish a certificate from the Board to the AO along with his return.

Sec. 10(31) - Subsidy received from other Board

➢ Any subsidy received from or through the concerned Board (like Coffee Boards, Rubber Board, etc.) is exempt.

➢ The subsidy is received under any such scheme for replantation or replacement of rubber plants, coffee plants, cardamom plants or plants for the growing of such other commodity or for rejuvenation or consolidation of areas used for cultivation of rubber, coffee, cardamom or such other specified commodity.

➢ The assessee should furnish a certificate from the Board to the AO along with his return.

Section 10(35)- Income from units from the Administrator of specified undertaking/ specified company/ Mutual Fund

➢ Any income received in respect of units from the Administrator of the specified undertaking/specified company/ Mutual Fund shall be exempt.

➢ Exemption shall not apply to any income arising from transfer of such units.

Insertion to Finance Act, 2020, w.e.f. 1-4-2021:

➢ Provided further that nothing contained in this clause shall apply to any income in respect of units received on or after the 1st day of April, 2020.

Sec. 10AA - Holiday for units established in special economic zones

Applicable to: All assessee

Conditions to be satisfied

1. The assessee is an entrepreneur as defined in Sec.2(j) of SEZ Act, 2005.
2. Assessee has been granted a letter of approval from development commissioner.
3. The undertaking has begun or begins to manufacture or produce articles or things or provide services on or after 01/04/2005 but before 31/03/2021 in any SEZ.

4. Business should not be formed by splitting up or reconstruction of an existing business.

   Exception to the above condition:
   However, this condition is not applicable when conditions given u/s 33B are satisfied, which are as follows -
   a. The business of an industrial undertaking carried on in India is discontinued in any previous year by reason of extensive damage to, or destruction of, any building, P&M or furniture owned by the assessee being used for business purpose.
   b. Such damage was caused due to -
      i. flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or
      ii. riot or civil disturbance; or
      iii. accidental fire or explosion; or
      iv. action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),
   c. Such business is re-established, reconstructed or revived by the assessee at any time before the expiry of 3 years from the end of previous year in which such damage was caused.
5. Such undertaking should not be formed by transfer of P&M previously used for any purpose.

   Exception to the above condition:
   a. A P&M is deemed as a new asset if the following conditions are satisfied
      i. Such P&M is imported into India.
      ii. Depreciation on such asset has not been allowed under this Act to any person; and
      iii. The assessee was the first user of such asset in India.
   b. Where the total value of old plant and machinery transferred to the new business does not exceed 20% of total value of plant and machinery used in such business, then this condition is deemed to be satisfied.
6. A report of a chartered accountant in Form 56F must be filed with the return of income certifying that the deduction has been correctly claimed.

Quantum of deduction:

Period	Deduction
For first 5 years from the commencement of operation	$\frac{\text{Profits of the business of the undertaking} \times \text{Export turnover}}{\text{Total turnover of the business carried on by the undertaking}}$
For next 5 years	$\frac{50\% \text{ of [Profits of the business of the undertaking} \times \text{Export turnover]}}{\text{Total turnover of the business carried on by the undertaking}}$

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For next 5 years	50% of [Profits of the business of the undertaking × Export turnover] / Total turnover of the business carried on by the undertaking

★ **Conditions:** Such profit must be credited in reserve account called "SEZ Re-investment Allowance Reserve A/c".

★ **Utilisation of such Reserve**:

➢ Such reserve shall be utilised for the purposes of acquiring new P&M which is first put to use before the expiry of a period of next 3 years following the PY in which the reserve was created.

➢ Until the acquisition of new P&M, such reserve can be utilised for any purpose of the business of the undertaking other than for
- distribution by way of dividends or profits or
- remittance outside India as profits or
- creation of any asset outside India

➢ The prescribed particulars in Form 56FF have been furnished by the assessee in respect of new P&M along with the return of income for the AY relevant to the PY in which such plant or machinery was first put to use.

★ **Misutilisation of Reserve:**

➢ Where any amount credited to such reserve

a) Has been misutilised; or

b) Has not been utilised before the expiry of the specified period,

– then such amount shall be deemed to be the taxable profits of the PY in which the amount was so misutilised or after the expiry of 3 years, as the case may be.

★ **Points to remember:**

➢ **Meaning of Export turnover:** It means the consideration received in India or brought into India by the assessee in respect of export by the undertaking being the unit of articles or things or services.

However, it does not include freight, telecommunication charges, insurance attributable to the delivery of the articles or things outside India or expenses incurred in foreign exchange in rendering of services (including computer software) outside India.

➢ **Profits and gains derived from on-site development of computer software** (including services for development of software) outside India shall be deemed

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to be profits and gains derived from the export of computer software outside India.

- **Business loss or loss under the head 'Capital Gains'** relates to such unit shall be allowed to be carried forward.

- **Conversion of FTZ into SEZ** – Where an undertaking initially located in any FTZ or EPZ is subsequently located in a SEZ by reason of conversion, the period of 10 consecutive assessment years shall be reckoned from the AY relevant to the PY in which the undertaking begins to manufacture or produce such articles or things or computer software in such FTZ or EPZ.
- However, where a unit initially located in any FTZ or EPZ has already completed the period of 10 consecutive assessment years, it shall not be eligible for further deduction from income w.e.f. A.Y.2006-07.
- **No deduction under section 80-IA and 80-IB** shall be allowed in relation to the profits and gains of the undertaking
- The assessee can claim deduction either under this section **or under sec 35AD**

- **Consequences of Amalgamation or Demerger** – Where any undertaking is transferred by an Indian company to another Indian company in a scheme of amalgamation or demerger -

● Amalgamating or the demerged company shall not be eligible for deduction under this section from the PY in which the amalgamation or the demerger takes place; and

● Amalgamated or the resulting company shall be entitled to deduction under this section from the PY in which the amalgamation or the demerger takes place in the same manner if the amalgamation or demerger had not taken place.

- **Inter unit transfer** – Where the assessee carries on 2 businesses and one of them is eligible for deduction under this section then any inter unit transfer between the 2 businesses is allowed only when it is at fair market value.

Sec. 14A - Expenditure related to Exempted Income

- For the purposes of computing the total income, no deduction shall be allowed in respect of expenditure incurred in relation to exempt income.
- The AO can determine the disallowable expenditure in accordance with the method prescribed by the CBDT in the following cases:

  ● Where he is not satisfied with the correctness of the claim of such expenditure by assessee,

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- Where an assessee claims that no expenditure has been incurred by him in relation to exempt income.

➢ Rule 8D lays down the method for determining the amount of such expenditure

➢ Expenditure in relation to income **=**

- Amount of expenditure directly relating to exempt income **+**
- Amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment whose income is exempt.

➢ However, any disallowance computed under this Rule cannot exceed total expenditure claimed by assessee.

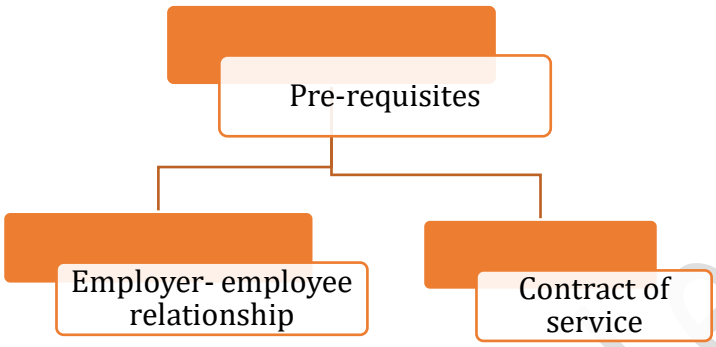
➢ Sec. 14A read along with Rule 8D provides for disallowance of expenditure even where the taxpayer has not earned any exempt income in a particular year.

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Computation of Income under Various Heads

Lesson 4 Part I. Income from salaries

4. 1.1 Basic Elements of Salary



- A payment can be construed as salary only if the payer is the employer and payee is the employee.
- The payment is in pursuance of a contract of service and not contract for service.
- Cases where income is taxed under other heads

(i) **Salary received by a partner** - Taxed under PGBP

(ii) **Remuneration of agent** - taxed under PGBP

(iii) **Salary received by sole proprietor** - is not an income.

(iv) **Payment to a non-executive director** - Taxed under other sources

(v) **Pension received by the widow** or legal heir of deceased employee - Taxed under other sources

(vi) Remuneration of an **official liquidator** - Taxed under salaries

(vii) Salaries of **MPs and MLAs** - Taxed under other sources

- Once salary has been earned by an employee, its **subsequent waiver does not make it exempt** from tax liability.
- Salary from **former, present or prospective employer** is chargeable to tax under the head "Salaries".
- Salary **surrendered to central government** under the provisions of voluntary surrender of salaries (exempt from taxation act 1961, is exempt from taxation
- **Place of accrual** - Where services are rendered.

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- Exceptions to the above rule is Sec 9(1)(iii) – Salaries paid by Government of India to a citizen of India for services rendered outside India is deemed to accrue or arise in India.
- However, any perquisites or allowances paid to such a person is exempt u/s 10(7)

➢ **Salary paid tax-free**: the employer bears the burden of the tax on the salary of the employee. In such a case, the income from salaries in the hands of the employee will consist of his salary income and also the tax on this salary paid by the employer.

- The income-tax paid by the employer on non- monetary perquisites on behalf of the employee would be exempt in the hands of the employee - Sec(10(10CC).

4. 1.2 Definitions & General Notes



Salaries –

a) Wages

b) Any annuity or pension.

c) Any gratuity.

d) Any fees, commission, perquisite or profits in lieu of or in addition to any salary or wages.

e) Any advance of salary.

f) Any payment received in respect of any period of leave not availed of by the assessee.

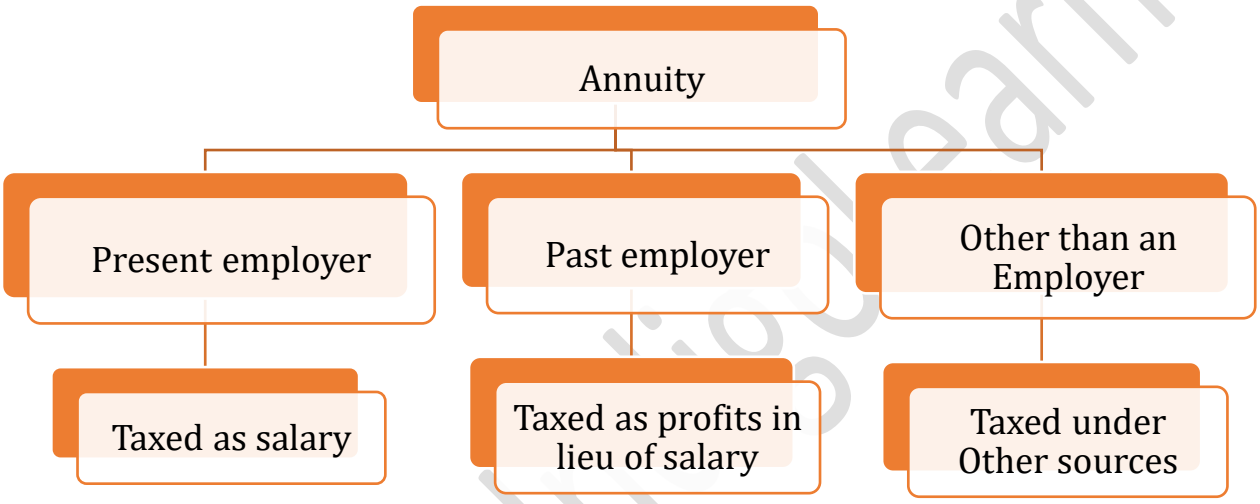
g) The portion of the annual accretion in any previous year to the balance at the credit of an employee, participating in recognised provident fund, to the extent it is taxable.

h) Transferred balance in a Recognised Provident Fund to the extent it is taxable.

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i) Contribution made by the employer in the previous year, to the account of an employee under a pension scheme referred to in sec. 80CCD [National Pension Scheme and Atal Pension Yojana].

Note: National Pension scheme is a scheme approved by the Government for Indian citizen aged between 18-60 years. When an employee, is a subscriber of the NPS account, employer may also contribute into the employee's account. However, while computing total income of the employee-assessee, a deduction under section 80CCD is allowed to the assessee in respect of the employer's as well as employee's contribution under a pension scheme referred therein. The deduction u/s 80CCD is subject to a maximum of 10% of salary.



4. 1.3 Basis of Charge

Sec 15- Basis of Charge

Salary is chargeable to tax either on 'due' basis or on 'receipt' basis, whichever is earlier.

Advance salary – Taxed on Receipt basis

('Advance salary' is different from 'Advance against salary' which is treated as loan)

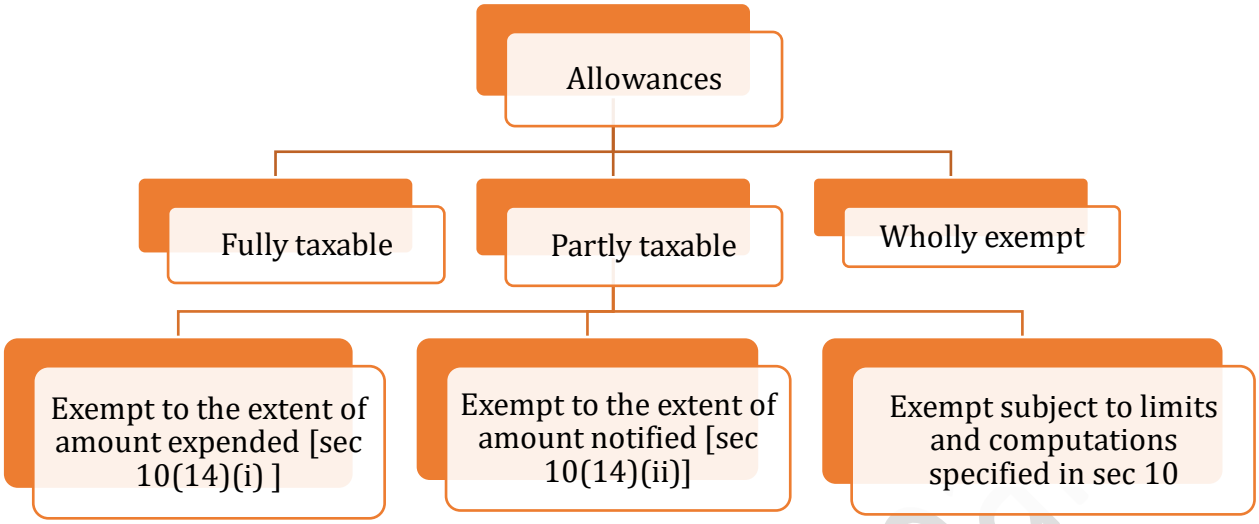
Advance against salary – Treated as loan.

Outstanding salary – Taxed on due basis.

Arrear salary – Taxed on Receipt basis

4. 1.4 Allowances

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Fully taxable allowances

1. Entertainment Allowance – Given to meet the expenses towards hospitality in receiving customers etc.

   Government employees a deduction u/s 16(ii)
2. Dearness Allowance
3. Overtime Allowance
4. Fixed Medical Allowance
5. City Compensatory Allowance (to meet increased cost of living in cities)
6. Interim Allowance
7. Servant Allowance
8. Project Allowance
9. Tiffin/Lunch/Dinner Allowance
10. Any other cash allowance
11. Warden Allowance
12. Non-practicing Allowance – given to a professional to refrain from practicing his profession
13. Transport allowance to employee other than blind/ deaf and dumb/ orthopedically handicapped employee. – (paid for the purpose of commuting between the place of his residence and the place of his duty)

Wholly exempt allowances

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i) Allowances to High Court Judges
ii) Allowance paid by the United Nations Organization Note - Section 2 of the United Nations (Privileges and Immunities) Act, 1947 grants exemption from income-tax to salaries and emoluments paid by the United Nations to its officials.
iii) Compensatory Allowance received by a judge
iv) Sumptuary allowance granted to High Court or Supreme Court Judges
v) Allowance granted to Government employees outside India.
vi) Compensatory allowance under Article 222(2) of the Constitution
vii) Allowance or Perquisite to member of Union Public Service Commission [Sec. 10(45)]
viii) Tax exemption is also available in respect of certain specified perquisites enjoyed by Chief Election Commissioner/ Election Commissioner and judges of Supreme Court on account of the enabling provisions in the respective Acts which govern their service conditions.

Partly exempt allowances
Exempt to the extent of amount expended [sec 10(14)(i)]
➢ These are paid to meet expenses incurred exclusively in the performance of the duties. ➢ For the allowances under this category, there is no limit on the amount which the employee can receive from the employer. ➢ Whatever amount is received should be fully utilized for the purpose for which it was given to him.
i) **Travelling Allowance** - allowance granted to meet the cost of travel on transfer
ii) **Tour allowance** - allowance granted to meet the cost of travel on transfer
iii) **Conveyance Allowance** - allowance granted to meet the cost of commuting from one place to another within the city
iv) **Helper Allowance** - granted to meet the expenditure incurred on a helper
v) **Research allowance/ Academic allowance** - any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions
vi) **Uniform allowance** - any allowance granted to meet the expenditure on the purchase or maintenance of uniform

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vii) **Daily allowance** - allowance granted to meet the cost of living in a place which is not the usual place of business for the employee ie while he is travelling.

Partly exempt allowances

Exempt to the extent of amount notified in Rule 2BB [sec 10(14)(ii)] -

- Allowances granted either to meet his personal expenses at the place where the duties of his office are ordinarily performed by him or at the place where he ordinarily resides or to compensate him for the increased cost of living
- There is a limit on the amount which the employee can receive from the employer. Any amount received by the employee in excess of these specified limits will be taxable in his hands.
- It does not matter whether the amount which is received is actually spent or not by the employee for the purpose for which it was given to him.

1.	Special allowance - Hill/ High altitude allowance/ uncongenial climate allowance/snow bound area allowance or avalanche allowance.	Rs.800 per month or Rs.300 per month depending upon the specified locations. 7000 per month in Siachen area of Jammu and Kashmir
2.	Any Special Compensatory Allowance in the nature of border area allowance or remote locality allowance or difficult area allowance or disturbed area allowance	1,300 or 1,100 or 1,050 or 750 or 300 or 200 per month depending upon the specified locations
3.	Tribal area allowance	Rs.200 per month for specified location
4	Transport allowance granted to an employee working in Transport system provided that such employee is not in receipt of daily allowance	70 % of such allowance up to a maximum of Rs. 10,000 per month
5	Children education allowance	Rs.100 per month, per child up to a maximum of two children
6	Hostel expenditure for employee's children	Rs.300 Per month, per child up to a maximum of two children
7	Compensatory field area allowance	Rs.2,600 per month for specified location
8	Compensatory Modified field area allowance	Rs.1,000 per month for specified location

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9	Special allowance in the nature of counter insurgency allowance granted to the member of armed forces operating in areas away from their permanent locations for a period of more than 30 days.	Rs.3,900 per month whole of India
10	Special compensatory highly active field area allowance granted for armed forces	Rs.4200 per month
11	High altitude allowance granted to members of armed forces operating in high altitude areas	Rs.1060 per month for 9k to 15k feet Rs.1600 per month for above 15K feet
12	Island duty allowance granted to armed forces in Andaman, Nicobar and Lakshadweep islands	Rs.3,250 per month.
13	Underground allowance	Rs. 800 p.m.
14	Transport allowance granted to an employee to meet his expenditure for the purpose of computing between the place of his residence and the place of his duty.	Rs. 3200 per month in case of blind or orthopedically handicapped employees

Any assessee claiming exemption in respect of allowances mentioned at serial numbers 7, 8 and 9 shall not be entitled to exemption in respect of the allowance referred at serial number 2.

Partly exempt allowances

Exempt to the extent of limits specified under various clauses of sec 10

House rent allowance [sec 10(13A)] - Least of the following is exempt

In Mumbai, Delhi, Chennai and Kolkata	In other cities
1. Actual HRA received	Actual HRA received
2. 50% of Salary	40% of Salary
3. Rent paid (Less) 10% of salary	Rent paid (Less) 10% of salary

- Salary = Basic + DA (if forms part of retirement benefit) + Turnover based Commission
- Fully taxable, if HRA is received by an employee who is living in his own house or if he does not pay any rent

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- It is mandatory for employee to report PAN of the landlord to the employer if rent paid is more than Rs. 1,00,000

4. 1.5 Perquisite [Sec. 17(2)]

Perquisites – Sec 17(2)

- **General meaning** - any casual emoluments or benefits attached to an office or position, in addition to salary or wages, which is availed by an employee
- It may be provided in cash or in kind.
- Reimbursement of expenses incurred in the official discharge of duties is not a perquisite.
- Perquisite will become taxable only if it has a legal origin. An unauthorised advantage taken by an employee without his employer's sanction cannot be considered as a perquisite under the Act.

Definition as per sec 17(2)

Value of rent-free accommodation

Value of concession in rent in respect of accommodation.

The value of any benefit or amenity granted or provided free of cost or at concessional rate to 'specified employees.

Amount paid by an employer in respect of any employee's obligation

Life insurance/annuity contract payments

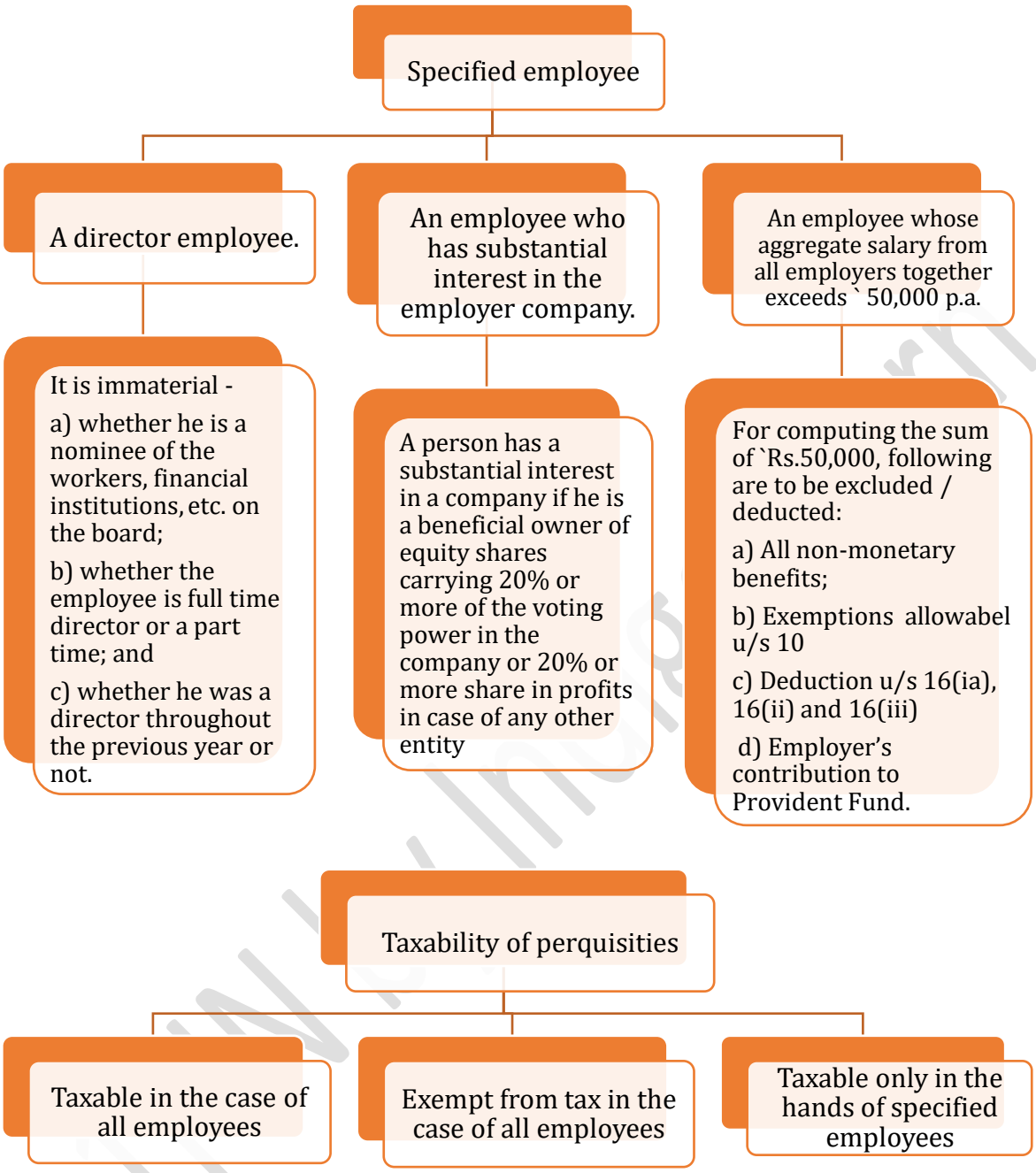
Any contribution in excess of Rs. 7,50,000 in an RPF,NPS and approved superannuation fund by the employer in respect of the assessee.

Annual accretion in excess of Rs. 7,50,000 to the credit of RPF, NPS, an approved superannuation fund by the employer and incl in total income of the assessee.

Value of ESOPs /Sweat equity shares provided free of cost or at concessional rate

Value of any other fringe benefit or amenity

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Perquisites taxable in the case of all employees

Value of rent-free accommodation

Value of concession in rent

Amount paid by an employer in respect of any employee's obligation

Amount payable directly or indirectly to affect an assurance on the life of the assesse

Value of ESOPs and Sweat equity shares

The amount of any contribution to an approved superannuation to the extent it exceeds Rs. 7,50,000.

The value of any other fringe benefit or amenity as may be prescribed by the CBDT - Interest free or concessional loan, Travelling, touring and accommodation, Gift, voucher or token in lieu of such gift, Credit card expense, club expenditure ,use of movable assets, Transfer of movable assets are some of the benefits covered under Rule 3(7).

Perquisites exempt from tax in the case of all employees

Rent-free official residence provided to a Judge of a High Court or to a Judge of the Supreme Court. Similarly, rent-free furnished house provided to an Officer of Parliament.
Telephone provided by an employer to an employee at his residence

Transport facility provided by an employer engaged in the business of carrying of passengers or goods to his employees either free of charge or at concessional rate
Privilege passes and privilege ticket orders granted by Indian Railways to its employees;

Perquisites allowed outside India by the Government to a citizen of India for rendering
services outside India.

Employer's contribution to staff group insurance scheme.

Refreshment provided to all employees during working hours in office premises

Subsidized lunch or dinner provided

Recreational facilities, including club facilities, extended to employeesin general i.e., not restricted to a few select employees;
Amount spent on training of employees

Sum payable by employer to an RPF or an approved superannuation fund

Rent-free official residence provided to a Judge of a High Court or the Supreme Court

Rent-free furnished residence including maintenance provided to an Officer of Parliament, Union Minister and a Leader of Opposition in Parliament;
Conveyance facility provided to High Court Judges

Leave travel concession, subject to the conditions specified under section 10.

Perquisites taxable in the hands of specified employees only

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Any monetary obligation of the employee which is discharged by the employer is perquisite in the hands of all employees as per section 17(2)(iv). However, sometimes instead of discharging employee's obligation, employer provides perquisites in the form of facility to the employee. Such perquisites are taxable in the hands of specified employees only.
For example:

Nature of perquisite	Specified Employee	Non-Specified Employee
Motor car and other conveyance owned by Employee and expenses met by Employer	Taxable	Taxable
Motor car owned by the employer	Taxable	Not taxable
Watchman, Gardener, Sweeper, Personal attendant engaged by employee and expenses met by employer	Taxable	Taxable
Above servants engaged by the employer	Taxable	Not taxable
Gas, Electricity, water, etc for household consumption in the name of employee and expenses met by employer	Taxable	Taxable
The above facilities in the name of the employer	Taxable	Not taxable

4. 1.6 Leave Travel concession

Leave travel concession – Sec 10(5)

- This clause exempts the leave travel concession (LTC) received by employees from their employers for proceeding to any place in India,
  - either on leave or
  - after retirement from service or
  - after termination of his service
- Family includes spouse and children of the individual and parents, brothers and sisters of the individual or any of them wholly or mainly dependent on the individual.
- The exemption referred to shall not be available to more than two surviving children of an individual after 1.10.1998. This restrictive sub-rule shall not apply in respect of children born before 1.10.1998 and also in case of multiple births after one child.
- The exemption in all cases will be limited to the amount actually spent

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- Under Rule 2B, exemption will be available in respect of 2 journeys performed in a block of 4 calendar years commencing from the calendar year 1986. The current block is 2018-2021
- Where such travel concession or assistance is not availed by the individual during any block of 4 calendar years, one such unavailed LTC will be carried forward to the immediately succeeding block of 4 calendar years and will be eligible for exemption.
- The cap limit for exemption is

Journey by air	Economy fare of national carrier by shortest route.
Journey by rail	1st class AC rail fare by shortest route.
Journey by any other mode where rail service exists	1st class AC fare, through recognised public transport by shortest route.
	a recognised public transport system exists - 1st class deluxe fare by shortest route.
	A recognised public transport system does not exist - amount equivalent to 1st class AC fare by rail through shortest route.

4. 1.7 Profits in lieu of salary [Sec. 17(3)]

Profits in lieu of salary [Section 17(3)]
The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the (a) termination of his employment, (b) modification of the terms and conditions of employment.
Any payment due to or received by an assessee from his employer or former employer except the following: ● Gratuity exempted u/s 10(10). ● House rent allowance exempted u/s 10(13A). ● Commuted pension exempted u/s 10(10A). ● Retrenchment compensation exempted u/s 10(10B). ● Payment from an approved Superannuation Fund u/s 10(13). ● Payment from statutory provident fund or public provident fund. ● Payment from recognised provident fund to the extent it is exempt u/s 10(12).

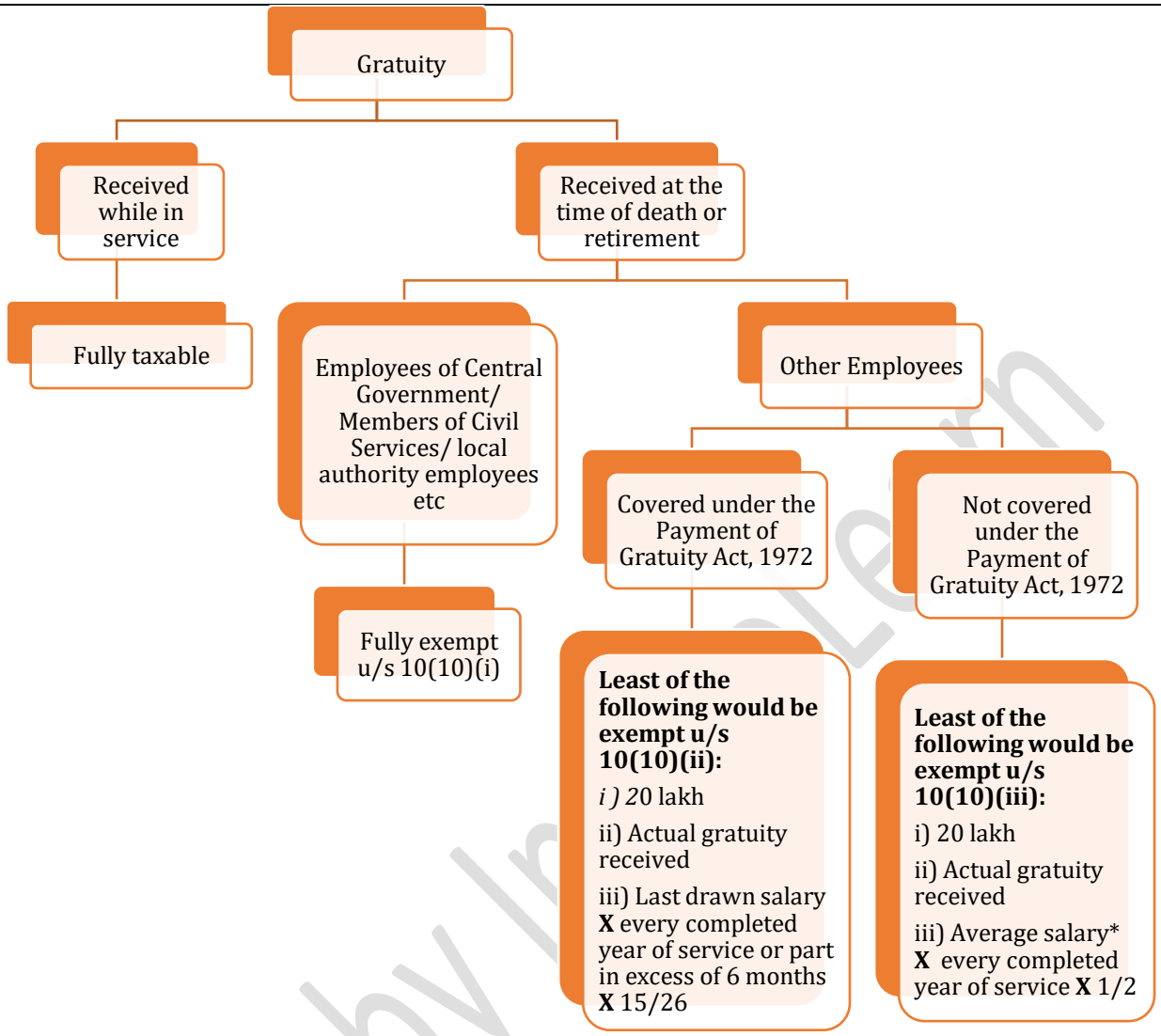
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Any payment from unrecognised provident fund or such other fund to the extent to which it does not consist of contributions by the assessee or interest on such contributions.
Any sum received by the employee under the Keyman Insurance Policy including the sum allocated by way of bonus on such policy.
Any amount due to or received by the employee (in lump sum or otherwise) prior to employment or after cessation of employment.

4. 1.8 Gratuity

Gratuity [Sec 17(1) and Sec 10(10)]
➢ Gratuity is a voluntary payment made by an employer in appreciation of services rendered by the employee. ➢ Retirement gratuity received under the Pension Code or Regulations applicable to members of the Defence Service is fully exempt.

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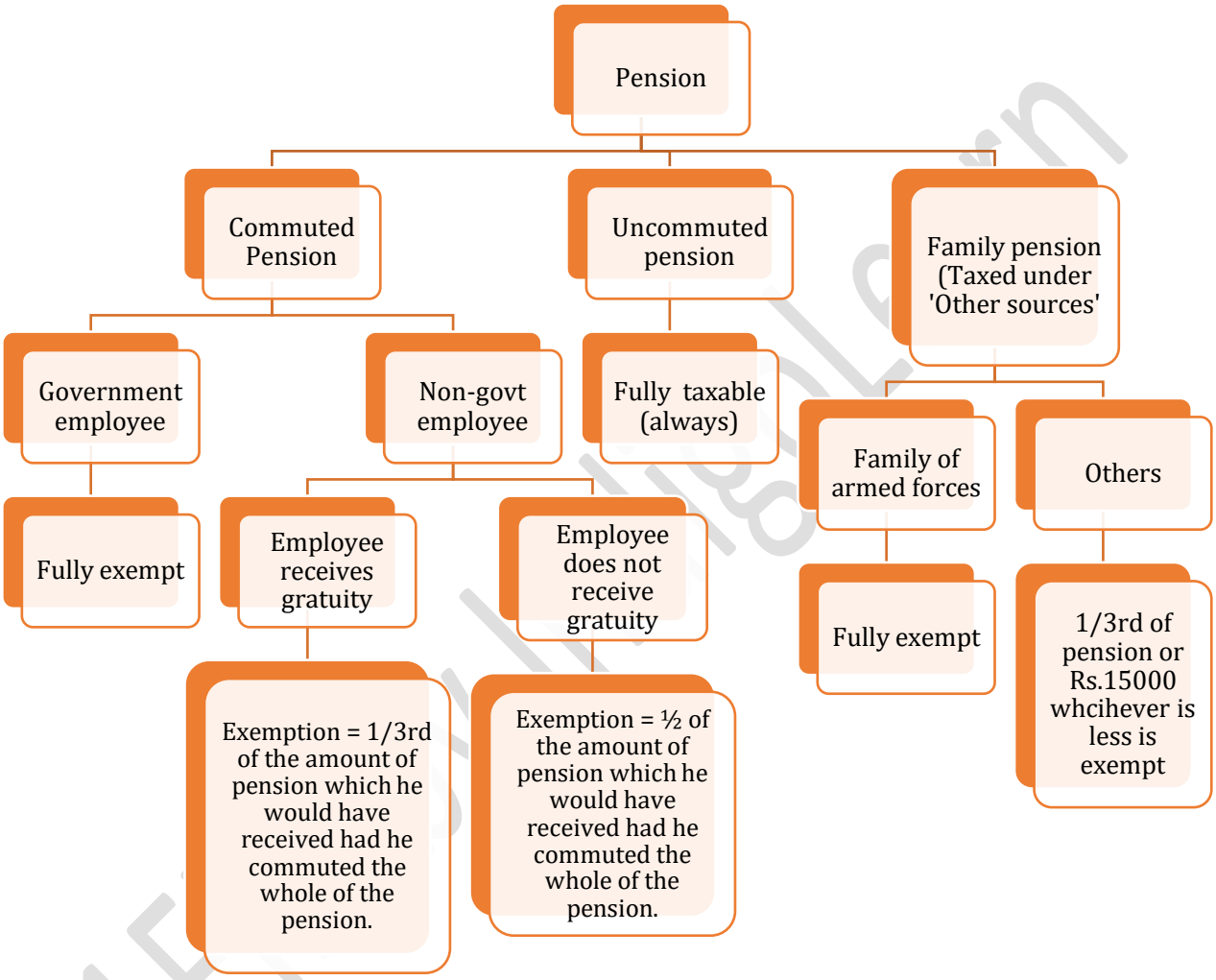
* Average salary - 10 months average salary.

- Where gratuity is received from 2 or more employers in the same year then aggregate amount of gratuity exempt from tax cannot exceed Rs. 20,00,000/Rs. 10,00,000, as the case may be.
- Where gratuity is received in any earlier year from former employer and again received from another employer in a later year, the limit of Rs. 20,00,000/Rs. 10,00,000, as the case may be, will be reduced by the amount of gratuity exempt earlier.
- The exemption in respect of gratuities would be available even if the gratuity is received by the widow, children or dependents of a deceased employee.

4. 1.9 Pension [Sec. 17(1)(ii)]

Pension - sec 17(1)(ii), Commuted pension [sec 10(10A) and Family Pension (Sec 56)

- Pension is a periodic payment made to the employee in consideration of past service payable after his retirement.
- Uncommuted pension refers to pension received periodically.
- Commutation means inter-change. Commuted pension means lump sum amount taken by commuting the whole or part of the pension.



- Judges of the Supreme Court and High Court will be entitled to exemption of the commuted portion.
- Any commuted pension received by an individual out of annuity plan of the Life Insurance Corporation of India (LIC) from a fund set up by that Corporation will be exempted.

4. 1.10 Retrenchment Compensation

Retrenchment compensation [Section 10(10B)]

- Compensation paid under Industrial Disputes Act, 1947 or under any Act, Rule, Order or Notification issued under any law.
- Amount exempted u/s 10(10B) - Least of the following –
  - Actual amount received
  - Rs. 5 lacs
  - 15 days average pay x every completed year of service or part thereof in excess of 6 months. (Sec 25 of Industrial disputes act)
- where the compensation is paid under any scheme approved by the Central Government for giving special protection to workmen under certain circumstances- nothing is taxable.

Average pay means average of the wages payable to a workman	
in the case of monthly paid workman,	In 3 complete calendar months
in the case of weekly paid workman	In the 4 calendar weeks
in the case of daily paid workman,	In the 12 full working weeks
If he has not worked for the above period, then	Average of the wages payable during the period he actually worked.
Wages includes – • all remuneration capable of being expressed in terms of money, • any value of non-monetary benefits like – the value of any house accommodation, or of supply of light, water, medical attendance or other amenity etc.	Wages excludes – • any bonus. • contribution to a retirement benefit scheme. • any gratuity payable on the termination of his service

- Notice pay is fully taxable.

4. 1.11 Compensation received at the time of voluntary retirement [Sec. 10(10C)]

Voluntary retirement compensation [sec 10(10C)]
➢ **Eligible Undertakings** – Central government, State government, Local authority, PSUs, any other company, Co-operative society etc.,
➢ **Amount exempted** – Lease of the following: 1. Actual amount received

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2. Rs. 5 lacs
3. 3 months x salary last drawn x completed year of service
4. Salary last drawn x Balance of months left for retirement/superannuation

- Salary = Basic salary **+** dearness allowance, (if forms part of retirement benefits) **+** commission which is expressed as a fixed percentage of turnover.
- **Conditions to satisfy**
  - Such compensation should be at the time of his voluntary retirement or termination of his service, in accordance with any scheme of voluntary retirement
  - Rule 2BA prescribes the following guidelines for the purposes of the scheme

1. It applies to an employee who has completed 10 years of service or completed 40 years of age.
   However, this requirement is not applicable in case of an employee of a public sector company under the scheme of voluntary separation framed by the company.
2. It applies to all employees by whatever name called, except directors of a company or a cooperative society.
3. The scheme of voluntary retirement or separation must have been drawn to result in overall reduction in the existing strength of the employees.
4. The vacancy caused by the voluntary retirement or separation must not be filled up.
5. The retiring employee of a company shall not be employed in another company or concern belonging to the same management.

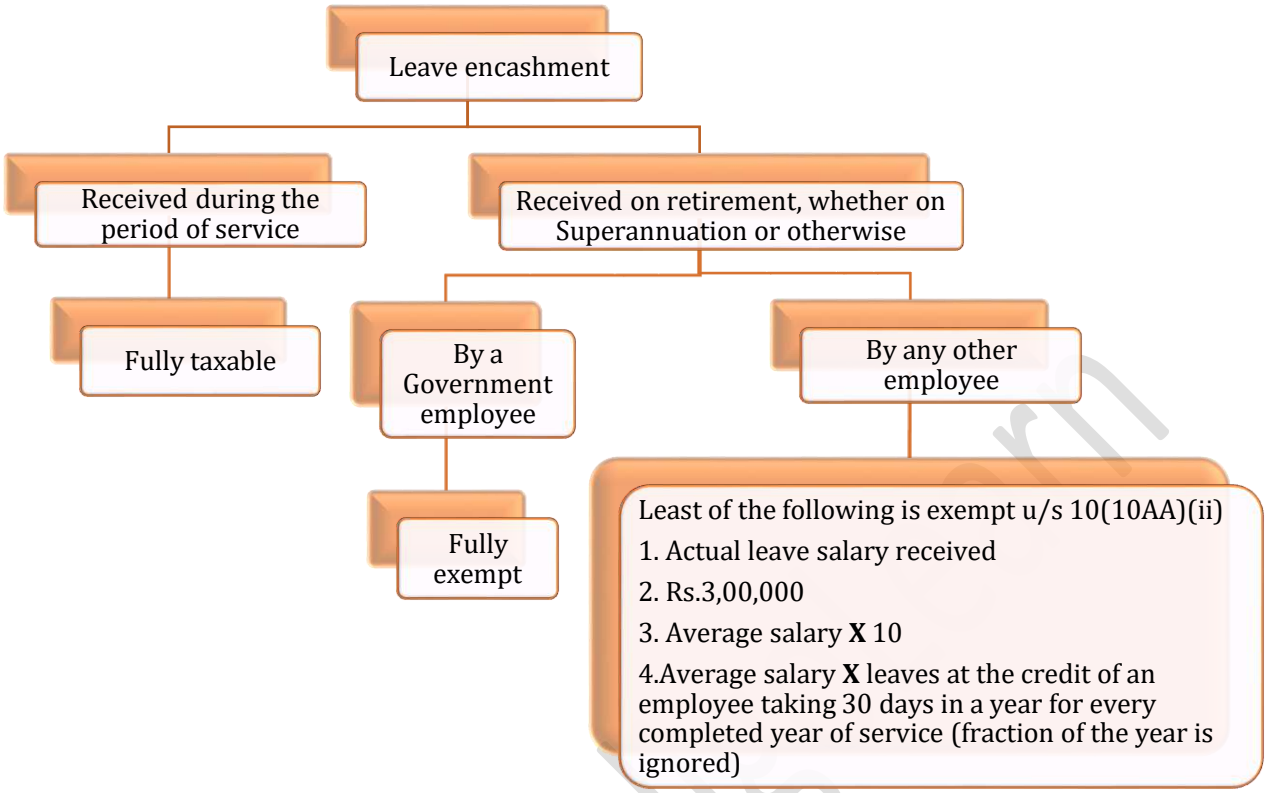
- No exemption u/s 10(10C) if the employee has already taken relief u/s 89
- Exemption u/s is allowed only once in lifetime.
- Exemption will be available even if such compensation is received in instalments.

4. 1.12 Leave salary encashment

Leave salary encashment [sec 10(10AA)]

The payment received on account of encashment of unavailed leave would form part of salary. However, section 10(10AA) provides exemption in respect of amount received by way of encashment of unutilised earned leave by an employee at the time of his retirement, whether on superannuation or otherwise.

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- Where leave salary is received from two or more employers in the same year, then the aggregate amount of leave salary exempt from tax cannot exceed Rs. 3,00,000.
- Where leave salary is received in any earlier year from a former employer and again received from another employer in a later year, the limit of Rs. 3,00,000 will be reduced by the amount of leave salary exempt earlier.
- Salary = Basic salary + dearness allowance, (if forms part of retirement benefits) + commission which is expressed as a fixed percentage of turnover.
- 'Average salary' will be determined on the basis of the salary drawn during the period of ten months immediately preceding the date of his retirement whether on superannuation or otherwise.

4. 1.13 Provident fund

Provident fund scheme is a scheme intended to give substantial benefits to an employee at the time of his retirement.

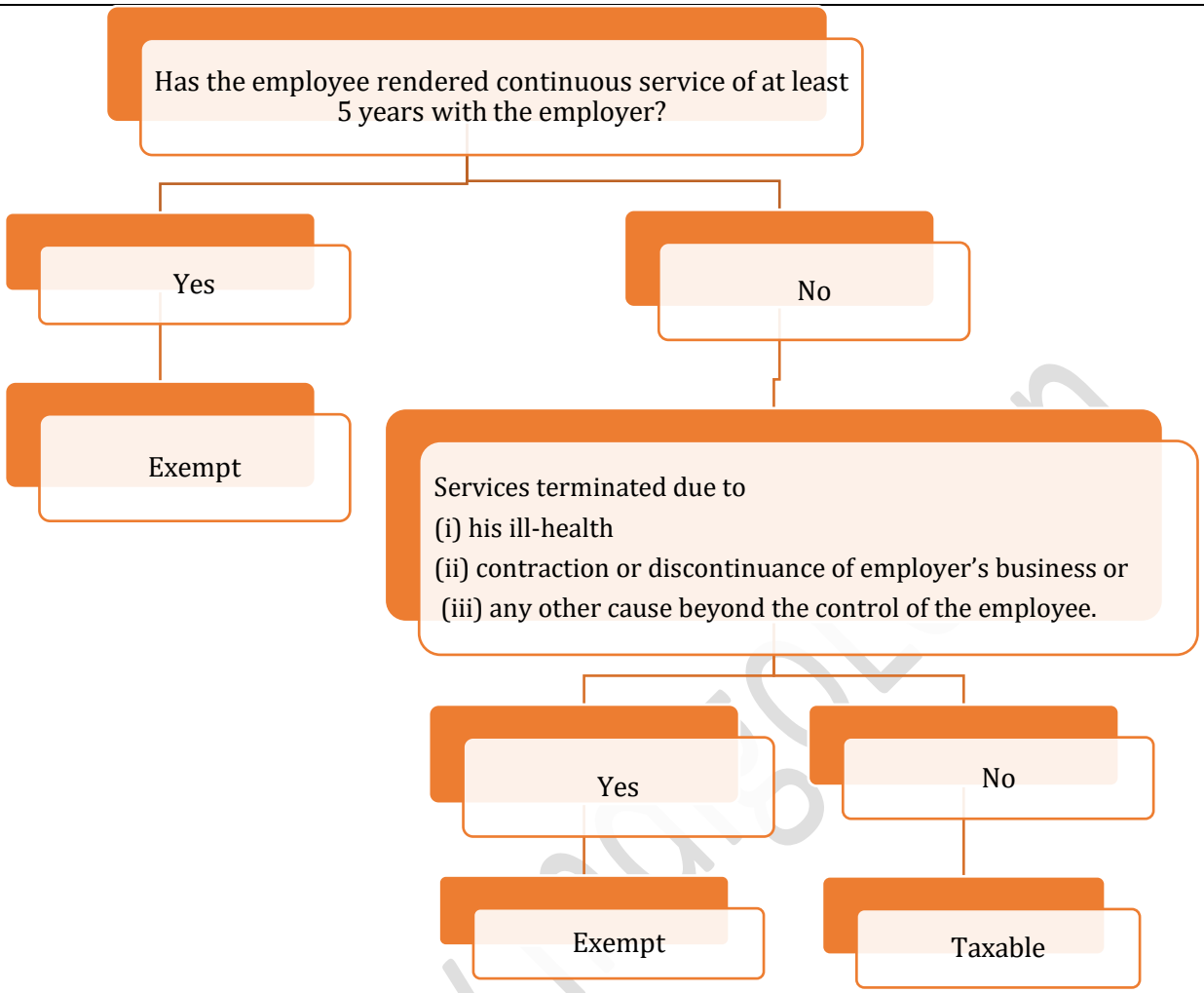
	Statutory PF	Public PF	Recognised PF	Unrecognised PF
	Governed by Provident fund Act 1925	Governed by Provident fund Act 1968	Governed by Provident fund Act 1952	Governed by Provident fund Act 1952

	Applies to employees of government, railways, semi-government institutions,	Membership of the fund is open to every individual though it is ideally suited to self-employed people	PF recognised by CIT	PF not recognised by CIT
Employee contribution	Deduction u/s 80C	Deduction u/s 80C	Deduction u/s 80C	No deduction u/s 80C
Employer contribution	Exempt u/s 10	N.A. (as there is only assessee's contribution)	Exempt up to 12% of salary Excess is taxable	Not taxable yearly
Interest on Employee contribution	Exempt u/s 10	Exempt u/s 10	Exempt up to 9.5% p.an Excess is taxable	Taxable under "other sources" at the end of the term
Interest on Employer contribution	Exempt u/s 10	N. A	Exempt up to 9.5% p.an Excess is taxable	Not taxable yearly
Lumpsum @ retirement	Exempt u/s 10	Exempt u/s 10	Exempt u/s 10	Employer contribution + interest thereon is taxed under "Salaries"

- Salary = Basic salary + dearness allowance, (if forms part of retirement benefits) + commission which is expressed as a fixed percentage of turnover.
- Any transfer from an unrecognised PF to Recognised PF is also taxable in the year of transfer.

Exemption of Accumulated balance of RPF, payable to an employee

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- If, after termination of his employment with one employer, the employee obtains employment under another employer, then, only so much of the accumulated balance in his provident fund account will be exempt which is transferred to his individual account in a recognised provident fund maintained by the new employer. In such a case, for exemption of payment of accumulated balance by the new employer, the period of service with the former employer shall also be taken into account for computing the period of five years' continuous service.

4. 1.14 Medical Facility [Proviso to Sec. 17(2)]

Medical facilities

- The following medical facilities will not amount to a perquisite

1. Value of medical treatment in any hospital maintained by the employer

2. Reimbursement of expenditure actually incurred on medical treatment in

   - any hospital maintained by the Government and
   - in respect of the prescribed disease or ailments in any hospital approved by the Principal Chief Commissioner

   The employee shall attach with his return of income a certificate from the hospital specifying the disease

3. Premium paid to affect an insurance on the health of employee under a scheme approved by the Central Government or IRDA for the purposes of section 36(1)
4. Payment of premium on personal accident insurance policies – because it is taken in their business interest only
5. Reimbursement of premium paid to affect an insurance on the health of employee or for the family of an employee under a scheme approved by the Central Government or the IRDA for the purposes of section 80D
6. Amount paid towards expenditure incurred outside India on medical treatment

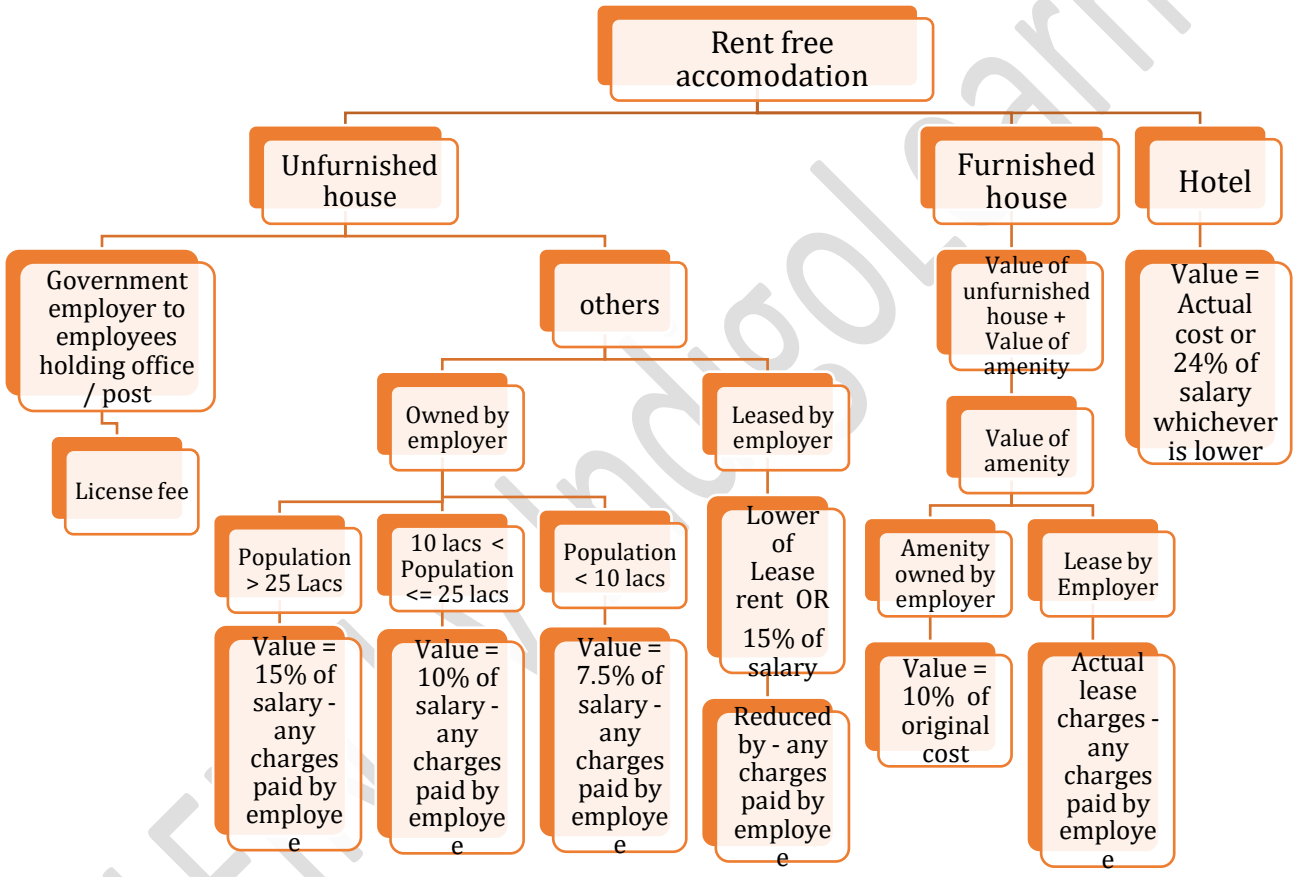
medical treatment of the employee or any member of the family	exempt only to the extent permitted by the RBI
travel and stay abroad for such treatment	exempt only to the extent permitted by the RBI
travel and stay abroad of one attendant who accompanies the patient	exempt if the employee's gross total income as computed before including the said expenditure does not exceed Rs. 2 lakhs

Family = Spouse + children + Parents & siblings if wholly dependent on the assessee

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4. 1.15 Valuation of Perquisites

Value of rent-free accommodation



- For computing the value of a furnished accommodation, first find the value of the unfurnished accommodation and then find the value of amenities. The aggregate is the value of furnished accommodation.
- All the above values will be reduced with the amount actually collected by the employer from the employee.
- In case of hotel accommodation, where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on his transfer from one place to another, there would be no perquisite.
- Where an employee is transferred from one place to another and he is provided with an accommodation at new place also, the value of perquisite shall be taken for only one such house having lower value for a period not exceeding 90 days. Thereafter, the values of both such houses are taxable.

- Where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with anybody or undertaking under the control of such Government, then the value is computed based on the population assuming such body or undertaking to be the employer
- Any accommodation provided to an employee working at a mining site; or an on-shore oil exploration site; or a project execution site; or a dam site; or a power generation site; or an off-shore site, which
  i. being of a temporary nature and having plinth area not exceeding 800 sq. Ft. is located not less than 8 kms away from the local limits of any municipality or a cantonment board; or
  ii. is located in a remote area. (Remote area here means an area located at least 40 K.M. away from a town having population not exceeding 20,000 as per latest published census.)
- **Definition of salary** -

Includes all allowances, bonus and commission and Excludes

(a) Dearness allowance if it does not form part of retirement benefit (only DA* is included)
(b) Employer's contribution to the provident fund account of the employee;
(c) Allowances which are exempted u/s 10
(d) The value of perquisites u/s 17(2)
(e) Any payment or expenditure specifically excluded under proviso 17(2)
(f) Lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments.

Value of any concession in the matter of rent respecting any accommodation provided to the assessee by the employer
➢ The difference between the specified rate in respect of the period during which said accommodation was occupied computed as per the above flowchart and the amount of rent recoverable/recovered from the employee would be deemed to be the concession in the matter of rent. ➢ All the above points with regard to hotel accommodation and 2 accommodations will remain the same ➢ Definition of salary is also the same as mentioned above.

Value of perquisite per calendar month -motor car / car / another vehicle			
Owner/hirer of the car	Expenses met / reimbursed by	Purpose	Taxable value
Employer	Employer	Fully official	Not a perk

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Employer	Employer	Fully personal	Actual expense on running and maintenance + Driver's salary +10% Dep on cost – Amount charged from EE
Employer	Employer	Partly official and partly personal	CC < 1.6 Lts – 1800 pm + 900 pm CC > 1.6 Lts - 2400 pm + 900pm CC = Cubic capacity of the engine 900 Pm for chauffer is considered only if driver is employed.
Employer	Employee	Partly official and partly personal	CC < 1.6 Lts – 600 pm + 900 pm CC > 1.6 Lts - 900 pm + 900pm CC = Cubic capacity of the engine 900 Pm for chauffer is considered only if driver is employed.
Employee	Employer	Fully official	Not a perk
Employee	Employer	Partly official and partly personal	Actual exp – (1800+900) (if CC < 1.6 Lts) OR Act exp – (2400+900) (if CC > 1.6 lts) as the case may be
Any other automotive conveyance			
Employee	Employer	Fully official	Not a perk
Employee	Employer	Partly official and partly personal	Actual exp – 900 pm

- If the employee uses more than 1 car owned or hired by ER, then 1 will be assumed to be used partly for personal use and the other will be assumed to be used fully for personal purposes.
- The employer has to maintain a complete record of all details like journey undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon in case it is used fully for official purpose.
- The use of any vehicle provided by an employer for journey by the assessee from his residence to his office or other place of work, and back home shall not be regarded as a benefit given or provided to him free of cost or at concessional rate.

4. 1.16 Valuation of Fringe benefits

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<table>
<tr><th colspan="2">Valuation of fringe benefits</th></tr>
<tr><th>Benefit</th><th>Valuation</th></tr>
<tr><td>Provision of domestic servants like sweeper, a gardener, a watchman or a personal attendant</td><td>Actual cost to the employer i.e. total amount of salary paid or payable by the employer as reduced by any amount paid by the employee for such service. .
<table>
<tr><td>If servants are engaged by the employee and employer pays or reimburses the cost</td><td>Taxable in the hands of all employees</td></tr>
<tr><td>If the domestic servants are engaged by the employer.</td><td>Taxable in the hands of specified employees only.</td></tr>
</table></td></tr>
<tr><td>Gas, Electricity or water supplied by employer</td><td>
<table>
<tr><th>Circumstances</th><th>Value of benefit</th></tr>
<tr><td>If payment is made to agency supplying of gas, electricity etc.</td><td>Sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water</td></tr>
<tr><td>If supply is made from resources owned by the employer</td><td>Manufacturing cost per unit incurred by the employer</td></tr>
</table></td></tr>
<tr><td>Free or concessional educational facilities</td><td>
<table>
<tr><td>If the fees is paid or reimbursed by the employer</td><td>Value = sum equal to the amount of expenditure incurred by the employer</td></tr>
<tr><td>If the educational institution is maintained and owned by the employer or If free educational facilities are allowed in any other educational institution by reason of his being in employment of that employer</td><td>Then it is taxed only in the hands of specified employees

Value = cost of such education in a similar institution in or near the locality

There would be no perquisite if the cost of such education per child does not exceed Rs. 1,000 p.m.</td></tr>
</table>
Note: The exemption of Rs.1,000 p.m. is allowed only in case of education facility provided to the children of the employee not to other household members</td></tr>
<tr><td>Fee or concessional tickets by the</td><td>Value at which such benefit or amenity is offered by such employer to the public (-) amount recovered.</td></tr>
</table>

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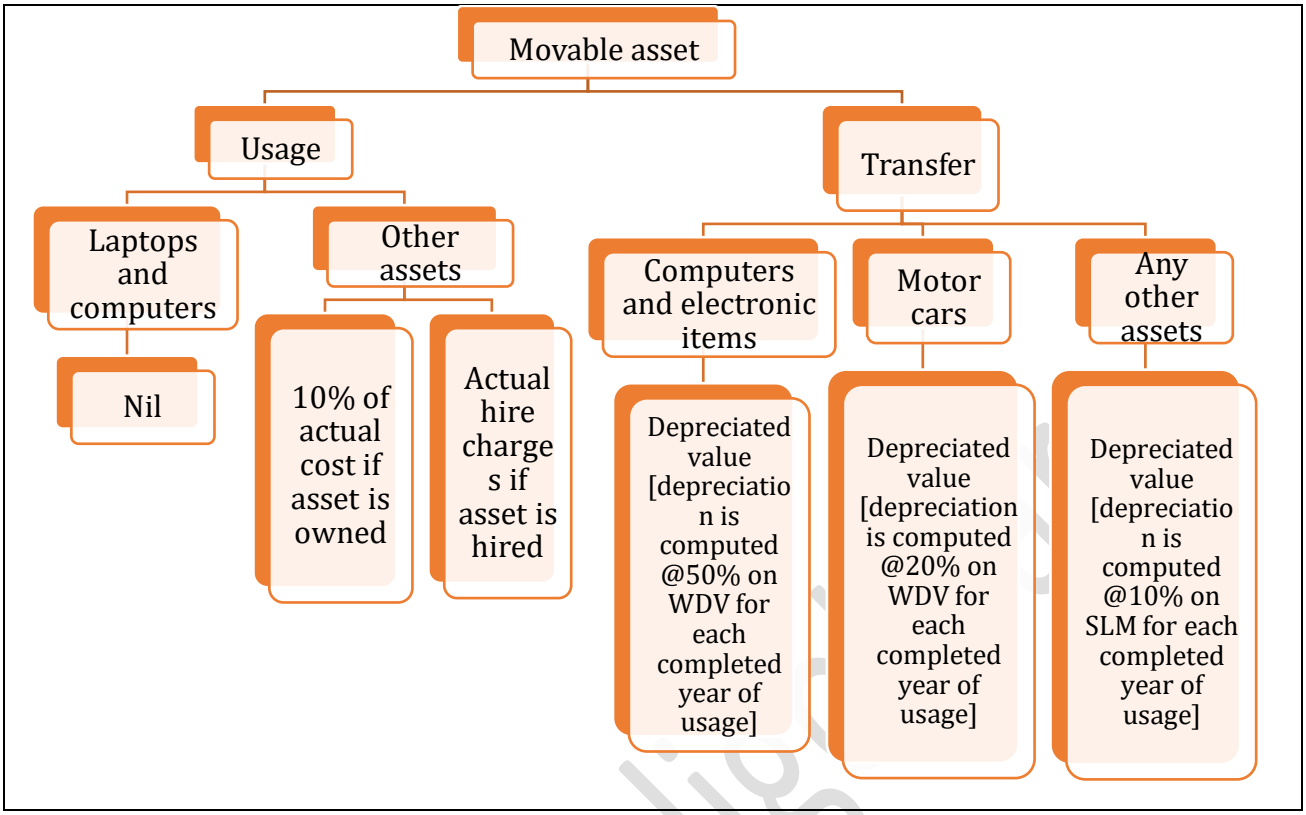
<table>
<tr><td>employer who is engaged in the carriage of passengers or goods</td><td>Value = Nil in case of employees of an airline or the railways.</td></tr>
<tr><td>Interest-free or concessional loan (for all employees or any member of his household)</td><td>Maximum outstanding monthly balance x SBI rate of interest on loans for same purpose on 1st day of PY (-) interest recovered.
Value = Nil if
1) Loan < = 20,000 and
2) Loan for medical treatment for prescribed disease.
(but no exemption if medical exp reimbursed by insurance)</td></tr>
<tr><td>Travelling, touring and accommodation</td><td><table>
<tr><td>For any holiday availed of by the employee or any member of his household</td><td>Value = Actual expenses paid for or borne or reimbursed by the employer</td></tr>
<tr><td>If such facilities are maintained by employer to particular employees only</td><td>Value = value at which such facilities are offered by other agencies to the public.</td></tr>
<tr><td>Expenses on any member of household accompanying such employee on office tour</td><td>Value = the amount of expenditure so incurred for that member</td></tr>
<tr><td>If official tour is extended as vacation</td><td>Value = Actual exp during vacation period.</td></tr>
</table></td></tr>
<tr><td>Free or concessional food and non-alcoholic beverages</td><td>Amount of expenditure incurred by such employer.
The following would not be treated as a perquisite:
1. Provided during working hours at office or business premises
2. Provided through paid vouchers which are not transferable and usable only at eating joints, (not exceeding Rs. 50 per meal) [No exemption is available to assessee, who opts for Section 115BAC]
3. Provided in a remote area or an offshore installation</td></tr>
<tr><td>Gift, voucher or token in lieu of such gift - given to employee or by member of his household on</td><td>Actual value of such gift.
Taxable Value = nil if value of gift is less than Rs. 5000</td></tr>
</table>

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ceremonial occasions or otherwise	
Credit card expenses (incurred by the employee or any member of his household)	Actual Amount of expenditure including membership fees and annual fees If it is for official purpose then, it is not taxable if complete details in respect of such expenditure are maintained by the employer and the employer gives a certificate to that effect.
Club expenditure (incurred by the employee or any member of his household)	Actual expenditure (met by the employer) **+** annual periodical fees **-** amount recovered from the employee. If Employer has taken corporate membership, then the initial fees is not considered as perk. If it is for official purpose then, it is not taxable if complete details in respect of such expenditure are maintained by the employer and the employer gives a certificate to that effect. No perquisite for use of health club, sports and similar facilities provided uniformly to all employees by the employer
Other benefit or amenity	Value = cost to the employer under an arms' length transaction as reduced by the employee's contribution, if any. If an employer pays or reimburses telephone bills or mobile phone charges of employee, there will be no taxable perquisite.

Valuation with regard to usage or transfer of Moveable property

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Valuation of specified security or sweat equity share

The FMV of any specified security or sweat equity share, being an equity share on the date on which the option is exercised is determined in the following manner –

If shares are listed on RSE	If shares are listed on more than one RSE	If no trading in share on RSE	If shares are not listed	In case of securities other than equity shares
FMV = average of the opening price and closing price of the share on that date.	FMV = average of the opening price and closing price of the share on that date in the RSE which records the highest volume of trading in the share	FMV = closing price on the date closest to the date of exercising of the option immediately preceding such date OR closing price on the date closest to the date of exercising in the RSE records the highest volume of trading in the share as the case may be.	FMV determined by a merchant banker on the specified date.	FMV determined by a merchant banker on the specified date.

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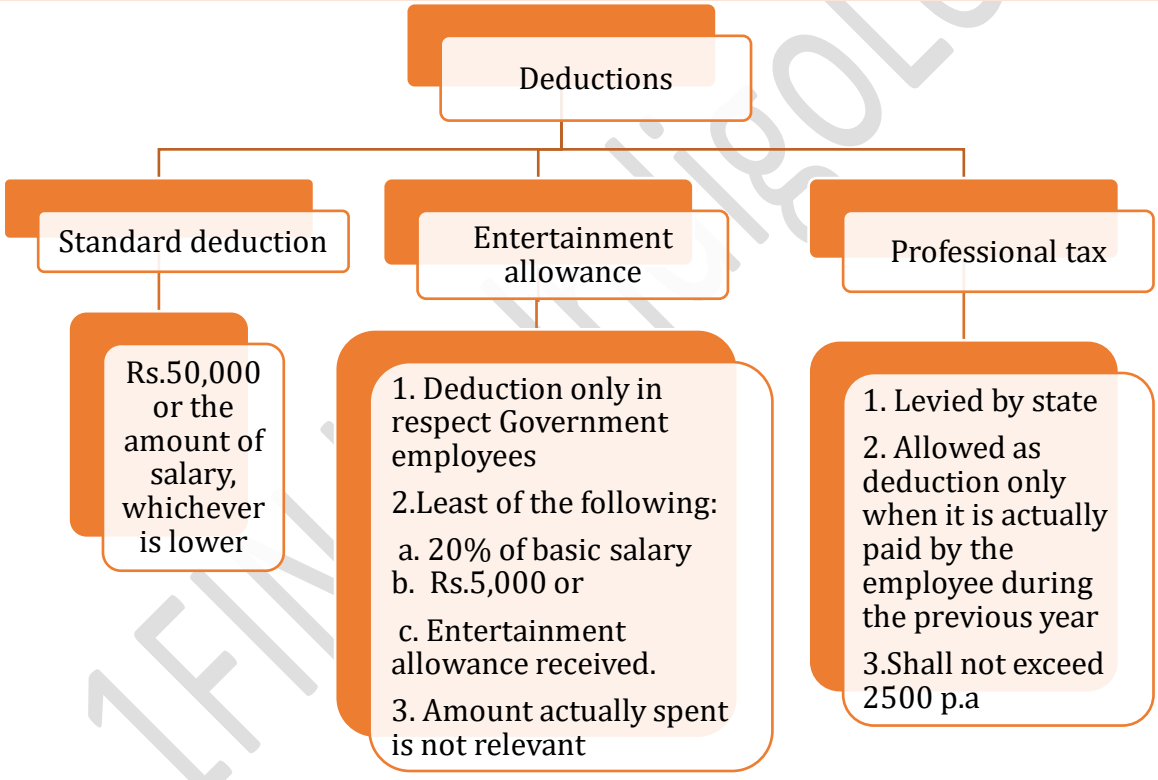
Tax on perquisite of specified securities and sweat equity shares allotted by employer is required to be paid

- Generally = In the year of exercising the option.
- Current employer, being eligible start-up is taxable in the year;
  - after expiry of 48 months from the end of the relevant A.Y
  - in which sale of such shares or securities are made by the assessee
  - in which the assess ceases to be the employee of such employer

Whichever is earlier

RSE – Recognised stock exchange
Specified Date – date of exercising of option or any date not exceeding 180 days prior to that date

4.1.17 Deductions from salary



Standard deduction has been increased from Rs. 40,000 to Rs. 50,000 w.e.f AY2020-21.

Definition of Member of household for the purpose of valuation of Perquisites:

include- spouse(s), (b) children and their spouses, (c) parents, and (d) servants and dependants

4.2.1 Chargeability [Section 22]

The **annual value of any property** *(computation given in sec 23)* comprising of **building or land appurtenant thereto,** of which the **assessee is the owner**, is chargeable to tax under the head "Income from house property".

Conditions for Chargeability

HP	OS/PGBP	Not taxable
Residential and commercial building	Vacant land – OS	Used by the assess for his business or profession
Land connected to building like garden, garage etc.	Subletting – OS	Let out to firm by the partner
Held as stock in trade	Letting out is incidental to main business – PGBP	One palace of ex-ruler
Letting – owner (including deemed owner)	Display of advertisement hoarding	Income from farm building used for agriculture purposes
Building on freehold / leasehold land	Letting with other facilities – like cotton mill with machinery. (if 2 lettings are inseparable)	Property held on charitable trust
	Assesse engaged in the business of letting out of properties – PGBP	House property owned by local authority or registered trade union

❖ Assessee must be the **owner** of the property
(a) **who is entitled to receive income** (beneficial owner)
(b) **Registration** of the sale deed is **not warranted.**
(c) The person **who owns the building need not also be the owner of the land upon which it stands.**
(d) Owner - **during the previous year**. It is not material whether he is the owner in the assessment year.
In case of recovery of **unrealised rent and arrears of rent**, ownership is not relevant.
(e) **Title** of the ownership of the property is under **dispute** in a court of law, the

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decision as to who will be the owner chargeable to income-tax under section 22 will be of the **Income-tax Department** till the court gives its decision to the suit filed in respect of such property.

4.2.2 Deemed owner [Section 27]

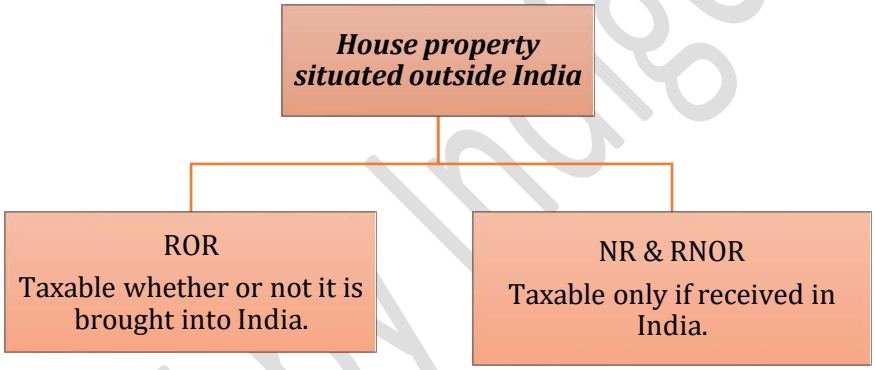
In the following cases the Transferor is deemed to be the owner of assessed property.

Sr.No.	Case	Condition
1.	Transfer to spouse	1. Without adequate consideration or 2. Not in connection with an agreement to live apart
2.	Transfer to minor child	1. Without adequate consideration Not being minor married daughter. Where cash is transferred to spouse or minor child and the transferee acquires property out of that money, then transferor will not be treated as deemed owner, but clubbing provision will be attracted.
3.	Holder of an impartible estate	Impartible estate – property which is not legally divisible. Holder of an impartible estate is deemed to be the individual owner of all properties comprised in the estate.
4.	A member of co-operative society, company or any other AOP	The building is allotted on house building scheme
5.	Person in possession of a property	Sec 53A of Transfer of property act – 1. Possession handed over 2. Consideration paid 3. Power of attorney or agreement to sell executed.
6.	Leased for at least 12 years	where any person acquires any right by way of sale / exchange/ lease for at least 12 years

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		Exception - In case the person acquiring any rights by way of lease from month to month or for a period not exceeding one year, such person will not be deemed to be the owner.

Composite Rent	
Income from building + Other services like, Lifts, Security, Power backup. Etc.	
If the building and amenities are separable	If they are not separable
Income from Building – Taxed u/s 22 and Income from facilities - Taxed u/s 56 or 28 as the case may be	If letting of building is not acceptable without the letting of other assets – then OS / PGBP as the case may be.
Applicable even if composite rent is received by the assesse from his tenant for two lettings.	Even if income is fixed separately



Determination of Annual value - Sec 23		
Particulars	Amount	Amount
Gross Annual Value (GAV)		XXX
(Less) Municipal taxes (**paid by owner**)		(xx)
Net Annual Value (NAV)		XXX
(Less) - Deduction u/s 24		
Standard deduction (30% of NAV- flat)	xxx	
Interest on borrowed capital	xxx	(XXX)
Income under the head House property		XXX

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4.2.3 Computation of GAV

1	Let out property throughout the year	**GAV = ER or AR (actual rent received/ receivable) whichever is higher.** ER (Expected Rent) Step 1- Compare FR (fair rent) or MV (municipal value) whichever is higher Step 2- Compare step 1 and SR (standard rent) whichever is lower Step 3 –Compare step 2 (ER) and Actual rent received/receivable – Whichever is higher Step 2 gives ER and step 3 gives GAV If property is vacant for part of year and Actual Rent is less because of vacancy, then AR shall be GAV.
2	Self-occupied	GAV = Nil. No deduction of Municipal taxes. (This is available only to Individual & HUF) (provided no other benefit is derived from such property)
3	Unoccupied for whole year	GAV = Nil No deduction of Municipal taxes. Unoccupied only because assessee is working in different Place. (This is available only to Individual & HUF) (provided no other benefit is derived from such property)
4	Self-occupied for part of year and let out for other part	ER for whole year compared with AR for let out period & whichever is higher is taken as GAV. Municipal taxes for whole year allowed.
5	Deemed to be let out (in case of more	GAV = ER, NAV = GAV – Municipal Taxes

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	than 2 properties are self-occupied)	Deemed at the option of assessee. Option can be changed year after year.
6	Portion let out and portion self-occupied	Treated as separate building and computed separately. Taxes split based on area (sft).
7	Property being held as stock in trade	GAV would be treated as NIL for a period of 2 years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority, if such property is not let-out during such period. GAV = ER after 2 year from the end of financial year in which certificate of completion of construction of the property is obtained from the competent authority.

4.2.4 Treatment of unrealised rent [Explanation below section 23(1)]

(1) The Actual rent received/receivable should not include any amount of rent which is not capable of being realised.

(2) However the conditions prescribed in Rule 4 should be satisfied. They are -

(a) the tenancy is bona fide.

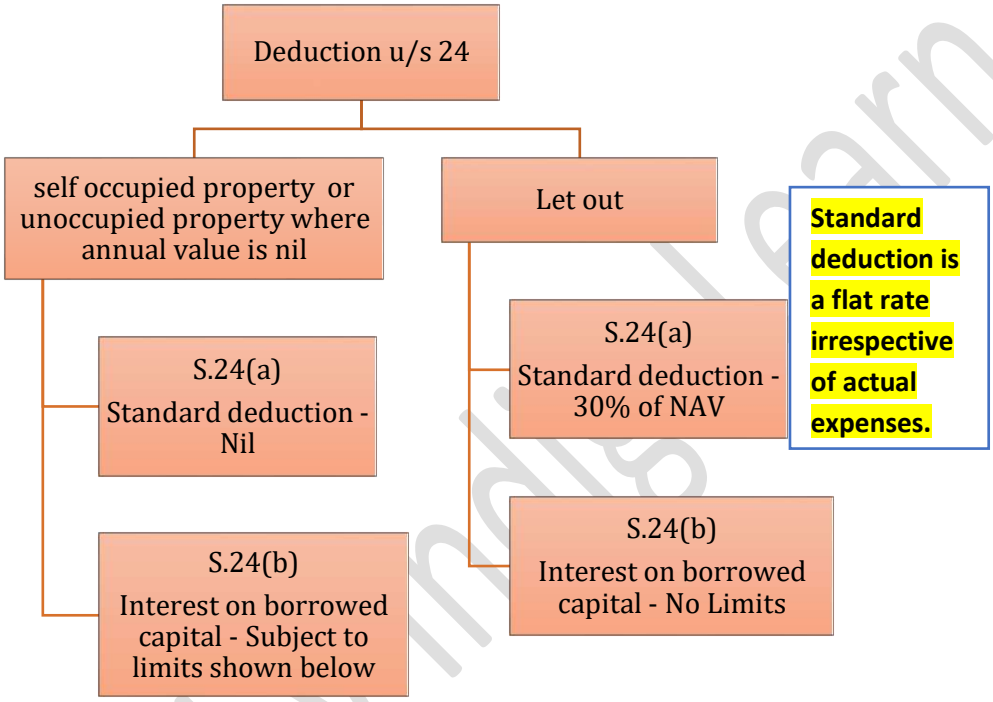
(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(c) the defaulting tenant is not in occupation of any other property of the assessee;

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

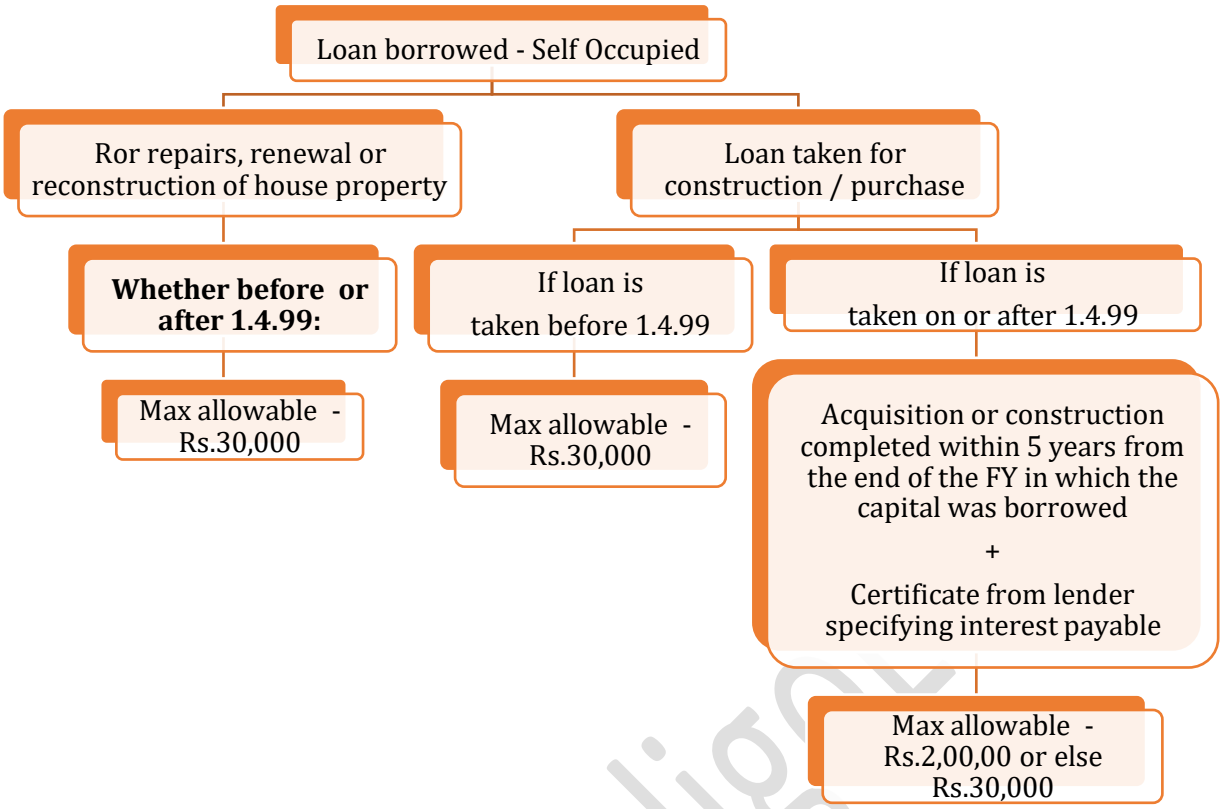
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4.2.5 Deduction from NAV [Section 24]



Interest on loan taken to repay the existing loan is also allowed as deduction.
Interest on interest is not allowed.
Interest to pay municipal taxes not allowed.

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The above limit is including the pre-construction period interest

Pre-Construction period interest	
Pre-construction period interest	Post construction period interest
Allowed in **5 equal instalments** from the PY in which building comes into existence.	Deduction allowed in the year of **accrual**
Pre-construction period: **Starts from** – 1st year when loan is borrowed **Ends on** – 31st March immediately prior to date of completion of construction or acquisition of property **OR** date of repayment of loan **whichever is earlier.**	

4.2.6 Inadmissible deductions [Section 25]

Interest chargeable under this Act which is **payable outside India** shall not be deducted if –

(a) No TDS - tax has not been paid or deducted from such interest and (b) No agent - there is no person in India who may be treated as an agent under section 163.
4.2.7 Arrears of rent and Unrealised [Section 25A]
Rent payable increased retrospectively- such arrears are **taxed** in the year of receipt. Standard deduction of 30% is allowed. Taxed - whether the assessee is the owner of that property or not

4.2.8 Treatment of income from co-owned property [Section 26]	
If shares are definite, and ascertainable	If shares are not ascertainable,
income of each co-owner should be determined in individual assessment	Assessed as AOP.
If it is self-occupied - then each is entitled to an aggregate deduction of 30,000 / 2,00,000, as the case may be	
If it is let out, the income from such property shall be computed as if the property is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their specific share.	

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Lesson 4:Part III - Profits or gains of business or profession

4.3.1 Meaning of Business & Profession

General provisions

★ **Business [Sec. 2(13)]**

➢ Business includes –

- any trade, commerce or manufacture; or
- any adventure or concern in the nature of trade, commerce or manufacture.

★ **Profession**

➢ Profession includes vocation. Profession requires purely intellectual skill or manual skill on the basis of some special learning and qualification gathered through past training or experience e.g. CA, doctor, lawyer etc

➢ Vocation implies natural ability of a person to do some particular work e.g. singing, dancing, etc.

★ Following **elements shall be considered to judge a transaction as business transaction**:

- Nature of commodity • Intention of the party • Efforts applied in transaction
- Periodicity of transaction • Nature of transaction (whether incidental to a business or not)

★ **Meaning of profits:**

➢ Profits may be realised in cash or in kind

➢ Capital receipts are generally not considered as income.

➢ Voluntary receipts are also considered as income.

➢ Income from illegal business is also subject to tax

➢ The profits of each distinct business should be computed separately

➢ The charge is not on gross receipts but on income/gain.

4.3.2 Income chargeable under the head Profits & gains of business or profession [Sec. 28]

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Sec 28 – Income chargeable under the head profits & gains of business or profession

- Profits & gains of any business or profession
- Income of trade or professional association's - from rendering specific services to its members shall be taxable under this head.
- An export incentive in form of profit on sale of import license or duty entitlement pass book, cash assistance, duty drawback etc.
- Perquisite from business or profession - the value of which is whether convertible into money or not.
- Compensation to Management agency : Any compensation/other payment due to or received –

By	In connection with
Any person managing the affairs of an Indian Company	Termination or modification of terms and conditions of his appointment.
Any person managing the affairs of any company in India	
Any person holding an agency in India for any part of the activities relating to the business of any other person.	Termination of agency or the modification of terms and conditions in relation thereto
Any person	1. The vesting in the Government or in any corporation owned/controlled by the Government, of the management of any property or business. 2. The termination or the modification of the terms and conditions, of any contract relating to his business

- Remuneration to partner – Includes any interest salary, bonus, commission etc.
- Non-compete fees – Fees for
  - not carrying out any activity in relation to any business or profession; or
  - not sharing any know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right.

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- Keyman Insurance Policy [Sec. 28(vi)]: - including bonus on such policy.
- Conversion of stock into capital asset - The fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset.
- Recovery against certain capital assets covered u/s 35AD
- Speculation business

4.3.3 Rent, rates, taxes, repairs & insurance for building [Sec. 30]

Sec 30 - Rent, Rates, Taxes, Repairs & Insurance for Building

- Premises are occupied by assessee as tenant.
- If the building is partly used for the purpose of business or profession and partly for other purpose, then deduction shall be restricted to a fair proportion of the expenditure which is attributable to the use for the purpose of business.
- Rent paid to proprietor is disallowed but rent paid by firm to its partner for using his premises is an allowed expenditure.
- The income from sub-letting is netted off with the expenditure.
- Only current repairs are allowed as deduction.
- Municipal taxes: Rates & taxes (for e.g. land revenue, municipal tax, etc) are deductible on cash basis [Sec. 30 read with sec. 43B]
- Taxes levied by foreign government is also allowed.

4.4.4 Repairs and insurance of machinery, plant & furniture [Sec. 31]

Sec 31 - Repairs & Insurance of machinery, plant & furniture

- Only current repairs are allowed as deduction.
- Only repairs & insurance is covered under this section. Rent paid for use of such assets is deductible u/s 37(1)
- If the building is partly used for the purpose of business or profession and partly for other purpose, then deduction shall be restricted to a fair proportion of the expenditure which is attributable to the use for the purpose of business.
- Repairs and insurance of discarded asset is not allowed as deduction.

- Repairs excludes replacement and reconstruction.

4.3.5 Depreciation [Sec. 32]

Sec.32 – Depreciation

★ **Mandatory provision**

- Depreciation is a deduction for diminution in the value of asset.
- It shall be made compulsorily whether or not the assessee has claimed the deduction in computing his total income.

★ **Sec. 32 provides for depreciation on –**

Tangible assets	Building, Machinery, Plant and Furniture.
Intangible assets	Know how, Copyright, Trade Mark, Patent, Licence, Franchise, or any other business or commercial right of the similar nature acquired on or after 1/4/1998

- Plant include ships, vehicles, books, scientific apparatus and surgical equipments & does not include warehouses for storage purposes, tea bushes, Horses, livestock, Cinema theatres, Hotel Building, Human body. P&M is residuary block.
- Buildings' includes within its scope roads, bridges, culverts, wells and tubewells.
- No depreciation on cost of land.

★ **Conditions to claim depreciation**

- Asset must be owned by the assessee.
  - Assessee need not be a registered owner, even a beneficial owner can claim depreciation.
  - In case of joint ownership, depreciation is allowed in proportion to the cost contributed by each owner.
  - Possessor of an immovable property u/s 53A of Transfer of Property Act can claim depreciation even though he is not the owner.
  - In case of hire purchase, the buyer can claim depreciation
  - Where an assessee being a lessee of a property incurs any capital expenditure by way of improvement, extension, super construction, etc. on a building being

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used for his business or profession, he is entitled to depreciation in respect of such capital expenditure.

- Asset must be used for the purpose of business or profession during the previous year.

- Both active and passive use are included. Passive use includes 'ready to use'. Thus stand by equipment and fire extinguishers can be capitalized.

- If the building is partly used for the purpose of business or profession and partly for other purpose, then deduction shall be restricted to a fair proportion of the expenditure which is attributable to the use for the purpose of business.

★ **Method of Depreciation**

- Depreciation shall be allowed on written down value method at the rates prescribed.

★ **Significance of Date of purchase** -

- Where

(a) an asset is acquired by the assessee during the previous year; and
(b) is put to use in the same previous year for less than 180 days,
the depreciation in respect of such asset is restricted to 50% of the normal depreciation.

- This applies only in the year of acquisition and not in subsequent years.

★ **Block of assets**

- Assets are categorised into Block of Assets. Block of assets means a group of assets of same nature, in respect of which same rate of depreciation is charged.

★ **Calculation of depreciation (at a glance)**

Particulars	Amount
W.D.V of the block at the beginning of the previous year 1	Xxx
Add: Assets (falling within the block) acquired during the previous year 2	Xxx
3 = 1-2	Xxx

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Less: Sale Proceeds of assets (falling within the block) sold during the PY [subject to max. of 3]	4	Xxx
Written Down Value = 3-4	5	Xxx
Less: Depreciation (as a % on 5) (Rates are provided in Rule 5(1))	6	Xxx
Opening WDV for 1st day of next year = 5-6	7	Xxx

- When Value as per 4 > value as per 3, the excess shall be treated as short term capital gain. (sec 50A)
- When value as per 5 (Value of block before depreciation) is positive but the block does not have any asset. In such case, such positive value shall be treated as short term capital loss.
- Depreciation in case of succession of firm/ sole proprietary concern by a company or business reorganization or amalgamation or demerger of companies depreciation calculated at the prescribed rates as if the succession, business reorganization, amalgamation or demerger had not taken place.
- Depreciation shall be apportioned between the two entities in the ratio of the number of days for which the assets were used by them.

★ **Rule 5(2) - Increased rate of depreciation for certain assets**

- The below asset qualifies for depreciation @40%.
- Any new machinery or plant installed to manufacture or produce any article or thing
  - by using any technology or other know-how developed in or
  - is an article or thing invented in a laboratory owned or financed by the Government
  - or a laboratory owned by a public sector company or a University or an institution recognized by the Secretary, Department of Scientific and Industrial Research
- **Conditions to satisify:**
  - The right to use such technology or other know-how or to manufacture or produce such article or thing has been acquired from the owner of such laboratory or any person deriving title from such owner.

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- The return filed for any previous year in which the said machinery is acquired, should be accompanied by a certificate from the Secretary, Department of Scientific and Industrial Research, Government of India
- The machinery or plant is not used for the purpose of business of manufacture or production of any article or thing specified in the Eleventh schedule.

4.3.6 Depreciation in case of power units - [Sec 32(1)(i)]

Sec 32(1)(i) - Depreciation in case of power units

★ **Applicable to -**

➢ An undertaking engaged in the business of generation or generation and distribution of power

★ **Condition to satisfy-**

➢ Such unit may charge depreciation (in respect of asset acquired after 31/3/1997) at its choice under –

- Written-down value method as followed by all other assessee (usual); or
- Straight-line method at the prescribed rate in 'Appendix IA' of the Income Tax Rules on actual cost of asset (not the block value of asset)

➢ Such option shall be exercised before the due date of furnishing return of income.

➢ Once the option is exercised, it shall be applicable for all subsequent assessment years.

★ **Consequence of opting for SLM method**-

➢ Additional depreciation is not available to the assessee who claims depreciation as per SLM.

➢ Loss on transfer of any asset is treated as terminal depreciation.

- Terminal depreciation = + ve value of [WDV of assets – (Sale value or Scrap value)]
- Terminal depreciation is written off in the books of accounts.

➢ Profit on transfer of such asset to the maximum of accumulated depreciation shall be treated as balancing charge.

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- The difference between sale price and actual cost shall be treated as capital gain.
- Balancing Charge = - ve value of [WDV of assets – (Sale value + Scrap value)]
- As per sec. 41(2), balancing charge is fully taxable as business income

4.3.7 Additional depreciation [Sec. 32(1) (iia)]

Sec. 32(1)(iia) - Additional depreciation

★ **Applicability**

- Additional depreciation is applicable on all assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power And
- Who has acquired and installed after 31st March, 2005, a new plant or machinery.
- Following is not included in P&M –
  1. Ships and Aircrafts
  2. P&M which was used either within or outside India by any other person before such installation; or
  3. P&M which is installed in office premises or any residential accommodation or guest house; or
  4. Any office appliances or road transport vehicle; or
  5. P&M which is allowed for 100% deduction (whether by way of depreciation or otherwise) in the PY.

★ **Rate of additional depreciation**

	Additional rate	If the asset is acquired and put to use for less than 180 days
Normal undertaking	20%	10%
Undertaking set up in the notified backward area of Andhra Pradesh or Bihar or Telangana or West Bengal during the period 1-4-2015 to 31-3-2020	35%	17.5%

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- Note - additional depreciation shall be available only on plant and machinery and not on other asset like furniture, building, etc.
- New plant and machinery acquired and installed in such notified backward areas on or after 1.04.2020, Sec 32D deduction is not allowed.

4.3.8 Unabsorbed depreciation [Sec. 32(2)]

Sec 32(2) – Unabsorbed depreciation

★ **Meaning**

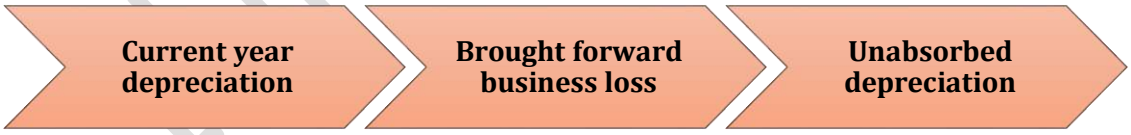
- Depreciation which could not be fully deducted from profits and gains of current year of business or profession (due to insufficient profit), is termed as unabsorbed depreciation.

★ **Treatment:**

- The unabsorbed depreciation can be deducted from income under any other head (except with Casual income and Salaries) of the same assessment year.
- If depreciation still remains unabsorbed, it can be carried forward for indefinite period and can be set off against any income (except with Casual income and Salaries) of the assessee.

★ **Order of set off**

- For set-off purpose following order is to be followed:



★ **Additional points**

- Unabsorbed depreciation can be carried forward even if return of income has not been filed.
- It is not necessary that the same business should be continued.

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4.3.9 Investment in new plant or machinery in notified backward area [Sec. 32AD]

Sec. 32AD - Investment in new plant or machinery in notified backward area

★ **Applicable to**

- Any Assessee

★ **Conditions to be satisfied**

- Manufacturing unit: The assessee sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1.4.2015.
- Location: Such undertaking must be set up in any notified backward area of Andhra Pradesh or Bihar or Telangana or West Bengal.
- Acquisition of new assets: The assessee should acquires and installs new asset for the purpose or such undertaking or enterprise during 01-04-2015 to 31-03-2020; and
- New P&M does not include -
  - Ships and aircrafts
  - P&M which was used either within or outside India by any other person before such installation; or
  - P&M which is installed in office premises or any residential accommodation or guest house; or
  - Any office appliances or road transport vehicle; or
  - P&M which is allowed for 100% deduction (whether by way of depreciation or otherwise) in the PY.

★ **Quantum of deduction**

- 15% of the actual cost of such new asset installed during the previous year.

★ **Points to remember**

- If any new asset is sold or otherwise transferred, within a period of 5 years from the date of its installation, the amount of deduction allowed shall be deemed to be the income (chargeable under PGBP) of the previous year in which it is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

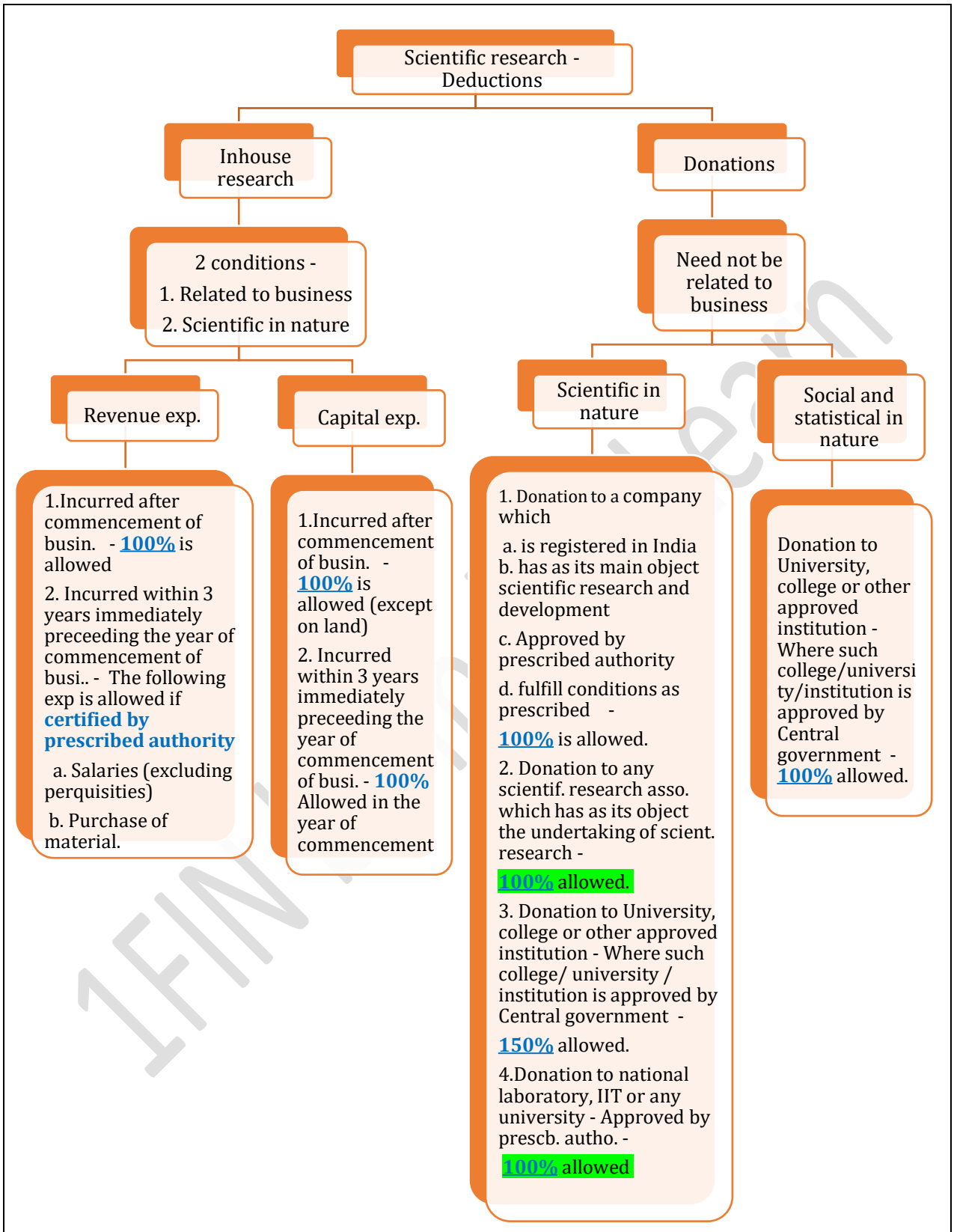
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- **Exception to the above condition** – The transfer can be in connection with the amalgamation or demerger or business reorganization (i.e., conversion of firm or proprietorship concern into company or conversion of unlisted company or private company into LLP),

4.3.10 Scientific Research [Sec. 35]

Sec. 35 - Scientific research

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- Deduction allowed on contribution which qualifies under this act, will not be entitled to any deductions under any other provisions of the act.

- Where deduction is allowed in any previous year in respect of any capital expenditure under this section, then no deduction u/s 32 shall be allowed on such asset.

- Withdrawal of approval: Deduction shall not be denied merely on the ground that subsequent to the payment made by the assessee, the approval granted to the association, university, IIT, etc. has been withdrawn.

- Carry forward of unabsorbed scientific research expenditure: Unabsorbed capital expenditure can be carried forward for unlimited years and set off in any subsequent assessment year(s) like unabsorbed depreciation.

- Effect of amalgamation [Sec. 35(5)]: Provisions of sec. 35 shall apply to the amalgamated company, as it would have been applied to the amalgamating company, if the latter had not transferred such asset.

- Sale of asset used for scientific research [Sec. 41(3)]

Without having been used for other purpose	Sale consideration to the extent of cost of such asset shall be taxable as business income in the year of sale. The excess of sale consideration over original cost (or indexed cost of acquisition) is taxable as capital gain u/s 45. This is applicable even if the business is not in existence in that year)
After being used for other purposes	Sale consideration shall be subtracted from relevant block of assets. It is to be noted that at the time of conversion of scientific research asset into normal business asset, the cost of acquisition shall be taken as nil in the relevant block.

4.3.11 In-house research & development expenses incurred by certain companies [Sec. 35(2AB)]

Sec. 35(2AB) - In-house research & development expenses incurred by certain companies

★ **Applicable to**

- Company engaged in the business of bio-technology or any business of manufacture or

production of any article or thing (other than those specified in the 11th Schedule)

★ **Conditions to be satisfied**

- The expenditure shall be incurred on in-house scientific research and development facility including capital expenditure (other than cost of any land or building).

- In-house research and development facility shall be approved by the Secretary, Department of Scientific and Industrial Research.
- The assessee must enter into an agreement with the prescribed authority
  - for co-operation in such research and development facility; and
  - fulfils such conditions with regard to maintenance of accounts and audit thereof and
  - furnishing of reports in such manner as may be prescribed.

★ **Quantum of deduction**

- 100% of expenditure
- Such expenditure should not be in the nature of cost of Land and Building.

Where deduction is allowed in any previous year in respect of any capital expenditure under this section, then no deduction u/s 32 shall be allowed on such asset.

4.3.12 Deduction in respect of expenditure on specified business [Sec. 35AD]

Sec. 35AD - Deduction in respect of expenditure on specified business

★ **Deduction is optional (optional i.e only if assessee wants)**

★ **Applicable to**

- Specified assessee engaged in the business of:

1. Setting up and operating a cold chain facility for specified products.
2. Setting up and operating a warehousing facility for storage of agricultural produce; or
3. Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

   Note: The project has been approved by the Petroleum and Natural Gas Regulatory Board and being notified by the Central Government.
4. Building and operating, anywhere in India, a hotel of two-star or above category as classified by the Central Government;
5. Building and operating, anywhere in India, a hospital with at least 100 beds for patients;

6. Developing and building a notified housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government (or a State Government)

7. Developing and building a notified housing project under a scheme for affordable housing framed by the Central Government (or a State Government)

8. Production of fertilizer in India;

9. Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;

10. Bee-keeping and production of honey and beeswax;

11. Setting up and operating a warehousing facility for storage of sugar.

12. Laying and operating a slurry pipeline for the transportation of iron ore

13. Setting up and operating a semi-conductor wafer fabrication manufacturing unit, and which is notified by the Board in accordance with such guidelines as may be prescribed

14. Developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility by an Indian company (or consortium thereof) / authority / board /corporation having agreement with Central Government or State Government or local authority or any statutory body

★ **Quantum of deductions**

- 100% of capital expenditure incurred during the previous year.
- Pre-commencement expenditure: - Allowed as deduction in the PY in which business commences
- Capital Expenditure shall not include:
  - Acquisition of any land or goodwill or financial instrument
  - Any expenditure in respect of which the payment or aggregate of payments made to a person in a day, in cash exceeds Rs.10,000

★ **Conditions to satisfy** –

- Splitting of existing business - Such business should not be set up by splitting up, or the reconstruction, of a business already in existence.

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- 2nd Hand Machinery - Such business should not be set up by the transfer to the specified business of machinery or plant previously used for any purpose.
- However, it is not a violation if the used P&M,
  - Is less than 20% of the total P&M used in such business.
  - Is imported into India from a foreign country.
- Deduction u/s Chapter VI A and sec 10AA - Once the assessee has claimed the benefit of deduction under section 35AD for a particular year, he cannot claim benefit under Chapter VI-A under the heading "C - Deductions in respect of certain incomes" or section 10AA for the same or any other year and vice versa.
- Deduction under this section is given only once, if a deduction has been claimed and given in earlier PYs, no deduction will be given again in the current PY and if deduction is claimed for the amount under this section, no other deduction will be given under any other provision.
- Set off & carry forward of losses - The loss from specified business can be set-off against the profit of another specified business under section 73A, irrespective of whether the latter is eligible for deduction under section 35AD.
- Transactions to be in Market value – In case of any transfer of goods or services between specified business and any other business carried on by the assessee, the profits and gains of the specified business shall be computed as if the transfer was made at market value.
- Compulsory audit and furnishing of report with return on income - The accounts of the assessee for the relevant previous year have been audited by a chartered accountant and the assessee furnishes the audit report in the prescribed form, duly signed and verified by such accountant along with his return of income.
- Use of such asset for 8 years - Section 35AD(7A) provides that any asset in respect of which a deduction is claimed and allowed under section 35AD shall be used only for the specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.
- Transfer of such asset taxed as PGBP income - If such asset is demolished, destroyed, discarded or transferred, the sum received or receivable for the same is chargeable to tax u/s 28(vii).
- PGBP income is asset is used otherwise – If the asset is used for any purpose other than the specified business during such 8 years, then –

Total deduction claimed u/s 35AD in one or more PYs	xxx
Less – Depreciation allowable u/s 32 (as if no deduction claimed u/s	(xx)

35AD)	
Deemed income (Chargeable under PGBP)	xxx

- However, the deeming provision under sub-section (7B) shall not be applicable to a company which has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, during the intervening period of eight years specified in sub-section (7A)..
- Transfer of operations - The assessee shall be deemed to be carrying on the specified business of building and operating hotel if

- He builds a hotel of two-star or above category
- Thereafter, he transfers the operation of the hotel to another person;
- He, however, continues to own the hotel

4.3.13 Payment to associations and institutions for carrying out rural development programmes [Sec. 35CCA]

Sec. 35CCA -Payment to associations and institutions for carrying out rural development programmes

★ **Eligibility**

- Contribution made by assessee to –

a. Association or institution, which has as its object the undertaking of any programme of rural development, to be used for carrying out any programme of rural development

- approved by the prescribed authority and
- the assessee furnishes a certificate from such association or institution ; or

b. Association or institution, which has as its object the training of persons for implementing programmes of rural development and

- the assessee furnishes a certificate from such association or institution; or

c. The National fund for rural development; or

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d. The National Urban Poverty Eradication Fund set up and notified by the Central Government in this behalf,

★ **Quantam of deduction** –

100% of such contribution

★ **Points to remember**

- Double deduction is not permissible: Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure, deduction shall not be allowed in respect of such expenditure u/s 80G or any other provision of this Act.
- Withdrawal of approval: Deduction shall not be denied merely on the ground that subsequent to the contribution made by the assessee, the approval granted to such programme, etc. has been withdrawn.

4.3.14 Expenditure on agricultural extension project [Sec. 35CCC]

Sec. 35CCC - Expenditure on agricultural extension project

★ **Eligibility**

- Assessee incurs any expenditure on notified agricultural extension project
- Notified by CBDT

★ **Quantam of deduction** –

- 150% (100% w.e.f. A.Y. 2021-22) of such expenditure shall be allowed.

★ **Conditions to satisfy**

- The project shall be undertaken for training, education and guidance of farmers
- Prior approval of ministry of agriculture is obtained
- Expenditure (other than cost of land &building) exceeds 25 lacs.
- Assessee maintains separate books of accounts
- Such books are audited and an audit report is furnished along with return of income.

★ **Points to remember**

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- Double deduction is not permissible: Deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

4.3.15 Expenditure on skill development project [Sec. 35CCD]

Sec. 35CCD - Expenditure on skill development project

★ **Eligibility**

- Where a company incurs any expenditure (not being expenditure in the nature of cost of any land or building) on any skill development project
- Notified by CBDT

★ **Quantam of deduction** –

- 150% (100% w.e.f. A.Y. 2021-22) of such expenditure.

★ **Conditions to satisfy**

- Assessee maintains separate books of accounts
- Such books are audited and an audit report is furnished along with return of income

★ **Points to remember**

- Double deduction is not permissible: Deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

4.3.16 Amortisation of preliminary expenses [Sec. 35D & Rule 6AB]

Sec. 35D - Amortisation of preliminary expenses

★ **Preliminary expenses -**

- Expenses in connection with –

- Preparation of project report;
- Preparation of feasibility report;
- Conducting market survey or any other survey necessary for the business;
- Engineering services related to the business.

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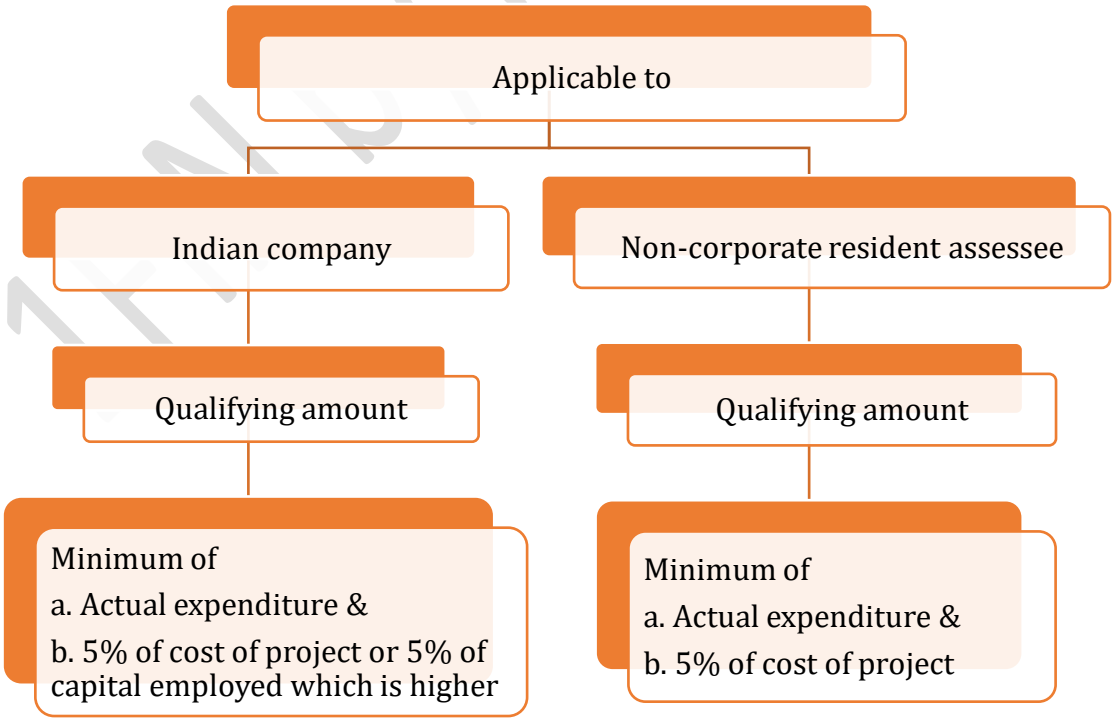
Note: Above work must be carried on by the assessee himself or by a concern, which is approved by the Board.

- Legal charges for drafting any agreement between the assessee and any other person for any purpose related to the setting up or conduct of business.
- Legal charges for drafting & printing of Memorandum of Association & Articles of Association (in case of company-assessee only).
- Registration fees under provisions of the Companies Act, 1956 (in case of company-assessee only).
- Expenses in connection with public issue of shares in or debentures of the company being underwriting commission, brokerage & charges for drafting, typing, printing & advertisement of the prospectus (in case of company-assessee only).
- Any other prescribed expenditure.

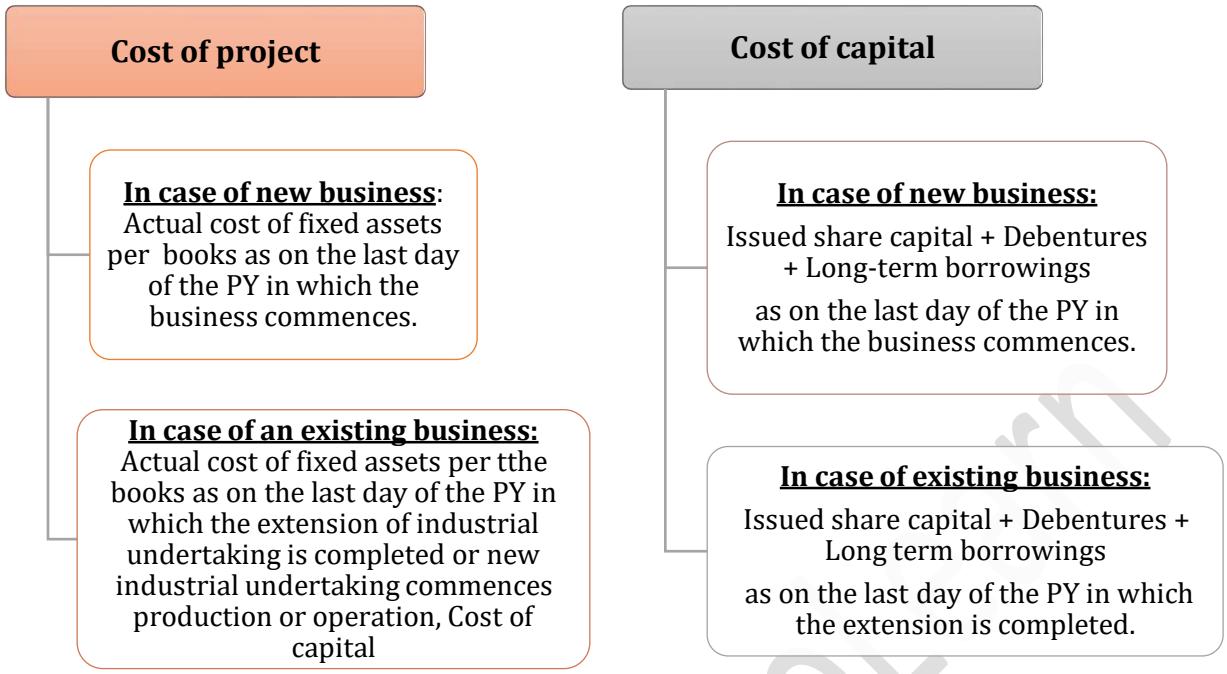
★ **Applicability**

- In case of New business - Preliminary expense is incurred before commencement of business for setting up a new undertaking or business.
- In case of existing business - Preliminary expense is incurred in connection with extension of any undertaking or in connection with setting up a new unit.

★ **Eligibility**



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★ **Quantum of deduction**

- 1/5th of the total eligible preliminary expense is allowed in 5 equal annual installments starting from the year in which the business commences or unit expanded or the new unit commences production or operation. (ie. 20% of expense allowed every year)

★ **Conditions to satisfy**

- Report of a chartered accountant: In the case of a non-corporate assessee, an audit report from a chartered accountant should be submitted along with the return of income before the date specified in Sec 44AB i.e. month prior to the due date for furnishing return of income u/s 139(1).
- And the assessee has by then should have furnish, report of audit for the first year in which deduction is claimed.

★ **Points to remember**

- A foreign company, which is resident in India, is not covered under this section.
- Effect of amalgamation or demerger

In case of transfer of undertaking under the scheme of amalgamation or demerger, the amalgamated company or resulting company (being Indian company) entitled to claim deduction u/s 35D for the residual period

Note: In the year of amalgamation or demerger, deduction shall be available amalgamated company or resulting company as the case may be.

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4.3.17 Deduction of expenses incurred in case of amalgamation or demerger [Sec. 35DD]

Sec. 35DD - Deduction of expenses incurred in case of amalgamation or demerger

★ **Applicable to**:

- An Indian company

★ **Conditions to satisfy**

- Assessee has incurred certain expenditure wholly & exclusively for the purpose of amalgamation or demerger.
- No deduction has been claimed for such expenses under any other section.

★ **Quantum of deduction**:

- 1/5 of expenses so incurred for a period of 5 years commencing from the year in which

  amalgamation or demerger takes places.

4.3.18 Amortisation of expenditure incurred under VRS [Sec. 35DDA]

Sec. 35DDA - Amortisation of expenditure incurred under VRS

★ **Applicable to**:

- All assessee

★ **Conditions to satisfy**

- Assessee has incurred any expenditure, by way of compensation to employees in connection with their voluntary retirement.

★ **Quantum of deduction**:

- 1/5th of expenditure so paid for a period of 5 years commencing from the year in which such expenditure was paid.

★ **Points to remember**

- Effect of amalgamation or demerger: In case of transfer of undertaking under the scheme of amalgamation or demerger, the amalgamated company or resulting company (being Indian company) as the case may be, shall be entitled to claim deduction u/s 35DDA for the residual period.

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- Effect of succession of business: Where there has been reorganisation of business,
  - whereby a firm or proprietary concern is succeeded by a company fulfilling the conditions laid down in sec. 47 (xiii) & (xiv) or
  - A private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in sec. 47 (xiiib),

  The provisions of this section shall apply to the successor concern, as they would have applied to the predecessor, if reorganisation of business had not taken place.
- No deduction shall be allowed to amalgamating company, demerged company, a firm, proprietary or other concern in the previous year in which amalgamation, demerger or succession, as the case may be, takes place.
- No deduction shall be allowed in respect of such expenditure under any other provisions of the Act.
- Sec. 10(10C) {under the head "Salaries"} and Sec. 35DDA {under the head "Profits & gains of business or profession"}

● Exemption u/s 10(10C) is not available to employee of the partnership firm, HUF, proprietorship firm, etc. Deduction u/s 35DDA can be claimed by all assessee.

● Exemption u/s 10(10C is available only if the scheme is approved by the Board. Deduction can be claimed u/s 35DDA even if the scheme is not approved by the Board.

4.3.19 Deductions

Sec	Further deductions allowed in full
Sec. 36(1)(i)	**Insurance Premium** Insurance premium paid against risk of damage or destruction of stocks & stores, used for the purpose of business or profession is allowable as deduction in full.
Sec. 36(1)(ia)	Any amount paid as **insurance premium** by a federal milk co-operative society on the lives of cattle owned by the members of a primary milk co-operative society affiliated to it, is allowed as deduction in full.
Sec.36(1)(ib)	Any **premium** paid (other than by cash) by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme framed in this behalf by— ● the General Insurance Corporation of India & approved by the Central Government

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<table>
<tr><td></td><td>● any other insurer and approved by the Insurance Regulatory and Development Authority
- shall be allowed as deduction.</td></tr>
<tr><td><u>Sec.. 36(1)(ii)</u></td><td>Any <u>bonus or commission</u> (other than in lieu of profit or dividend) paid to employees shall be allowed as deduction.
Such amount must have been actually paid before the due date of furnishing return [Sec. 43B]</td></tr>
<tr><td><u>Sec.36(1)(iii)</u></td><td>Amount of <u>interest paid in respect of capital borrowed</u> for the purposes of business or profession shall be allowed as deduction.
<u>Other points to remember</u>
1. Interest paid to another person: Interest should be paid to another person. Hence, interest on capital to proprietor is disallowed expenditure. However, interest on capital to partners is allowed u/s 40(b).
2. Interest paid to relative is allowed as deduction subject to sec. 40A(2) i.e. if the interest paid is in excess of market rate then excess portion shall be disallowed.
3. If borrowed money is utilised in earning non assessable income, interest on such borrowing shall not be allowed as deduction.
4. Interest on money borrowed to pay income tax is not allowed
Note: Interest on money borrowed for payment of sales tax is allowed as deduction.
5. Interest paid outside India without deducting tax at source is not allowed.
6. Amount borrowed may be applied for the purpose of revenue expenditure or capital expenditure.
7. Other interest: Interest other than interest on borrowed capital e.g. interest on deferred payment for purchased of asset, interest on delayed payment of electricity charges, interest on purchase price of raw-material, etc. shall not be allowed under this section but can be claimed u/s 37(1)
8. Interest on borrowings made for acquiring & installing assets:
<table>
<tr><td>Prior to commencement of business</td><td rowspan="2">Interest is to be added to actual cost of the asset</td></tr>
<tr><td>After commencement of business but before asset is put to use</td></tr>
<tr><td>After asset is put to use</td><td>Interest is allowed u/s 36(1)(iii)</td></tr>
</table>
</td></tr>
<tr><td><u>Sec.36(1)(iiia)</u></td><td><u>Discount on issue of zero coupon bonds</u>
“Zero Coupon Bond” means a bond—
• issued by any infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank on or after 1/6/2005;
• in respect of which no payment and benefit is received or receivable before maturity or redemption from the issuer; and</td></tr>
</table>

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	• which the Central Government may, by notification in the Official Gazette, specify in this behalf. **Treatment:** Discount on issue of Zero Coupon Bonds shall be allowed on pro rata basis having regard to the period of life of such bond. Discount – Difference between amount received/receivable on issue of the bond and the amount payable on redemption/maturity. Life of the bond – From the date of issue to the date of redemption.
Sec.36(1)(iv)	**Contribution towards RPF & Superannuation fund** Any sum paid , by the employer towards recognised provident fund or an approved superannuation fund is allowed as deduction in full. **Points to remember** Contribution towards unrecognised provident fund is not allowed as deduction. Contribution towards statutory provident fund is allowed u/s 37(1).
Sec. 36(1)(iva)	**Contribution towards notified pension scheme u/s 80CCD** Any sum paid by the assessee, as an employer, by way of contribution towards a pension scheme, as referred to in section 80CCD, on account of an employee is allowed as deduction. Maximum Limit: Such contribution should not exceed 10% of the salary of the employee in the previous year. "Salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.
Sec. 36(1)(v)	**Contribution towards approved gratuity fund** Any sum paid as employer's contribution towards an approved gratuity fund created by him exclusively for the benefit of his employees under an irrevocable trust is allowed as deduction. Such amount must have been actually paid before the due date of furnishing return [Sec. 43B]
Sec.36(1)(va)	**Employee's contribution towards staff welfare scheme** Any sum received by an employer from his employees as contribution towards ● Provident Fund; or ● Superannuation Fund; or ● Any other fund set up under the provision of the Employee's State Insurance Act, 1948; or ● Any other fund for the welfare of such employees - is treated as an income of the employer. Subsequently, when such sum is credited by the employer to the employee's account in the relevant fund on or before the due date of crediting such contribution prescribed under the relevant Act, then deduction is allowed. Example: As per the provisions Employee State Insurance Act, 1948 (ESI), all the contributions under this Act are to be deposited within 21 days of the following month. Similarly, all contributions under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 must be deposited within 15 days of the following month.
Sec. 36(1)(vi)	**Allowance in respect of dead or useless animals**

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<table>
<tr><td></td><td><u>Conditions</u>
(a) Animals are used for the purpose of business or profession.
(b) Such animals are not held as stock-in-trade.
(c) Such animals have died or become permanently useless for such purpose.
<u>Quantum of deduction</u>
Difference between actual cost of the animals to the assessee and the amounts realised, if any, in respect of carcasses or sale of animals is allowed as deduction.</td></tr>
<tr><td><u>Sec.36(1)(vii)</u></td><td><u>Bad debts</u>
Any debt or part thereof, which becomes bad shall be allowed as deduction.
<u>Conditions</u>
1. Debt must be <u>incidental to the business</u> or profession of the assessee. There must be a close nexus between the debt and the business of the assessee.
2. The debt has been considered as income of the assessee of that previous year or of earlier previous years.
Debt taken into account in the computing the income of the assessee on the <u>basis of notified ICDS</u> to be allowed as deduction in the PY in which such debt or part thereof becomes irrecoverable.

3. It must have been written off in the accounts of the assessee.
(Provision for bad debt is not allowed as deduction.)
4. Business must be carried on during the previous year or any part of the PY.
Bad debt of a discontinued business is not allowed as deduction even though the assessee has any other business continued.
5. It must be of a revenue nature.
Bad debt arising due to insolvency of a debtor for sale of an asset (not goods) is not allowed as deduction.
Notes:
a. Bad debts are also allowed in the hands of successor of the business.
<u>Recovery of bad debts [Sec. 41(4)]</u>
<table><tr><td>Amount recovered</td><td>Xxx</td></tr><tr><td>Less: Bad debt claimed – Bad debt allowed as deduction</td><td>(xx)</td></tr><tr><td>Taxable bad debt recovery</td><td>xxx</td></tr></table>Such recovery shall be taxable irrespective of the fact whether the business is continued or not.</td></tr>
<tr><td><u>Sec.36(1)(ix)</u></td><td><u>Expenditure on promotion of family planning among employees</u>
<u>Applicable to</u>: Company only
<u>Purpose of such expenditure</u>: Such expenditure must have been incurred for promotion of family planning among its employees.
<u>Quantum of Deduction</u>
● Revenue expenditure is fully allowed as deduction.
● Capital expenditure shall be allowed in 5 equal installments commencing from the previous year in which it is incurred.</td></tr>
</table>

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	Note: Where deduction is allowed in respect of any expenditure under this section then no deduction shall be allowed u/s 32 or any other provisions of this Act. Treatment of unabsorbed capital expenditure: As in case of unabsorbed depreciation. Sale of assets acquired for family planning: Treated in the same manner as in case of sale of assets used for scientific research.
Sec.36(1)(xiv)	**Credit guarantee fund trust** Any sum paid by a public financial institution by way of contribution to specified credit guarantee fund trust for small industries shall be allowed as deduction.
Sec.36(1)(xv)	**Securities transaction tax** Any amount of Securities Transaction Tax (STT) is allowed as deduction provided income arising from such transactions is included in the income computed under the head PGBP.
Sec.36(1)(xvi)	**Commodities transaction tax** Any amount of Commodities Transaction Tax (CTT) paid in respect of the taxable commodities transactions entered into in the course of his business during the PY shall be allowed as deduction provided income arising from such transactions is included in the income computed under the head PGBP Taxable Commodities Transaction means; transaction of Sale of commodity derivatives or Sale of commodity derivatives based on • price or indices of price of commodity or • option on commodity derivatives/in goods in respect of commodities other than agricultural commodities, traded in Recognised Stock exchange.

4.3.20 General deductions [Sec. 37(1)]

Sec. 37(1) - General deductions - Residuary section
Any expenditure which is not specifically provided in any provisions (discussed earlier) of the Act is allowed under this section. For eg., theft, embezzlement, destruction of asset etc. However it should **fulfil following conditions-** 1. It must be real and not notional, fictitious or in lieu of distribution of profit. 2. It must be expended wholly & exclusively for the purpose of business or profession carried on by the assessee. 3. It must have been incurred in the previous year. 4. It must not be a personal expenditure. 5. It must not be a capital expenditure. 6. It must be lawful and not have been incurred for any purpose, which is an offence or prohibited, under any law.
However the following expenditure are **specifically not allowed.**

- **Corporate Social Responsibility:** Any expenditure incurred on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred for the purposes of the business or profession.

- **Expenditure prohibited under law :** The claim of any expense incurred in providing any Gift, Travel facility, Hospitality, Cash or monetary grant or similar freebees in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible being an expense prohibited by the law.

4.3.21 Advertisement in souvenir etc. of a political party [Sec. 37(2B)]

Sec. 37(2B) - Advertisement in souvenir etc. of a political party

- Expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or like, published by a political party is disallowed.

4.3.22 Section 40

Sec. 40(a) - Disallowed expenditure

Sec.40(a)(i) - Interest, royalty, fees for technical services payable to a non-resident or outside India

- Any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable ,—

● outside India; or
● in India to a non resident (not being a company) or to a foreign company,
- on which tax is deductible at source under Chapter XVIIB; and such tax -
● has not been deducted; or
● after deduction, has not been paid to the credit of Central government within the due date of submission of return of income u/s 139(1).

- Where, in respect of any such sum,

●tax has been deducted in any subsequent year, or
● has been deducted during the previous year but paid after the due date of submission of return of income u/s 139(1),
such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

- Where an assessee fails to deduct the whole or any part of the tax but is not deemed to be an assessee in default under the first proviso to section 201(1), then, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee.

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Sec. 40(a)(ia) – Any sum payable to a resident on which TDS provision is applicable

- 30% of any sum payable to a resident on which tax is deductible at source under Chapter XVII-B is disallowed if such tax:

● has not been deducted; or
● after deduction, tax has not been paid on or before the due date of furnishing return of income

- The amount disallowed earlier (i.e., 30% portion) shall be allowed as deduction in the following assessment year if

● such tax has been deducted in any subsequent year, or
● tax has been paid after the due date of furnishing return of relevant assessment year,

- Where an assessee fails to deduct the whole or any part of the tax but is not deemed to be an assessee in default under the first proviso to section 201(1), then, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee.

- This relaxation is not available where the payer has deducted tax but fails to deposit such tax to the credit of the Central Government.

Sec. 40(a)(ib) - Consideration on which Equalisation Levy is applicable

- Any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible and such levy:

● has not been deducted or
●after deduction, has not been paid on or before the due date of furnishing return of income.

- Where in respect of any such consideration, the equalisation levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date of furnishing return of income, such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid.

Sec. 40(a)(ii) - Income tax

Even, income tax paid by the assessee on income of predecessor is not deductible. Professional tax is an allowed expenditure

Sec. 40(a)(iib) - Royalty, licence fees, etc. payable by State Government Undertaking

- Any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or

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➢ which is appropriated, directly or indirectly, from, a State Government undertaking by the State Government.
Sec. 40(a)(iii) – Salaries for non-resident Any payment which is chargeable under the head "Salaries", if it is payable— (i) outside India; or (ii) to a non-resident, and if the tax has not been paid in India thereon nor deducted therefrom under chapter XVII-B.
Sec. 40(a)(iv) – Payment from provident fund or any other fund without deducting tax Any payment to a provident fund or any other fund established for the benefit of employees of the assessee in respect of whom the assessee has not made effective arrangement to secure that tax shall be deducted at source from any payment made from the fund, which are taxable under the head 'Salaries'.
Sec. 40(a)(v) – Tax on non-monetary perquisite paid by employer Any tax on non-monetary perquisite [which is exempt in the hands of employee u/s 10(10CC)] actually paid by employer on behalf of employee is disallowed.

4.3.23 Deduction u/s 40(b)

Sec 40(b) – Deductions disallowed in the hands of firm and LLP

The following amounts are not deducted while computing business income in case of a firm assessable as such or a LLP.

1. Remuneration (salary, commission or by whatever name called) paid to a non-working partner.
2. Remuneration to a working partner or Interest on capital to any partner which is not authorised by the deed.
3. Remuneration or interest to a partner authorised by deed but relates to an earlier period. Ie. The remuneration or interest pertains to the period prior to the date of current deed.
4. Interest to any partner in excess of 12% simple interest per annum.
5. Remuneration to a working partner in excess of the below mentioned prescribed limits

Book profits	Quantum of deduction
On the first 3 lacs of the book profits or in case of loss	Rs. 1,50,000 or 90% of book profits whichever is higher
On the balance of books profits	60% of book profits

Computation of book profit	
Step 1	Find out the net profit as per P&L account
Step 2	Make adjustment as per sec 28 to 44DB (including the adjustment of interest on partner's capital)
Step 3	Add partner's remuneration (if debited to P&L a/c)
Step 4	Subtract unabsorbed depreciation but do not subtract brought forward losses.

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	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
Step 5	The resultant figure is the book profit.

Sec 40(ba) – Disallowance in case of AOP and BOIs

Total income of AOP/BOI is computed as per normal provisions of the Act with the following exception -

Interest or remuneration to member – Any interest paid to members (either on capital or loan) and any remuneration (by whatever name called) paid is not allowed as deduction.

However,

- Where interest is paid by the AOP/BOI to any member (who is member in a representative capacity) or vice-versa, then such interest shall be allowed.
- Where interest is paid by AOP/BOI to any member or vice-versa on behalf of any other person, then such interest shall be allowed.
- Where interest is paid by AOP/BOI to its members as well as interest is received by AOP/BOI from its members, then only net interest so paid is disallowed. However, no such adjustment shall be made where interest is paid to a member and received from another member.

4.3.24 Payment made to relatives in excess of requirement [Sec. 40A (2)]

Sec 40A (2) - Payment made to relatives in excess of requirement

Any payment made by an assessee to a related person or to a person having substantial interest shall be disallowed to the extent it is excess or unreasonable as per the Assessing Officer.

Relative	Spouse, brother, sister or any lineal ascendant or descendant of that individual.
substantial interest	●In case of company - beneficial owner of equity share carrying not less than 20% of voting power ●In any other case - beneficially entitled to not less than 20% of the profits
Excessive or unreasonable	Decided after considering – ●The FMV of the goods, services or facilities for which payment is made. ●The legitimate need of the business or profession ●The benefit arising to the assessee there from

Assessee	Related Person means
An Individual	●Relative ●A person in whose business or profession the individual has substantial interest.

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A Company	●Director of the company or any relative of the director ●A person in whose business or profession the company or any of its director or relative of such director has substantial interest. ●Any other company carrying on business or profession in which the aforesaid company has substantial interest.
A Firm	●Partner of the firm or relative of partner ●A person in whose business or profession the firm or any of its partner or relative of such partner has substantial interest.
An AOP	●A member of the Association or a relative of the member. ●A person in whose business or profession the AOP or any of its member or relative of such member has substantial interest.
An HUF	●A member of the family or relative of such person ●A person in whose business or profession the HUF or any of its member or relative of such member has substantial interest.

- Where an assessee sells his goods at a lower rate, there is no expenditure incurred by him, hence sec. 40A(2) shall not be invoked.

4.3.25 Consequences of payment exceeding Rs.10,000/- otherwise than by account payee cheque or demand draft [Sec. 40A(3)/(3A)]

Sec. 40A(3)/(3A) - Consequences of payment exceeding Rs. 10,000/- otherwise than by account payee cheque or demand draft

★ **Applicability**:

- 100% of any expenditure in respect of which payment has been made in excess of specified amount in a day otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account is disallowed.

Case	specified amount
Payment made for plying, hiring or leasing goods carriages	Rs. 35,000
Payment made for other expenses	Rs.10,000

- Cash payment made in excess of above limits shall be deemed to be income of the subsequent year if expense has been allowed as deduction in any PY on due basis.

★ **This provision is not applicable in the following cases ;**

- If an assessee makes payment of two different bills (none of them exceeds Rs 10,000 /Rs. 35,000) at the same time in cash to the same person.
- If an assessee makes payment of a single bill (exceeding Rs. 10,000 / Rs. 35,000) on different days to the same person in cash, this provision is not attracted, provided any of the payment does not exceed the limit.
- Where payment is made over Rs. 10,000 (or Rs. 35,000) at a time, partly by account payee cheque & partly in cash but the payment in cash alone at one time does not exceed Rs.10,000 (or Rs. 35,000).
- Loan transactions – Because advancing of loan and repayment of prinicipal amount is not an expenditure
- Payment to a commission agent – because cost of goods received on consignment basis is not an expenditure.
- The provision of sec. 40A(3) is attracted only when such expenditure is claimed as deduction u/s 30 to 37.

★ **Exceptions [Rule 6DD]**

Under the following circumstances, provision of Sec.40A(3) is not attracted even if the payment is in excess of Rs.10,000 (or Rs.35,000) has been made through cash

(a) Where the payment is made to—
- The RBI or any banking company
- The SBI or any subsidiary bank
- Any co-operative bank or land mortgage bank;
- Any primary agricultural credit society or any primary credit society
- The Life Insurance Corporation of India

(b) Where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;

(c) Where the payment is made by—
- Any letter of credit arrangements through a bank;
- A mail or telegraphic transfer through a bank;
- A book adjustment from any account in a bank to any other account in that or any other bank;
- A bill of exchange made payable only to a bank;
- The use of electronic clearing system through a bank account;
- A credit card or A debit card

(d) Where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee i.e., Book Adjustment;

(e) Where the payment is made for the purchase of the following to the cultivator, grower or producer of such articles, produce or products;
- Agricultural or forest produce; or
- The produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

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● Fish or fish products; or
● The products of horticulture or apiculture,
(f) Where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
(g) Where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
(h) Where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed Rs. 50,000;
(i) Where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -
●is temporarily posted for a continuous period of 15 days or more in a place other than his normal place of duty or on a ship; and
●does not maintain any account in any bank at such place or ship;
(j) Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
(k) Where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
(l) Where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

4.3.26 Provision for Gratuity [Sec. 40A (7)]

Sec. 40A(7)- Provision for gratuity
No deduction shall be allowed in respect of any provision (by whatever name called) made by the assessee for the payment of gratuity to his employees. **Exceptions:** Any provision made by the assessee for the purpose of payment of a sum ● by way of any contribution towards an approved gratuity fund; or ● for the purpose of payment of any gratuity, that has become payable during the previous year; - shall be allowed as deduction.

4.3.27 Certain contributions not deductible [Sec. 40A (9)]

Sec. 40A(9) - Certain contributions not deductible
No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards setting up or formation of, or as contribution to, any fund, trust, company, AOP, BOI, society or other institution for any purpose. **Exception:**

●Where such sum is paid by way of contribution towards approved superannuation fund, recognised provident fund, approved gratuity fund, NPS as per the requirements under any law, then such sum is allowed.
●Contribution to unrecognized provident fund is disallowed.

4.3.28 Section 41

Sec 41 - Deemed profit chargeable to tax as business income

The following receipts are chargeable to tax as business income even if the business to which such receipt is related is not in existence during the previous year.

Section	Contents
41(1)	Recovery against any deduction
41(2)	Balancing charge
41(3)	Sale of asset used for scientific research
41(4)	Recovery of Bad debts
41(5)	Brought forward losses of defunct business

41(1) - The pre-requisite for the application of this section is that an allowance or deduction must have been made previously while computing the taxable income . Later where such expense is recovered or any benefit is accrued due to the liability, it shall be taxed in such PY.
Where benefit has been obtained by the successor in business, such benefit shall be taxable in hands of successor.
41(5) - In cases where a receipt is deemed to be profit of business u/s 41, relating to a business which ceased to exist and there is unabsorbed losses (not being speculation loss) which arouse in that business during the PY in which it cease to exist, it would be set off against income which is chargeable under this section.

4.3.29 Section 43(5)

Sec 43(5) - Speculation business

- Speculation business - Speculative transaction means a transaction in which contract for purchase and sale of any commodity including stock and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scripts. Sec. 43(5)

- As per explanation to sec. 73, where any part of the business of a company consists of purchase and sale of shares of other companies, such company shall be deemed to be carrying on speculation business to the extent of purchase and sale of shares. However, this rule is not applicable in case of companies -

  a) of which gross total income mainly consists of income which is chargeable under the head "House property", "Capital gains", and "Other sources"; or
  b) of which principal business is the business of trading in shares or banking or granting of loans and advances.

- Notes: Above explanation covers only transactions of purchase and sale of shares. Debentures, units of UTI or of Mutual Funds are not covered by this explanation.
- Following transactions are not deemed to speculative transactions:
  - Hedging contract in respect of raw material and merchandise to safeguard loss through future price fluctuations
  - Hedging contract in respect of stocks and shares
  - Forward contract to guard against loss arising in the ordinary course of business
  - Trading in derivatives
  - Trading in commodities derivatives – on which commodity transaction tax is paid

Note – The requirement of chargeability of commodity transaction tax is not applicable in respect of trading in agriculture commodity derivatives from AY 2019-20.

Sec 145 – Method of accounting

- Income chargeable under the head "Profits & gains of business or profession" or "Income from other sources", is to be computed in accordance with the method of accounting (i.e. either on cash or on accrual basis) regularly followed by the assessee.
- However, there are certain expenditures specified u/s 43B, which shall be deductible only on cash basis.

4.3.30 Section 43A

Sec. 43A- Consequence of changes in rate of exchange of currency

★ **Conditions**

1. Assessee has imported an asset.
2. In consequence of a change in the rate of exchange during any PY after the acquisition of such asset, there is an increase or reduction in the liability (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment -

a. towards the whole or a part of the cost of the asset; or

b. towards repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with interest.

★ **Tax Treatment**

The amount by which such liability is increased or reduced at the time of making the payment (irrespective of the method of accounting adopted by the assessee) shall be added to or deducted from the actual cost (as reduced by depreciation already claimed) of the asset.

★ **Points to remember**

● If such increase or decrease arises after the depreciable asset is transferred (but block exists), then such increase or decrease shall be adjusted in the WDV. If however, block cease to exist, then such amount shall be treated as capital receipt or expense.

● Where the whole or any part of the liability aforesaid is met, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this section.

4.3.31 Expenditures allowed on cash basis [Sec. 43B]

Sec. 43B - Expenditures allowed on cash basis

★ **Applicability**

Deduction in respect of following expenses are allowed

● only if payment is made

● on or before the due date for furnishing return of income u/s 139(1) of the PY in which such liability is incurred

1. Any **tax, duty, cess, fee**, by whatever name called, under any law for the time being in force.
2. **Bonus or commission** to employees.
3. **Interest on loan** or borrowing from any
   - Public financial institutions (i.e., IFCI, LIC, etc.); or
   - State financial corporation; or
   - State industrial investment corporation.
   - deposit taking non-banking financial company or
   - systemically important non-deposit taking non-banking financial company (NBFC not accepting/holding public deposits and having total assets of ≮ Rs.500 crores as per last audited Balance sheet and is also registered with RBI)
4. **Interest on any loans** and advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.
5. Salary in lieu of any leave (i.e. **leave encashment).**
6. **Employer's Contribution to any provident fund**, superannuation fund, gratuity fund or any other fund for the welfare of employees.
7. Any sum payable to the Indian Railways for the **use of railway assets.**

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★ **Points to remember** :

1. Deduction can, however, be claimed in the year of payment.
2. Where outstanding interest on loan (taken from Banks, PFIs, etc.) is converted into loan then such interest is not deemed as interest paid.
3. As per sec. 36(1)(va), any sum received by an employer from his employees as contribution towards provident fund, superannuation fund, any other fund set up under the provision of the ESI Act, 1948 or any other fund for the welfare of such employees, is treated as an income of the employer. Subsequently, when such sum is credited by the employer to the employee's account in the relevant fund on or before the due date of crediting such contribution prescribed under the relevant Act, then deduction is allowed. If such contribution is not deposited within time allowed as per the provisions of the relevant Act, the deduction shall never be allowed.

Sec 43CA – Stamp duty value of land and building to be taken as the full value of consideration in respect of transfer, even if the same are held by the transferor as stock in trade.

★ **Applicability**

- where in respect of transfer of an asset (other than capital asset), being land or building or both,

● 110% of the consideration < The stamp duty value, then
● Full value of the consideration = the stamp duty value
for the purposes of computing income under the head PGBP.

★ **Date of stamp duty value:**

- Where the date of the agreement and the date of registration are not the same
- Full value consideration = Stamp duty value on the date of agreement if following conditions are satisified :
  - Whole or part of consideration is paid
  - By any mode other than cash
  - On or before the date of agreement.

★ **Reference to Valuation Officer**

- The Assessing Officer can refer the case to the Valuation Officer if following conditions are satisfied:

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- Assessee claims that the value adopted or assessed by Stamp Valuation authority exceeds the FMV of the property as on the date of transfer; &
- The value so adopted or assessed or has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court.

★ **Consequences where the value is determined by the Valuation Officer**

➢ sale consideration of the asset shall be taken as minimum of the following –

- Value adopted or assessed or assessable for the purpose of stamp duty;
- Value determined by the Valuation Officer.

4.3.32 Special Provision in case of Income of Public Financial Institutions, etc. [Sec. 43D]

Sec 43D- Income of public financial institutions, public companies, etc

Applicability

- Public financial institutions (i.e., IFCI, LIC, etc.); or
- Schedule Bank
- Cooperative Bank (related to other than agricultural)
- State financial corporation; or
- State industrial investment corporation.
- deposit taking non-banking financial company or
- systemically important non-deposit taking non-banking financial company
- housing finance company

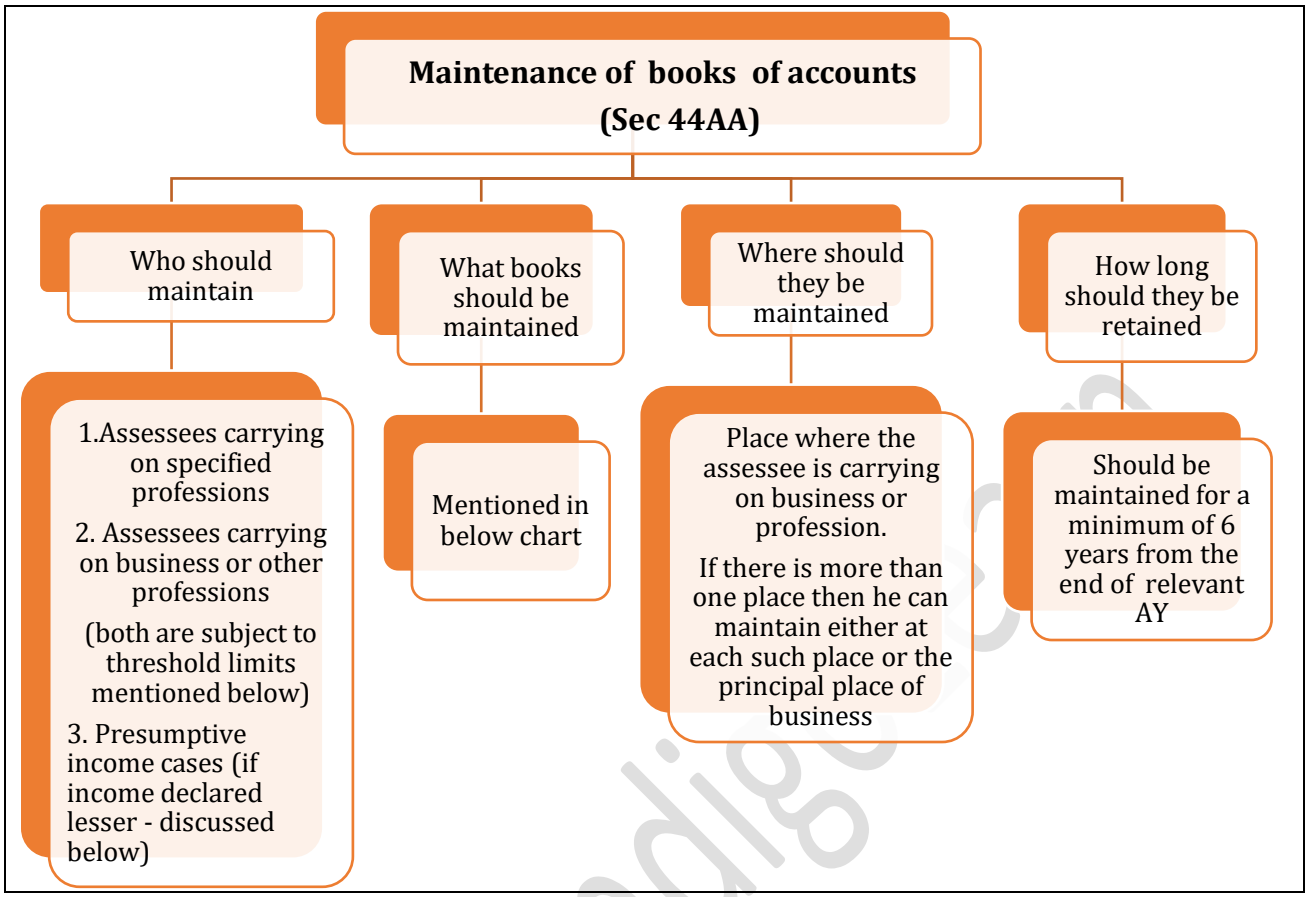
Condition Income by way of interest in relation to NPAs is chargeable to tax

- in the year in which it is credited
- in the year in which it is actually received,

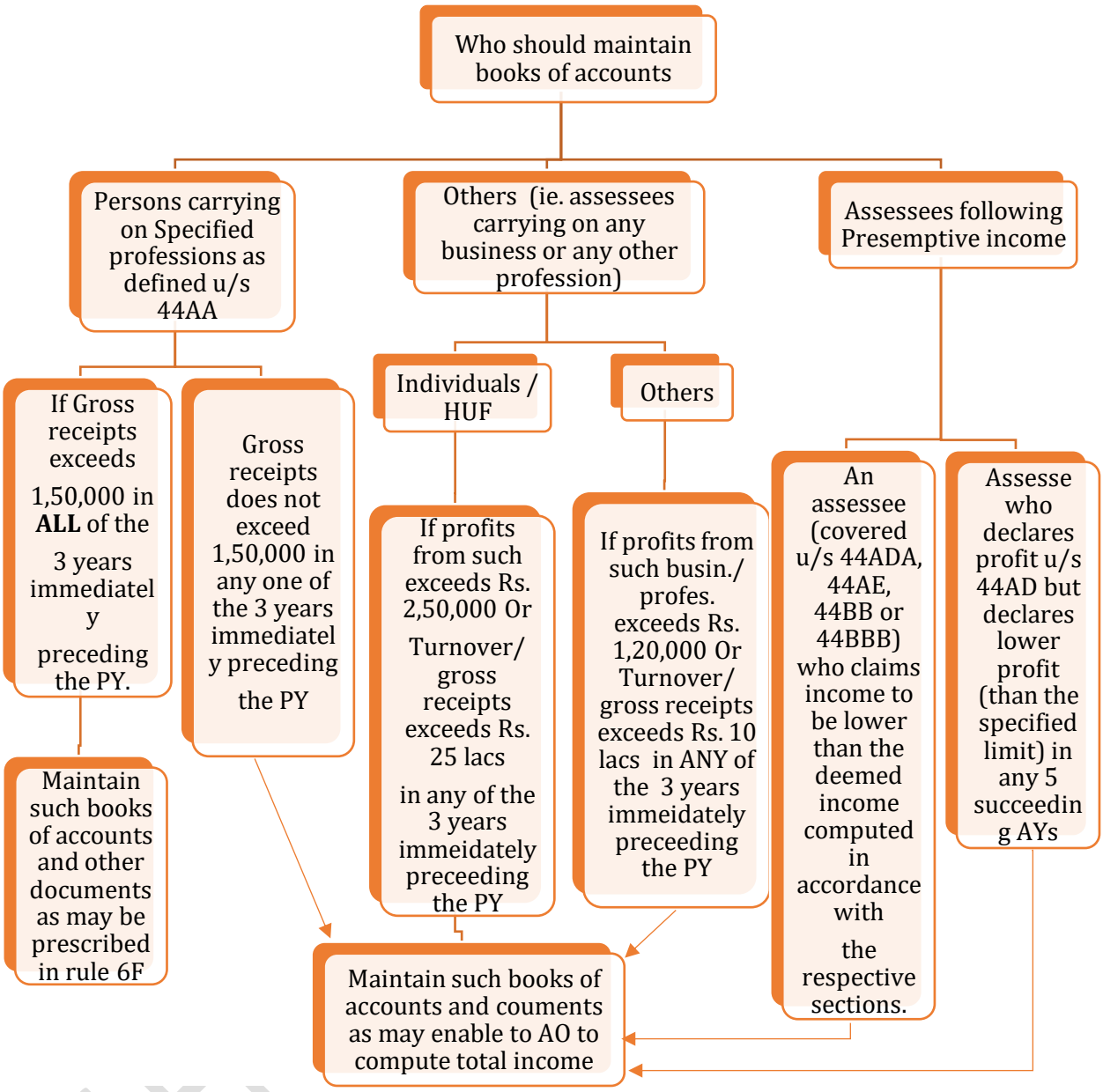
whichever is earlier

4.3.33 Maintenance of books of account [Sec. 44AA & Rule 6F]

Sec 44AA – Maintenance of books of accounts



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Books to be maintained as per Rule 6F

- Cash book, Ledger
- Journal, if mercantile system of accounting is followed
- Carbon copies of machine numbered bills, exceeding Rs.25, issued by the person and
- Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and expenditure incurred does not exceed Rs. 50, payment vouchers prepared and signed by the person.

Assessee engaged in medical profession are required to maintain two more books

- Daily Case Register in Form 3C.

- Inventory records of drugs, medicines and other consumable accessories used in the profession.

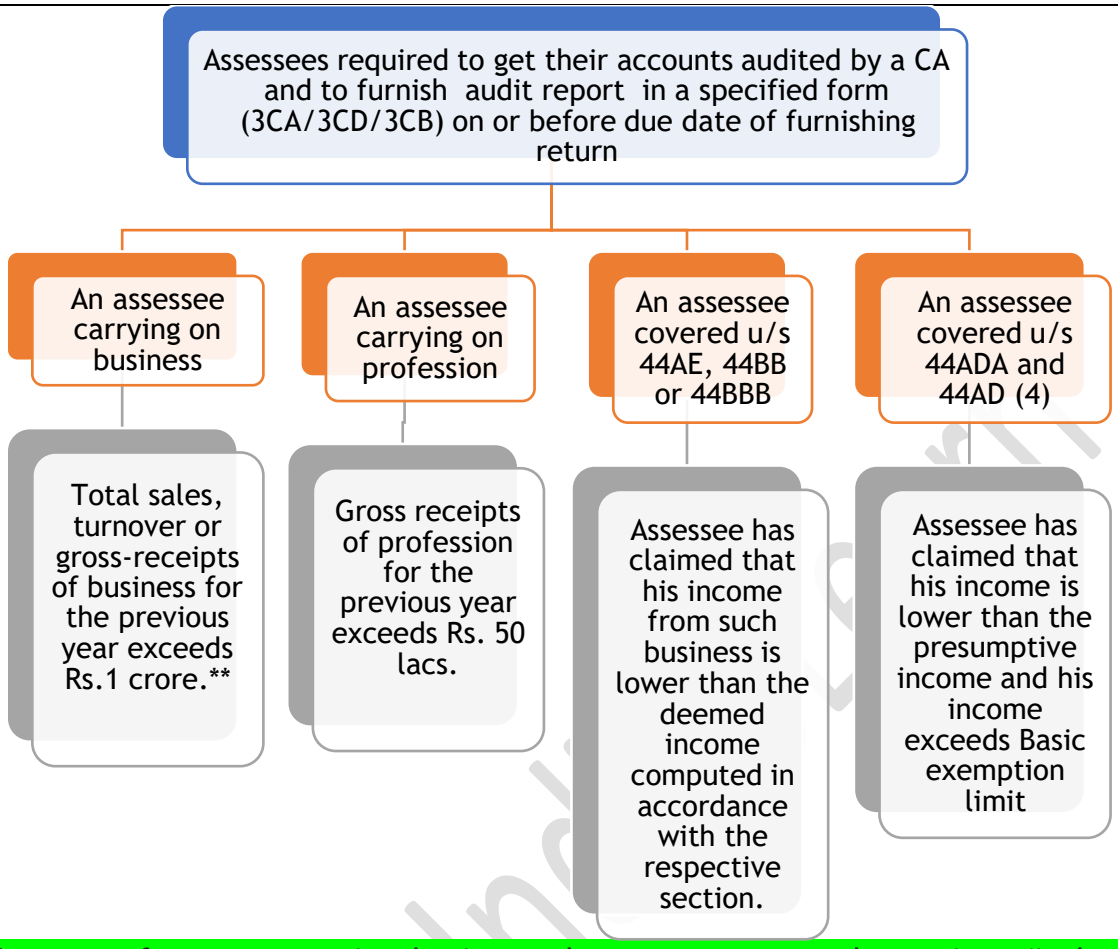
Specified profession -

1. Legal
2. Medical,
3. Engineering,
4. Architectural profession
5. Profession of accountancy,
6. Technical consultancy,
7. Interior decoration,
8. Information technology,
9. Company secretary,
10. Authorised representative,
11. Film artist OR Any other profession as is notified by the Board in the Official Gazette.

4.3.34 Tax Audit [Sec. 44AB]

Sec 44AB - Tax audit

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- **In case of person carrying business whose aggregate cash receipts (incl. sales, turnover, gross receipts)/payments (incl. amount incurred for expenditure) in the relevant P.Y ≤ 5% of total receipt or payments respectively, then audit will have to be done if total sales, turnover or gross receipts exceeds Rs.5 crore for relevant P.Y.
- Where the accounts are required to be audited under any other law before the specified date, it would be sufficient if such audit is carried on and the said report is furnished within the due date.
- This section does not apply to persons who declare income on presumptive basis u/s 44AD and his total sales or gross receipts does not exceed 2 crores.
- In case of 44AD, books of accounts are required to be maintained if the assessee opts out of the scheme and declares a lower income.
- In case of any violation, provisions of sec 271B applies.

Particulars	Sec 44AD	Sec 44ADA	Sec 44AE
Eligible assessee	➢ Resident individual, HUF or Partnership firm	Resident assessee engaged in any	An assessee owning not

	engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under "C- Deductions in respect of certain incomes" ➢ Non-applicability of section 44AD in respect of the following persons: 1. LLP 2. A person carrying on profession specified u/s 44AA(1) 3. A person earning income in the nature of 4. Commission or brokerage 5. A person carrying on any agency business.	profession specified u/s 4AA(1), namely, legal, medical, engineering, architecture or Profession of accountancy or technical consultancy or interior decoration or notified profession (authorized representative, film artist, company secretary, profession of information technology)	more than 10 goods carriages at any time during the P.Y.
Eligible business/ profession	Any business, other than business referred to in section 44AE, whose total turnover/ gross receipts in the P.Y. ≤ Rs. 200 lakhs	Any profession specified under sec. 44AA(1), whose total gross receipts ≤ Rs. 50 lacs in the relevant P.Y.	Business of plying, hiring or leasing Goods carriage
Presumptive income	➢ 8% of total turnover/ sales/ gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee. ➢ 6% of total turnover/ gross receipts in respect of the amount of total turnover/ sales/ gross receipts received by A/c payee cheque/ bank draft/ ECS / prescribed electronic mode during the P.Y. or before due date of filing of return u/s 139(1) in respect of that P.Y.	50% of total gross receipts of such profession or a sum higher than the aforesaid sum claimed to have been earned by the assessee.	For each heavy goods vehicle Rs. 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month and For other than heavy goods vehicle, Rs. 7,500 per month or part of a month during which such vehicle is owned by the assessee or an amount

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			claimed to have been actually earned from such vehicle, whichever is higher.
Relief from maintenance of books of accounts and audit : - Assessees opting for presumptive scheme are not required to maintain books of accounts under 44AA and get it audited u/s 44AB. This relives them from compliance and administrative burden.			
Requirement of maintenance of books u/s 44AA and audit u/s 44AB	After declaring profits on presumptive basis u/s 44AD, say, for A.Y.2019-20, non-declaration of profits on presumptive basis for any of the 5 successive A.Y.s thereafter (i.e., from A.Y.2020-21 to A.Y.2024-25), say, for A.Y. 2021-22, would disentitle the assessee from claiming profits on presumptive basis for 5 successive AYs subsequent to the AY relevant to the PY of such non declaration (ie from AY 2022-23 to 2026-27). In such a case the assessee is subject to both Sec.44AA and 44AB if his total income exceeds basic exemption limit.	If the assessee claims his profits to be lower than profits computedby applying presumptive rate, he has to comply with sec 44AA and 44AB if his total income exceeds basic exemption limit.	If the assessee claims his profits to be lower than profits computed by applying presumptive rate, he has to comply with sec 44AA and 44AB .
Declaration of higher income	The assessee can declare a higher amount than the presumptive income in his return.		
Deduction u/s 30 to 38	Deduction allowed u/s 30 to 38 shall be deemed to have been given full effect to and no further deduction shall be allowed. Even in case of firm, salary and interest paid to partners is not deductible. However in case of sec 40AE, it is subject to limit specified in sec 40(b)		
WDV of asset	WDV of any asset of an eligible business/ profession shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed depreciation for each of the relevant assessment years		
Advance tax	Such assesses are required to pay advance tax by 15th March of the financial year. (ie only one instalment)		

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4.3.35 Actual cost of assets [Sec. 43(1)]

Sec 43(1) - Actual cost of assets	
Cost price (Purchase price) of the asset	xxx
Add: Expenses directly related to acquisition eg. travelling expenditure	xxx
Add: Expenses necessary to bring the asset to site, installation, and to make it ready to use, e.g. carriage inward, loading and unloading charges, installation cost, trial run cost, etc.	xxx
Add: Expenses incurred to increase the capacity of the asset or to make it fit prior to its use.	xxx
Add: Interest on borrowed capital upto the date the asset is put to use	Xxx
Less : portion of cost which has has been met directly or indirectly by any other person or authority (eg. Government subsidy)	Xxx
Less : Taxes & Duties (if Cenvat / Input credit is availed)	xxx
Less / Add – Forex Gain or loss	xxx
Actual cost of the asset on which depreciation is computed	xxx

- If any payment as mentioned above, exceeding Rs. 10,000 is paid in cash to any person in a day, then such amount is ignored in computing actual cost.

- Further, actual cost in various situations in mentioned below:

S.N	Mode acquisition	Actual cost
1	Assets acquired for scientific research subsequently bought into business use	Actual cost (-) deduction availed u/s 35
2	Conversion of inventory into capital asset	FMV on the date of conversion
3	Asset acquired by way of gift or inheritance	Actual cost to the previous owner (-) depreciation allowable to him.
4	Asset acquired from any person using the asset for his business or profession with a view to avoid tax	Actual cost to be determined by the AO with the prior permission of Joint Commissioner
5	Reacquisition of transferred asset	WDV at the time of first transfer or the price paid for reacquisition, whichever is lower
6	Asset acquired by an assessee from another person and given on lease to the same person who had earlier claimed depreciation	WDV of the asset to the transferor
7	Building used for personal purpose subsequently brought into business	Cost of purchase or construction (-)notional depreciation by applying the rate applicable on the date of such conversion
8	Asset, which was acquired outside India, brought by a non-resident assessee to India and used for the purposes of his business or profession	Actual cost to the assesse,(-) depreciation calculated at the rate in force that would have been allowable

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		had the asset been used in India for the said purposes since the date of its acquisition .
9	Any capital asset transferred by a holding company to its 100% subsidiary company or vice versa where transferee company is an Indian company.	Actual cost to the transferee company shall be taken to be the same as it would have been if the transferor company had continued to hold the capital asset for the purpose of its business
10	Any capital asset transferred by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company	Actual cost to the amalgamated company shall be same as it is for the amalgamating company .
11	Any capital asset transferred by the demerged company to the resulting company where the resulting company is an Indian company	Actual cost to the resulting company shall be same as it is for the demerged company
12	Capital asset is acquired by the assessee under a scheme for corporatisation of a recognised stock exchange in India	Actual cost of the asset shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatisation
13	The actual cost of any capital asset on which deduction is allowable u/s 35AD	Actual cost of the asset shall be taken as NIL.
14	Where an assessee was not required to compute his total income under Income tax Act for any previous year(s) preceding the relevant PY.	Actual cost shall be reduced by the total amount of depreciation on such asset, provided in the books of account (as adjusted by amount attributable to the revaluation of assets) in respect of such PY
15	Composite income *	The total amount of depreciation shall be computed as if the entire composite income is chargeable under the head PGBP. The total depreciation is allowed to arrive at the WDV.

Rule	* Composite income	Business income (taxable)	Agriculature income(exempt)
7A	Income from manufacture of Rubber	35%	65%
7B	Income from manufacture of Coffee Sale of coffee grown and cured Sale of coffee grown, cured, roasted and grounded	 25% 40%	 75% 60%
8	Income from manufacture of Tea	40%	60%

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4.3.36 Special deduction for assessee engaged in Tea, Coffee or Rubber growing & manufacturing business [Sec. 33AB and Rule 5AC]

Sec. 33AB - Special deduction for assessee engaged in tea, coffee or rubber growing & manufacturing business

★ **Applicable to**

- All assessee carrying on business of growing and manufacturing of the followings in India:

a. Tea; b. Coffee; or c. Rubber

★ **Conditions to be satisfied**

- Deposit of amount - Assessee must deposit (hereinafter referred to as special account) an amount in:

  - Account with NABARD - under a scheme approved by Tea, Board, Coffee Board or Rubber Board, as the case may be
  - An account in accordance with, and for the purpose specified in a scheme approved by Tea Board or Coffee Board or Rubber Board, as the case may be, with prior approval of the Central Government.

- Time of deposit : The amount must be deposited within 6 months from the end of the previous year or before the due date of furnishing the return of income, whichever is earlier.

- Audit of accounts: Accounts of assessee should be audited by a chartered accountant & the report of an auditor in Form 3AC should be furnished before the specified date referred to in section 44AB date one month prior to] the due date for furnishing the return of income under sub-section (1) of section 139..

★ **Quantum of Deduction**

- Minimum of

  - Amount so deposited
  - 40% of the profit of such business computed under PGBP before allowing any deduction u/s 33AB and before adjusting brought forward business loss.

★ **Calculation of taxable income**

Nature of business	Calculation of income
Tea growing & manufacturing business (Rule 8)	40% of [Income from business – Deduction u/s 33AB]

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Similarly for Coffee growing & manufacturing business (Rule 7B) Rubber growing & manufacturing business (Rule 7A)

★ **Points to remember**

- ➢ Any excess deposit made during a previous year is not treated as deposit made for the next year(s).
- ➢ No deduction shall be allowed in respect of any amount, utilised for the purpose of purchase of :-
  - Any P&M to be installed in any office premises / residential accommodation /guest house
  - Any office appliances (other than computer)
  - Any P&M, the entire cost of which is allowed as deduction
  - Any P&M to be installed in an industrial undertaking for constructing, manufacturing or producing any items specified in Schedule XI of the Act
- ➢ On closure of business: Apart from the specified purpose(s) of scheme, the amount deposited may be withdrawn in the following circumstances: -

Case	Tax Treatment
• Closure of business	Fully taxable
• Dissolution of firm	Fully taxable
• Death of the tax payer	Not taxable
• Partition of Hindu Undivided Family	Not taxable
• Liquidation of company	Not taxable

- ➢ Where the assessee is a firm, AOP or BOI, then deduction under this section shall not be allowed in computation of income of any partner/member.

4.3.37 Site restoration fund [Sec.33ABA]

Sec. 33ABA - Site restoration fund

★ **Applicable to**

- ➢ All assessee engaged in the business of

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- Prospecting for petroleum or natural gas; or
- Extraction or production of petroleum or natural gas; or
- Both

- in India.

★ **Conditions to be satisfied -**

➢ Agreement with the Central Government: The Central Government has entered into an

agreement with the assessee for such business.

➢ Deposit of amount: The assessee must deposit an amount -

- With the State Bank of India in an account maintained as special account
- in an account (called Site Restoration Account) opened by the assessee - in accordance with and for the purposes specified in a scheme approved by the Government ,Ministry of Petroleum & Natural Gas.

➢ Time of deposit: Such amount must be deposited before the end of the previous year.

➢ Audit of books of account: Accounts must be audited & auditor's report should be filed in Form 3AD along with return of income before the specified date referred to in section 44AB date one month prior to] the due date for furnishing the return of income under sub-section (1) of section 139..

★ **Quantum of Deduction**

➢ Minimum of the following:

- Amount so deposited (as discussed above); or
- 20% of the profit of such business computed under PGBP before allowing deduction under this section and before adjusting brought forward business loss.

★ **Points to remember -**

➢ They are same as 33AB

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Lesson 4: Part IV - Capital Gains

4.4.1 Basis of Charge

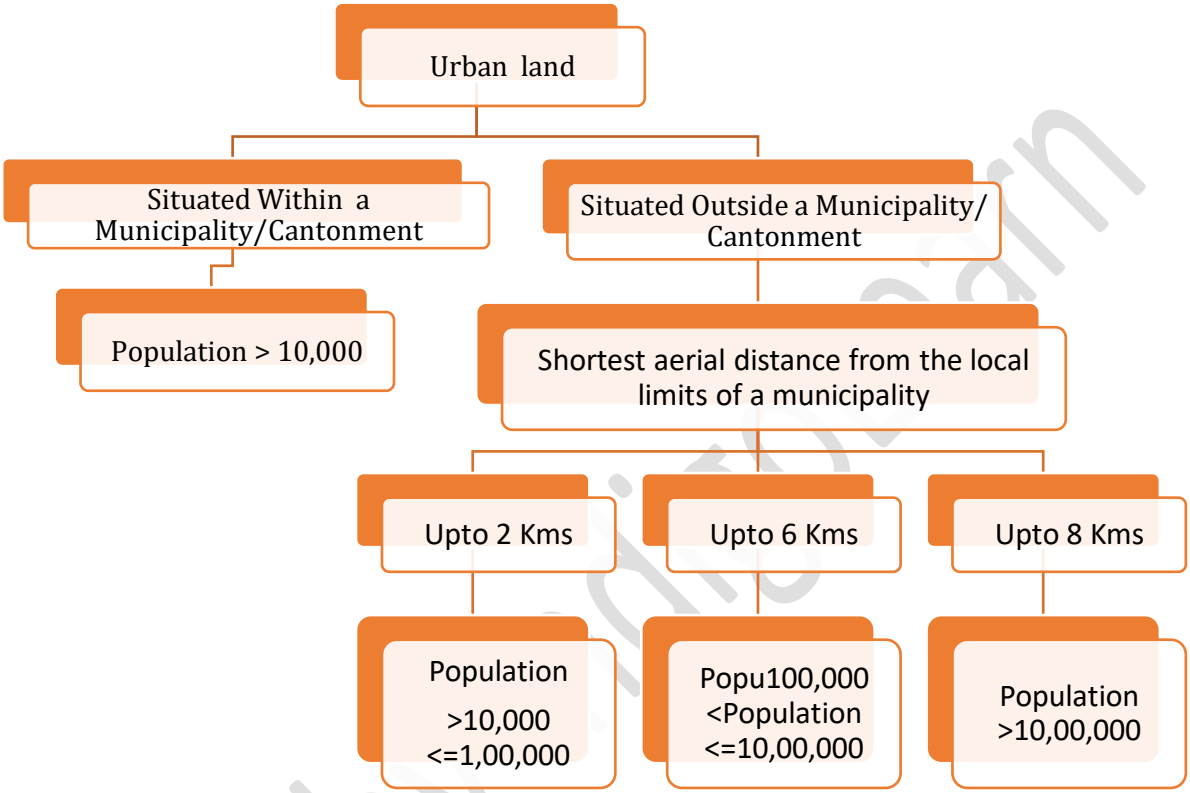
Sec.45 (1) - Chargebility
Profits or gains arising on transfer of a capital asset in the previous year shall be chargeable under the head "Capital Gains".

4.4.2 Capital Asset [Sec. 2(14)]

Sec 2(14) - Capital asset	
Includes	Excludes
Any Immovable asset	Stock-in-trade (other than securities held by FII per SEBI regulations)
Movable items – including following personal effects Jewellery –includes utensils and even sewn in wearing apparel, Archaeological collections Drawings and paintings, Sculptures and Any work of art	Personal effects eg. wearing apparel, furniture, vehicles etc.
Securities held by a FII - invested per SEBI Act 1992	
Urban agriculture land [exempt u/s10(37 – in case of compulsory acquistion)]	Agricultural land in Rural area
Financial assets	6½ per cent Gold Bonds, 1977, 7% gold bonds 1980 & national defence gold bonds issued by government
Intangible asset - eg. License, goodwill etc.	Special Bearer Bonds 1991 issued by government
Any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever	Gold Deposit Bonds issued under gold deposit scheme.

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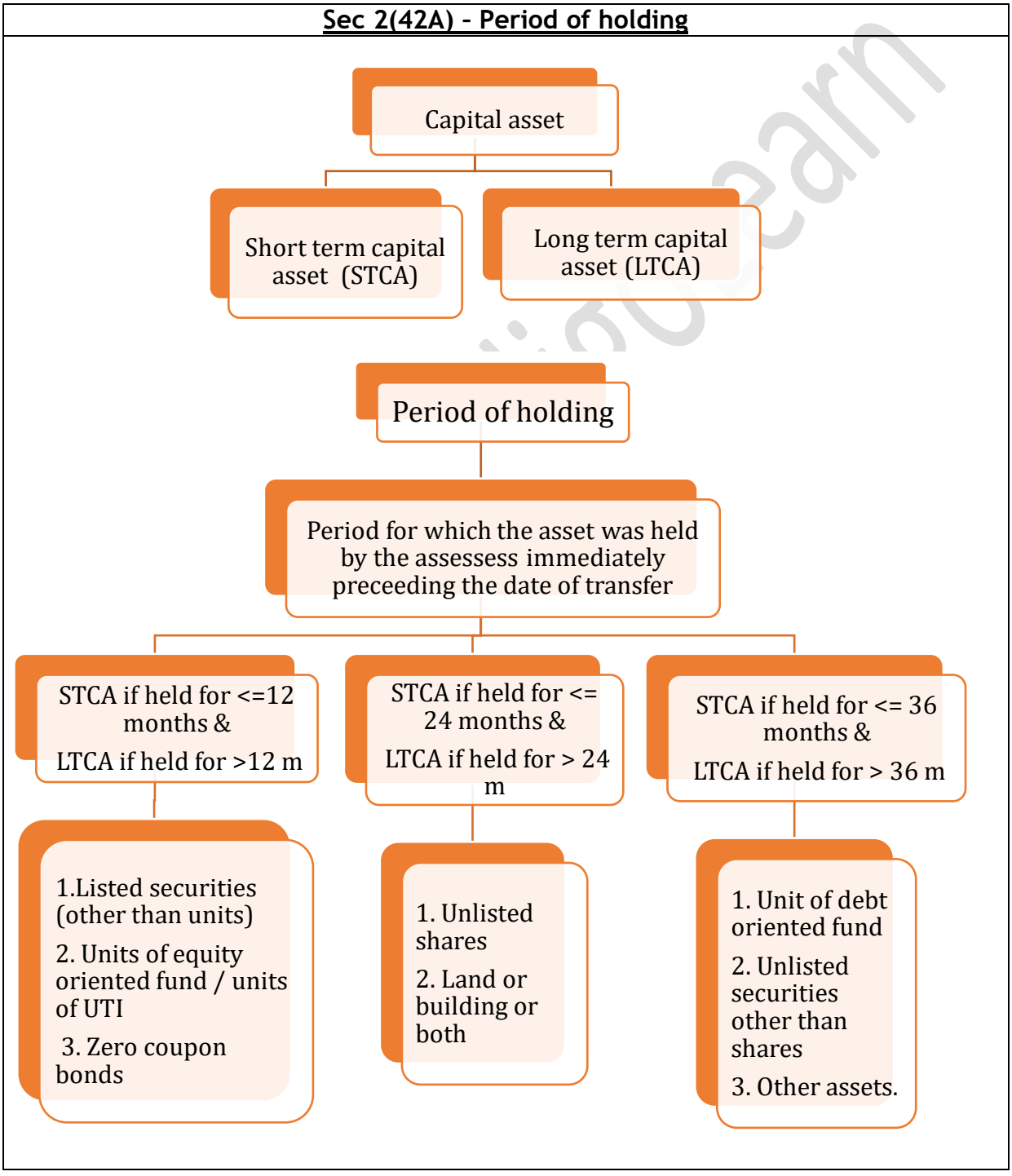
Urban agriculture land



- Population, according to the last preceding census of which the relevant figures have been published before the first day of the previous year, shall be considered.
- If such land is not agricultural land, it will be treated as capital asset irrespective of its location.
- If agricultural land is located outside India, it will be treated as capital asset

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4.4.3 Period of holding



Sn.	Instances	Period of holding
1.	Transfer	The date on which the asset is transferred is to be excluded.
2.	Liquidation	The period after the date of commencement of liquidation is to be excluded.
3.	Right shares, Bonus shares and ESOPs	starts from date of allotment
4.	When right to subscribe any share is renounced in favour of another person	Period from the date of offer of such right by the company or institution is considered.
5.	Conversion of preference shares into equity shares	Includes the period for which the preference shares were held.
6.	In case of amalgamation and demerger	The Period for which shares were held in the amalgamating Co. /demerged company should also be included.
7.	When asset becomes the property of the assessee by virtue of sec 49(1)	Period of holding of previous owner should be included.
8.	When stock in trade is converted into Capital asset	Period from the date of conversion should be taken.
9.	Where a transfer enables the enjoyment of any immovable property whether by way of becoming a member of, or	Starts from the date of allotment of shares or date on which such right is obtained

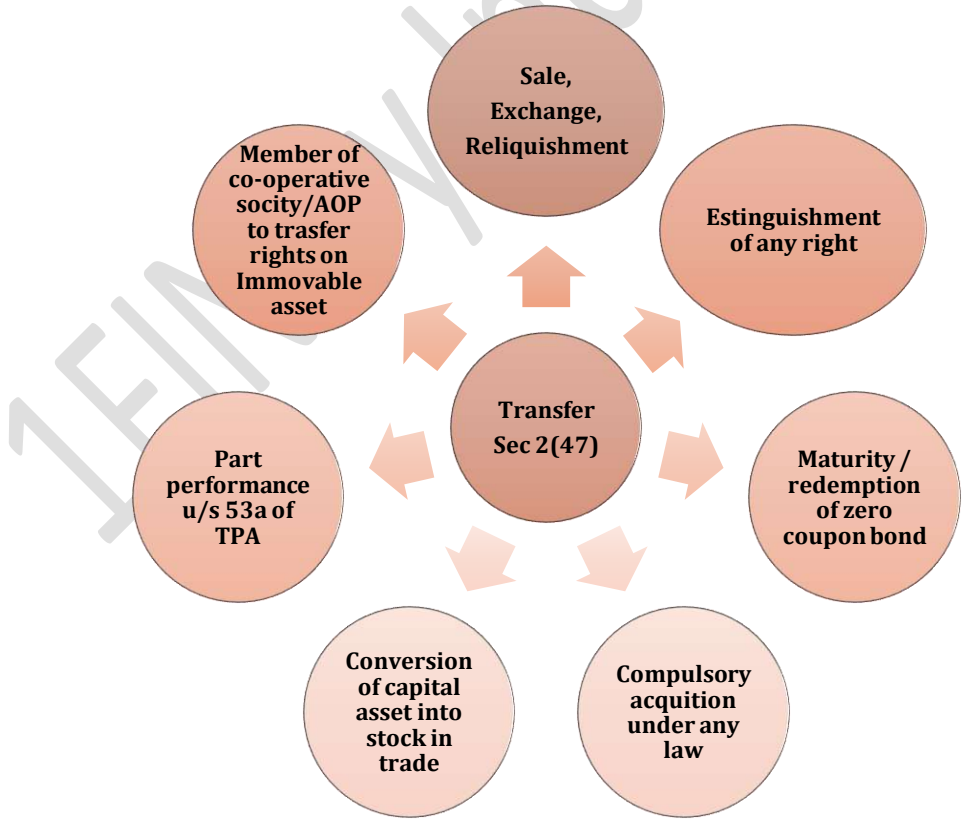
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	acquiring shares in a co-operative society, company or other AOP	
10	Where any specified securities or sweat equity shares are allotted/transferred by employer to employee (incl. former)	starts from date of allotment/ transfer

- Transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form of a company into shares or debentures of that company is **not** regarded as transfer for levy of CG tax.

4.4.4 Transfer [Sec. 2(47)]

Sec 2(47) - Transfer



- In case of exchange though there is only one transaction the tax liability arises on both the parties. The sale consideration shall be taken as the fair market value of assets received.
- Cancellations of license, forfeiture of shares are examples of extinguishment of right.

4.4.5 Transactions not regarded as transfer [Sec. 47]

Sec 47- Transactions not regarded as transfer

1) Any distribution of capital assets on the total or partial partition of an HUF.
2) Any transfer of a capital asset under a gift or will or an irrevocable trust.

(Exception: Gift of shares acquired through Employees Stock Option Plan (ESOP) shall be treated as transfer)

3) Any transfer of a capital asset by a 100% holding company to its Indian subsidiary company.
4) Any transfer of a capital asset by a 100% subsidiary company to its Indian holding company
5) Any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company.
6) Any transfer of a capital asset by a banking company to a banking institution in a scheme of amalgamation
7) Any transfer, in a scheme of demerger, of capital asset by the demerged company to the resulting company, if the resulting company is an Indian company.
8) Any transfer or issue in a scheme of demerger, of shares by the resulting company to the shareholders of demerged company as a consideration.
9) Any transfer in a scheme of amalgamation, of shares held by a shareholder in the amalgamating company in consideration of shared in amalgamated company being Indian company.
10) Any transfer in a business re-organisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank

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11) Any transfer, in a scheme of amalgamation , of a capital asset being a share or shares held in an Indian company or a foreign company, (referred to in the Explanation 5 of sec.9(1)(i)), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, by the amalgamating foreign company to the amalgamated foreign company, if –

   a) At least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

   b) Such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated

12) Any transfer of a capital asset, being

   a. foreign currency convertible bonds or Global Depository Receipts referred to in sec. 115AC(1),

   b. rupee denominated bond of an Indian company

   c. derivative

   d. Such other securities as may be notified by the Central Govt.

made by a non-resident on IFSC and where the consideration for such transaction is paid or payable in foreign currency.

13) Any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident.

(Any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company held by him, shall be ignored for the purposes of computation of full value of consideration)

14) Any transfer made outside India, of a capital asset being Government securities carrying periodic payment of interest, through intermediary dealing by a non-resident to another non-resident.

15) Any transfer of Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015, by way of redemption, by an assessee being an individual

16) Any transfer of a capital asset being a work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print,

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to the Government or a University or the National Museum, National Art Gallery,

17) Any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form of a company into shares or debentures of that company.

18) Any transfer by way of conversion of bonds referred to in sec. 115AC(1)(a) into shares or debentures of any company.

19) Any transfer by way of conversion of preference shares of a company into equity shares of that company

20) Any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government

Mode of disbursement of Loan to Reverse Mortgagor	Max period of loan
Directly	20 years from the date of signing agreement by Reverse Mortgagor and approved lending institutions.
In part/ full to annuity sourcing institution for periodic payment by way of annuity	Residual lifetime of borrower

Any Amount under reverse mortgage scheme, received by senior citizen as a loan, either in lump sum OR installments would be exempt.

4.4.6 Mode of computation of capital gains [Sec 48]

Sec 48 – Mode of computation of capital gains

Short term capital gain/loss		Long term capital gain/loss	
Full value consideration:	xxx	Full value consideration:	xxx
(-) Exp wholly or exclusively in connection with such transfer	(xx)	(-) Exp wholly or exclusively in connection with such transfer	(xx)
Net Sale consideration	xxx	Net Sale consideration	xxx
(-)Cost of Acquisition	(xx)	(-)Indexed Cost of Acquisition	(xx)
(-)Cost of Improvements	(xx)		xxx
Capital Gains (STCG)	xxx		(xx)

Exemption u/s 54B /54D /54G		(-)Indexed cost of Improvements Capital Gains (STCG) Exemption u/s 54/ 54B/ 54D/ 54EC/ 54EE /54G	

- **Indexed cost of acquisition**

$$= \frac{\text{COA} \times \text{CII for the PY in which the asset was transferred}}{\text{CII for the year in which the asset was first held by the assessee Or CII for PY 2001-02, whichever is later}}$$

- CII = Cost inflation Index
- CII for PY 2001-02 = 100 and for 2020-21 is 301
- CII in relation to PY means such index having regard to 75 % of average rise in the CII(Urban) for immediately preceding PY to such PY.
- In case asset is acquired by the owner/previous owner on or before 1.4.2001 then COA = FMV on 1.4.2001 or actual cost whichever is higher.
- **Indexed cost of improvement**

$$= \frac{\text{COI} \times \text{CII for the PY in which the asset was transferred}}{\text{CII for the year in which improvement was made}}$$

- Any improvement made before 1.4.2001 is not considered.
- **No deduction of STT as an expenses.**
- **No indexation in following cases** -
- case of Bonds & Debentures except
  - Capital indexed bonds issued by GOI &
  - Soverign gold bond issued by RBI
- Slump Sale

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- Equity shares and equity oriented fund referred to in sec. 112A
- Transactions by a non-resident - u/s 115AB, 115AC, etc.
- Transfer of Global Depository Receipt.
- Depreciable asset
- **Sec 48 - Special provision for non-residents** –
- In case of transfer of shares & debentures of an Indian company
- which were purchased in foreign currency
- Cost of Acquisition, Expenses wholly or exclusively in connection with such transfer and Full value consideration should be converted into same foreign currency with which shares were acquired.
- Resultant capital gain reconverted into Indian currency.
- No indexation benefit in this case.
- **Special provision in case of Rupee denominated bonds** -
- Any gains arising due to appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company, shall be ignored for the purposes of computation of full value of consideration.
- No benefit of indexation or currency conversion.
  - Non-residents and foreign companies in which public are not substantially interested => tax at concessional rate @10% on LTCG from transfer of unlisted securities/ shares
  - LTCG arising from transfer of;
    (i)equity shares on which STT is paid at the time of acquisition and transfer
    (ii)unit of equity oriented funds or unit of business trust on which STT is paid at the time of transfer.

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- **Redemption or maturity or sale of Zero coupon bonds**
- Full value consideration = Redemption price, Maturity value or sale proceeds as the case may be.

4.4.7 Deemed or Notional Cost of Acquisition [Sec. 49(1)]

Sec 49(1) - Circumstances in which the assessee became the owner of the capital asset otherwise than by acquisition.

(i) on any distribution of assets on the total or partition of a HUF;

(ii) under a gift or will;

(iii) by succession, inheritance or devolution;

(iv) on any distribution of assets on the liquidation of a company;

(v) under a transfer to revocable or an irrevocable trust;

(vi) under any transfer of capital asset by a holding company to its wholly owned subsidiary Indian company or by a subsidiary company to its 100% holding Indian company, referred to in section 47(iv) and 47(v) respectively;

(vii) under any transfer referred to in section 47(vi) of a capital asset by amalgamating company to the amalgamated Indian company, in a scheme of amalgamation;

(viii) under any transfer referred to in section 47(vib), of a capital asset by the demerged company to the resulting Indian company, in a scheme of demerger;

(ix) by conversion by an individual of his separate property into a HUF property, by the mode referred to in section 64(2).

4.4.8 Cost of Acquisition

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Cost of acquisition	
Case	**COA**
Where the capital asset became the property of the assessee through any mode mentioned u/s 49(1)	If ascertainable, Cost of previous owner shall be deemed to be the COA. If not ascertainable, then FMV of the asset on the date on which the previous owner acquired it. Indexation benefit will be available from the year in which it was first held by the assessee.
Shares of amalgamated Indian company received as consideration in a scheme of amalgamation.	Cost of acquisition of the shares in the amalgamating company.
Shares received by way of conversion of bonds or debentures, debenture-stock or deposit certificates	That part of the cost of debentures, debenture stock, bond or deposit certificate in relation to which such asset is acquired by the assessee. Benefit of indexation shall be available from the date of allotment of the new asset ie. convered shares.
Shares acquired through ESOPs or sweat equity shares	FMV taken into account while computing the value of perquisite u/s 17(2)(vi).
Equity Shares received at the time of conversion of preference shares.	Part of cost of preference share in relation to which the shares are converted.
Units acquired under consolidated scheme of mutual fund or under a consolidated plan of mutual fund scheme	Cost of units in the consolidating plan of the scheme of the mutual fund shall be deemed to be the cost of units in a consolidated plan of a mutual fund scheme.
Shares received in a resulting company in a scheme of demerger.	COA = A x B/C A = Cost of acquisition of shares held in the demerged company B = Net book value of the assets transferred in a demerger C = Net worth of the demerged company
Property subject to tax u/s 56(2)(x)	the value taken into account for the purposes of section 56(2)(x)
Capital asset which was used by the assessee as an inventory	FMV of the inventory as on the date on such conversion determined in the prescribed manner.
Goodwill of business, right to manufacture./ produce, right to carry on business	If self generated, COA = Nil, If purchased, COA = Purchase price. COI = Nil

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	Self generated Goodwill of profession is NOT TAXABLE. (SC decision)
Trademark, brand name, tenancy rights, stage carriage permits/loom hours	If self generated, COA = Nil, If purchased, COA = Purchase price. COI = Expense incurred by assessee / previous owner after 1.4.2001
Original shares (which form the basis of entitlement of rights shares)	Amount actually paid for acquiring the original shares.
Rights entitlement (which is renounced by the assessee in favour of a person)	COA = Nil
Rights shares acquired by the assessee	Amount actually paid for acquiring the rights shares
Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement	Purchase price paid to the renouncer **+** amount paid to the company which has allotted the rights shares.
Bonus shares	If allotted before 1.4.2001, COA = FMV as on 1.4.2001 (at the option of the assessee) If alloteed after 1.4.2001 - COA = Nil
Long term capital assets being, • equity shares in a company on which STT is paid both at the time of purchase and transfer or • unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer, acquired before 1st February, 2018	Cost of acquisition shall be the higher of ***(i)*** COA of such asset; and ***(ii)*** Lower of • the fair market value of such asset; and • the full value of consideration received or accruing as a result of the transfer of the capital asset.
Capital asset which becomes property of assessee	(i) <u>Generally</u> Before 1-4-2001 = COA to assessee or FMV on 1-4-2001 (at the option of the assessee) (ii)<u>By modes specified in Sec 49(1)</u> COA to Previous owner Before 1-4-2001 = FMV as on 1.4.2001 (at the option of the assessee) (iii)<u>On distribution on liquidation</u> If Assessed under Sec 46, COA is FMV on the date of distribution

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If a Capital asset which becomes property of assessee (discussed in i & ii above) is land/ building/ both, the FMV of such asset on 1.04.2001 shall not exceed the Stamp Duty Value as on 1.04.2001 (wherever available).

★ **Meaning of FMV for the above purpose** –

- **In a case where the capital asset is listed on any recognized stock exchange as on 31.01.2018**

Case	Value
If there is trading in such asset on such exchange on 31.01.2018	The highest price of the capital asset quoted on such exchange on the said date
If there is no trading in such asset on such exchange on 31.01.2018	The highest price of such asset on such exchange on a date immediately preceding 31.01.2018 when such asset was traded on such exchange.

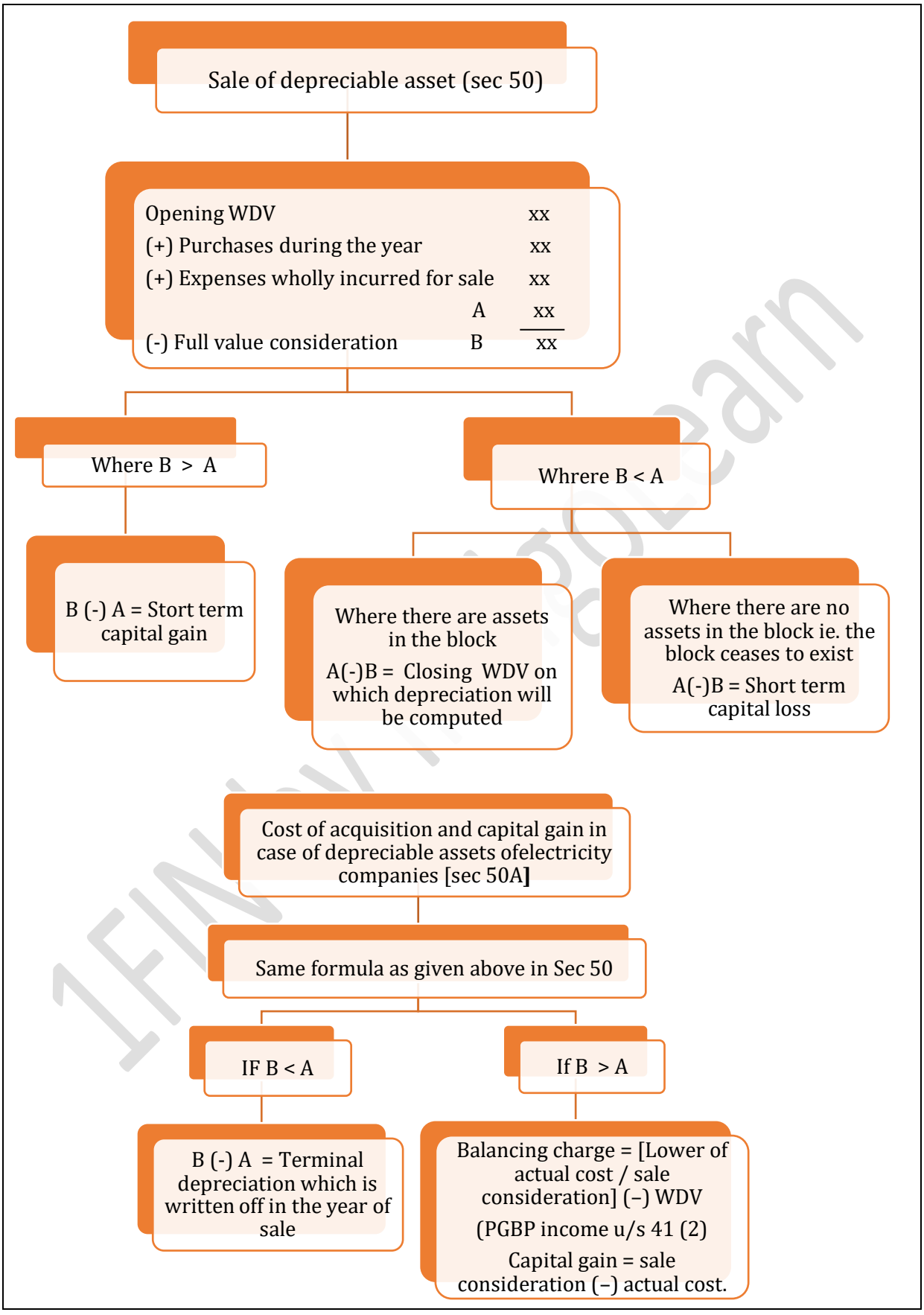
- **In a case where the capital asset is a unit which is not listed on any recognized stock exchange as on 31.01.2018**

• The net asset value of such unit as on the said date

- In a case where the capital asset is an equity share in a company which is
- not listed on a recognized stock exchange as on 31.01.2018 but listed on such exchange on the date of transfer
- listed on a recognized stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on 31.01.2018 by way of transaction not regarded as transfer u/s 47

• An amount which bears to the cost of acquisition the same proportion as CII for the financial year 2017-18 bears to the CII for the first year in which the asset was held by the assessee or on 01.04.2001, whichever is later.

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Sale of depreciable asset (sec 50)
Opening WDV xx
(+) Purchases during the year xx
(+) Expenses wholly incurred for sale xx
A xx
(-) Full value consideration B xx
Where B > A
B (-) A = Stort term capital gain
Whrere B < A
Where there are assets in the block
A(-)B = Closing WDV on which depreciation will be computed
Where there are no assets in the block ie. the block ceases to exist
A(-)B = Short term capital loss
Cost of acquisition and capital gain in case of depreciable assets ofelectricity companies [sec 50A]
Same formula as given above in Sec 50
IF B < A
B (-) A = Terminal depreciation which is written off in the year of sale
If B > A
Balancing charge = [Lower of actual cost / sale consideration] (–) WDV
(PGBP income u/s 41 (2)
Capital gain = sale consideration (–) actual cost.

4.4.9 Capital gains in case of slump sale [Sec. 50B]

Sec 50B - special provisions in case of slump sale

Sale consideration	xx
Less : Expenses exclusively for sale	(xx)
Less : Net worth of the undertaking	(xx)
Capital gain	xx

- LTCG if the undertaking is held for more than 36 months otherwise STCG
- No indexation benefit

Net worth of the undertaking = Total assets - outside liabilities

Value of total assets =

In case of depreciable assets = WDV as per Sec 43(6)

In case of assets wholly allowed as deduction u/s 35AD = Nil

In case of other assets = Book value

Value of Liabilities = Book value

- Slump sale' means the **transfer of one or more undertakings** as a result of the sale for a **lump sum considerationwithout values being assigned** to the **individual assets and liabilities** in such sales.

Every assessee shall furnish a prescribed form on or before 30th Sep of the AY being the specified date referred under Sec 44AB a certified report of Chartered Accountant.

4.4.10 Valuation of consideration in case of land or building or both [Sec. 50C]

Sec. 50C - Valuation of consideration in case of land or building or both

★ **Conditions**

- Capital asset being land or building or both is transferred.
- Value adopted or assessed or assessable by the stamp valuation authority exceeds 110% of actual consideration.
- If does not exceed 110% of actual consideration => Consideration so received shall be full value of consideration

★ **Tax treatment**

- ➢ Full value of consideration = value adopted or assessed (i.e. Stamp duty Value)

★ **Reference to Valuation Officer**

- ➢ The Assessing Officer can refer the case to the Valuation Officer if following conditions are satisfied:
  - Assessee claims that the value adopted or assessed by Stamp Valuation authority exceeds the FMV of the property as on the date of transfer; &
  - The value so adopted or assessed or has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court.

★ **Consequences where the value is determined by the Valuation Officer**

- ➢ sale consideration of the asset shall be taken as minimum of the following –
  - Value adopted or assessed or assessable for the purpose of stamp duty;
  - Value determined by the Valuation Officer.

★ **Date of stamp duty value:**

- ➢ Where the date of the agreement and the date of registration are not the same -
- ➢ Full value consideration = Stamp duty value on the date of agreement if following conditions are satisified :
  - Whole or part of consideration is paid
  - By any mode other than cash
  - On or before the date of agreement.

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★ **Revision of value of such asset:**

If the value adopted for stamp duty purposes is revised in any appeal, revision or reference, the assessment earlier made shall be amended to re-compute the capital gains by taking the revised value as sale consideration [Sec. 155]

★ 1

4.4.11 Valuation of consideration in case of unquoted shares [Sec. 50CA]

Sec 50CA - Special provision for full value of consideration for transfer of unlisted shares

★ **Applicable to** - Transfer of unquoted shares (prescribed persons may be exempted from this section if prescribed conditions are satisfied)

★ **Condition** - consideration < FMV

★ **Tax treatment** - In such case Full Value consideration = FMV

★ **How to compute FMV for the purpose of 50CA**

- Option 1 – Obtain valuation certificate from Merchant banker / CA
- Option 2 – Compute Net asset value as per Rule 11UA

Net asset value	
Book value of all the assets of the company Asset excludes - Jewellery, artistic work, securities and immovable property. Ignore – Fictitious assets like Income tax refund, miscellaneous expenditure, deferred tax etc	xx
(+) Fair market value of Jewellery and artistic work	xx
(+) Fair value of securities	xx
(+) Stamp duty value of immovable property	xx
Total assets	xx
(-) Book value of outside liabilities	(xx)
Net asset value	xx

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Net asset value X Paid up value of each share / Paid up value of the company	

Sec 50D - Fair market value of the capital asset on the date of transfer to be taken as sale consideration, in cases where the consideration is not determinable

★ **Applicable -**

➢ Where the consideration received or accruing as a result of the transfer of a capital asset is not ascertainable or cannot be determined,.

★ **Consequence -**

➢ Full value of the consideration = FMV of the said asset on the date of transfer

4.4.12 Section 45

Sec 45 - Scope and year of chargeability

Sec	Transaction	Full value consideration	Year of chargeability	Additional condition
45(1)	Transfer of a capital asset	Agreed consideration	PY in which transfer takes place	
45(1A)	Damage of capital asset due to 1.Natual calamities, 2.civil disturbance/riot 3 Accidental fire 4. Action by an enemy or combating an enemy.	Insurance compensation (money) + FMV (on the date of receipt) of any asset	PY in which money/ asset is received from insurance company	1. Indexation benefit available(if any) till year of destruction 2. Damage due to any other reason is not considered as transfer
45(2)	Conversion of capital asset into stock in trade	FMV as on the date of conversion	PY in which stock in trade is sold	Indexation benefit available(if any) till year of Conversion.
	Capital gain = FMV on the date of conversion (-) Cost / Indexed cost of acquisition (-) cost of improvement PGBP income = Sale price of stock in trade (-) FMV on the date of conversion.			

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45(2A)	Transfer of beneficial interest in securities (transfer made through depository)	Agreed consideration	PY in which transfer takes place. Date of contract of sale will be treated as date of transfer.	FMV as on the date of transfer
45(3)	Capital contribution by partner / member to firm/AOP/BOI	Amount at which such asset is recorded in books of the firm/AOP/BOI	PY in which transfer takes place.	
45(4)	Distribution of capital asset on dissolution of firm/AOP/BOI	FMV of the asset as on the date of transfer	PY in which transfer took place	
	Where depreciable asset is distributed, there will always be short-term capital gain/loss based upon the particular block of assets. If non-depreciable asset is distributed, it will be LTCG/ STCG depending upon the period of holding by the firm.			
45(5)	Compulsory acquisition or any transfer where consideration is determined by CG/RBI	Compensation awarded	PY in which compensation is first received.	Indexation benefit available till the year of compulsory acquisition.
	Additional points : In case of compensation is enhanced, the additional amount is taxed. Cost of acquisition & Cost of improvement is taken as nil. In case compensation is reduced capital gain is recomputed. Compensation received by interim order is taxed in the year in which final order is received. If transferor dies before receiving the compensation, it is taxed in the hands of the recipient.			
45(5A)	Joint development agreement with regard to	Stamp duty value on the date of issue of completion certificate of	In the year in which completion certificate for the whole or part of the project is	Benefit of indexation is available upto the year in which

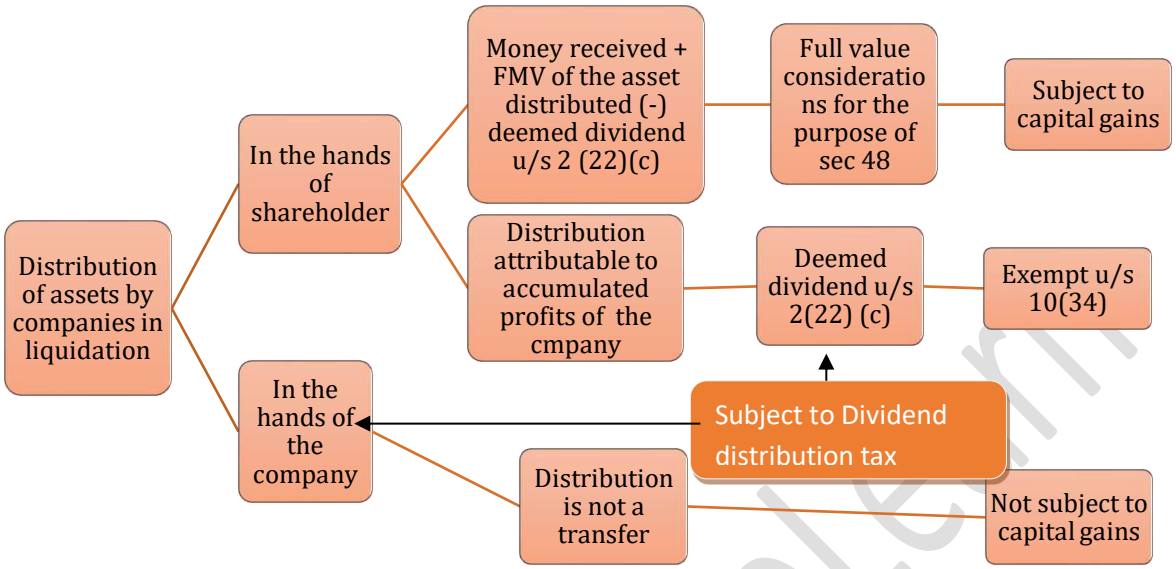
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	immovable property	his share being land/building/ both in the project + cash consideration	issued by the competent authority.	completion certificate is issued.
	Additional points: ➢ The assessee is an individual or a HUF. ➢ Such assessee transfer capital asset being land or building or both under a specified agreement to another person ➢ Specified agreement means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash. ➢ Cost of acquisition for the assessee on subsequent transfer of such share - Proportionate cost of the asset transferred ie. the proportion of full value consideration (mentioned above) attributable to the proportionate sale. ➢ Where the assessee transfers his share in the project on or before the date of completion certificate, in that case, aforesaid provision is not applicable and the capital gains shall be taxable in the previous year in which such transfer takes place. Further, capital gain shall be computed as per other provisions.			
Sec 48	Full value consideration for shares, debentures or warrants issued under ESOP to an employee which is transferred under a gift or irrevocable trust = FMV on the date of transfer			

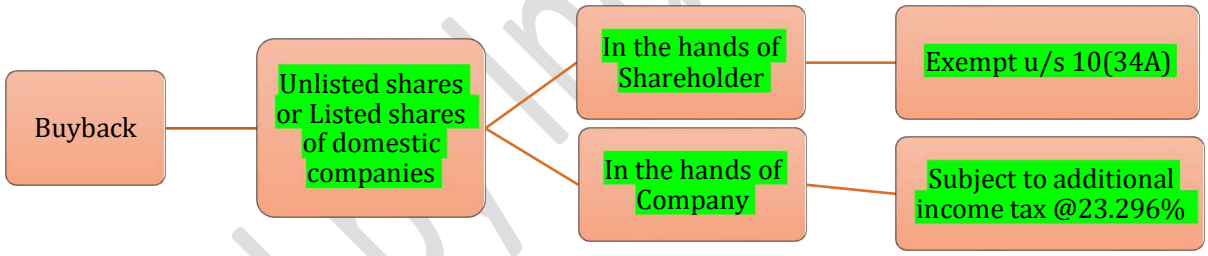
4.4.13 Capital gain on distribution of assets by companies in its liquidation [Sec. 46]

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Sec 46 - Capital gain on distribution of assets by companies in its liquidation



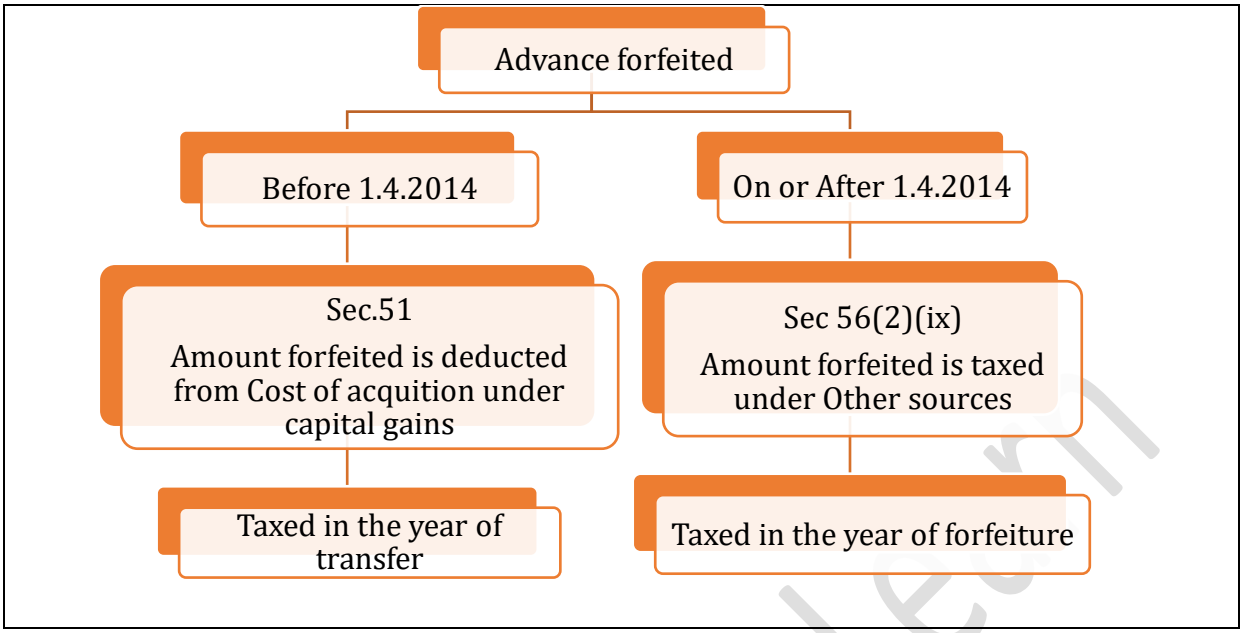
Sec 46A - Buyback of shares or other securities



Exception to Listed shares - Public announcement has been made on or before the 5th day of July, 2019 in accordance with the provisions of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018

Advance money forfeited

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4.4.14 Tax Rates under Capital Gains

Tax rates under capital gains

Sec 111A - Tax on STCG on transfer of certain assets on which Security transaction tax (STT) has been charged

★ **Applicable to** - All assessee

★ **Conditions to be satisfied**

- A short-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust.
- Such transaction is chargeable to STT
- Concessional rate shall be applicable on short term capital gain arises from a transaction undertaken in a foreign currency on a recognised stock exchange located in any International Financial Services Centre even though STT is not applicable on such transaction

★ **Tax rate** - 15% + surcharge (if applicable) + Health and Education Cess.

★ **Sec 112 - Tax on long term capital gains**

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Persons	Tax rate	Particulars
Resident individuals and HUF	20%	In case of transfer of listed securities (other than units) and zero coupon bonds LTCG would be taxable at the lower of 1. 10% without indexation benefit 2. 20% with indexation benefit
Resident AOPs and BOIs	20%	
Resident Firms & LLPs	20%	
Domestic companies	20%	
Non-corporate, non resident and foreign companies	20%	
Non-corporate, non resident and foreign companies – In case of unlisted securities or shares of a private limited company	10%	

★ **Sec 112A – Tax on long term capital gain in certain cases**

- Applicable to: All assessee

★ **Conditions:**

- The capital gains arise from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust;
- Securities Transaction Tax (STT) has been levied:
- The condition of payment of STT in either case is not applicable in case where transfer has been undertaken on a recognised stock exchange located in any International Financial Services Centre provided the consideration for such transfer is received or receivable in foreign currency.

★ **Tax rate :**

Case	Rate of taxation

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Where such long term capital gain does not exceed Rs. 1,00,000	Nil %
Where such long term capital gain exceeds Rs. 1,00,000	10% on income exceeding Rs. 1,00,000

- In case of a resident individual or a Hindu Undivided Family (HUF), the long-term capital gain taxable u/s 112 or 112A or short-term capital gain taxable u/s 111A shall be reduced by the unexhausted basic exemption limit and the balance shall be subject to tax.
- No deduction under Chapter VI-A can be claimed in respect of such long-term capital gain chargeable to tax u/s 112 or u/s 112A or short-term capital gain chargeable to tax u/s 111A.
- Rebate u/s 87A is not available in respect of tax payable @10% on Long-term Capital Gains u/s 112A.

4.4.15 Section-10 exemptions

Exemptions u/s 10	
10(33)	Income from transfer of units of UTI of unit scheme of 1964 of UTI
10(37)	Income by way of compensation for compulsory acquisition of urban agriculture land. **Conditions** • The Land was used for agriculture either by the assessee or his parents for atleast 2 years prior to the date of transfer. • The compensation is received on or after 1.4.2004
10(43)	The amount received by a senior citizen as a loan either in lumpsum or in installments in a transaction of reverse mortgage.

4.4.16 Deductions

Deductions

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Sec.	Eligible assessee	Old asset	New asset	Time limit for investment	Conditions to be fulfilled	Quantum of exemption	Does CG deposit scheme apply
54	Individual/HUF	Long-term residential house	One new residential house or at the option of assessee 2 residential house if CG <= 2 crores [One time option]	For purchase - 1 year before, or 2 yrs after, the date of transfer & For construction - Within 3 years after the date of transfer	1. New residential house should be in India. 2. Capital asset must be long term	Investment in new asset OR capital gain whichever is less.	Yes.
54B	Individual/HUF	Urban Agricul-ture land (long term or short term)	New land for agricul-tural purpose. The new land may be in urban area or rural area.	Within 2 years after the date of transfer.	1. Old asset must have been used by the individual or his parents or by such HUF for agricultural purposes for at least 2 years, prior to its transfer.	Investment in new asset OR capital gain whichever is less.	Yes.
54D	All assesses	Any land or building or any right therein, forming part of an industrial under-taking.	purchase any land or building or construct a building, for the shifting or re-establishing the said under-taking or setting	Within 3 years after the date of receipt of compensation or any part thereof.	1.Old asset is compulsorily acquired under any law for the time being in force. 2. It was used for industrial purpose for at least 2 years prior to its transfer.	Investment in new asset OR capital gain whichever is less.	Yes

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			up another industrial under-taking				
54EC	All assesses	Long-term capital asset being land or building or both.	Long-term specified asset means any bond redeemable after 5 years, issued by a) NHAI , b) RECI c) PFCL d) IRFC e) any other bond being notified by the Central Govern.	Within 6 months after the date of transfer	The investment made during the financial year in which the original asset or assets are transferred and in the subsequent financial year cannot exceed Rs.50 lakhs. Earlier benefit shall be revoked if such bond is transferred or converted into money within 5 years of its acquisition or a loan is taken on security of the new asset within the said period.	Investment in new asset OR capital gain whichever is less.	No
54EE	All assesses	Any long-term capital asset.	Long-term specified asset means a unit or units, issued before 01-04-2019, of such fund as may be notified by the Central Govern.	Within 6 months after the date of transfer	The investment made during the financial year in which the original asset or assets are transferred and in the subsequent financial year cannot exceed Rs.50 lakhs. Earlier benefit shall be revoked if such bond is transferred or	Investment in new asset OR capital gain whichever is less.	No

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					converted into money within 3 years of its acquisition or a loan is taken on security of the new asset within the said period.		
54F	Individual or HUF	Long-term capital asset other than a residential house property.	One residential house	For purchase - 1 year before, or 2 yrs after, the date of transfer & For construction - Within 3 years after the date of transfer	1.New house should be situated in India. 2. Assessee does not own more than one residential house property, on the date of transfer. 3. Also does not purchase (within2 yrs) or construct (within 3 yrs) any other house property. Otherwise the exempt income will be deemed to be long term capital gain.	Investment X Capital gain / Net sale consideration Or Capital gain Whichever is less	Yes
54G	Any person	Land, building, Plant and machinery	Land, building, Plant and machinery	1 years back and 3 years after	Transfer of asset in the case of shifting of Industrial undertaking from urban area	Investment in new assets or capital gain whichever is lower	Yes
54GA	Any person	Land, building, Plant and machinery	Land, building, Plant and machinery	1 years back and 3 years after	Transfer of asset to shift undertaking to a SEZ	Investment in new assets or capital gain whichever is lower	Yes
54GB	Individual/HUF	Long Term / Residential House property	Shares in eligible company. Eligible company should	Shares should be acquired before due date	Shares should not be transferred within 5 years.	Investment in new asset x capital gain/net sale	Yes

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		Upto 31-03-2017. In case of startup up to 31-03-2021	purchase new asset within 1 year of subscription	of return u/s 139. Asset should be acquired within 1 year of subscription.	Assets should not be transferred within 5 years (in case of computers – 3 years)	considerat ion	

Common Points to remember

- If the new asset is not acquired till the due date of submission of return of income, then the taxpayer will have to deposit the money in 'Capital Gains Deposit Account' with a nationalized bank. The proof of deposit should be submitted along with the return of income.
- **If the amount held in Capital Gains Deposit Account Scheme (1988) is unutilized,** then such amount shall be taxable as long-term capital gain in the previous year in which the period of 3 years from the date of transfer expires.
- In case of 54F, proportionate amount will be taxable.
- In case of compulsory acquisition, time limit for new investment starts from the date of receipt of compensation.
- **Consequences of violation - U/s 54 , 54B , 54D**

  If the new asset is transferred within 3 years from the date of its acquisition then the benefit availed earlier shall be reduced from cost of acquisition of new asset.

- **Consequences of violation - U/s 54EC , 54EE, 54F, 54GB**

  Such revoked income shall be treated as long-term capital gain in the year of transfer of new asset.

- **Consequences of violation - U/s 54G , 54GA**

  Such revoked income shall be treated as short-term capital gain in the year of transfer of new asset

- An assessee can claim exemption under more than one section (from sec. 54 to 54GB) if conditions of the respective sections are fulfilled.
- **Sec 54H**
  - Where the transfer of the original asset is by way of compulsory acquisition under any law; and

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- Amount of compensation awarded is not received on the date of such transfer.
- The period for acquiring the new asset or the period available to the assessee for depositing the amount of capital gain in relation to such compensation (sec. 54, 54B, 54D, 54EC and 54F) shall be reckoned from the date of receipt of such compensation.
- In case of enhanced compensation, the period for acquiring the new asset shall commence from the date of receipt of such enhanced compensation.

4.4.17 Reference to Valuation Officer [Sec. 55A]

Sec 55A – Reference to Valuation officer

- With a view to ascertaining the fair market value of a capital asset for the purposes of this chapter [e.g. sec. 45(1A),45(2), 45(4), 46(2), 55 and 2(47)] the Assessing Officer may refer the valuation of capital asset to a Valuation Officer.
- Cases where reference to Valuation Officer can be made

Case	Condition
Where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer.	If the Assessing Officer is of opinion that the value so claimed is at variance with its FMV
In any other case	If the Assessing Officer is of the opinion— 1. That the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than ● 15% of the value of the asset as so claimed; or ● by more than Rs. 25,000 whichever is less.

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	2. That having regard to the nature of the asset and other relevant circumstances, it is necessary to do so.

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(Residuary head)

4.5.1 Basis of Chargeability [Sec. 145]

Income under this head shall be chargeable on 'accrual' or 'cash' basis depending on the method of accounting regularly followed by the assessee (i.e. either mercantile or cash system of accounting).

4.5.2 Dividend

Sec. 2(22)(a) to (e) - Deemed Dividend	
Sec.2(22)(a)	*Distribution of accumulated profits, entailing the release of company's assets.* ➢ Whether accumulated profits are capitalised or not. ➢ For example, if accumulated profits are distributed in cash - it is dividend in the hands of the shareholders. ➢ Where it is distributed in kind, for example by delivery of shares etc. entailing the release of company's assets, the market value of such shares on the date of such distribution is deemed as dividend in the hands of the shareholder.
Sec.2(22)(b)	*Distribution of debentures, deposit certificates to shareholders and bonus shares to preference shareholders* ➢ Distribution to the extent of accumulated profits Whether capitalised or not ➢ Bonus shares given to equity shareholders are not treated as dividend ➢ Value of debentures, debenture stock etc. = market rate ➢ And if there is no market rate - then valued according to accepted principles of valuation.
Sec.2(22)(c)	*Distribution on liquidation* -

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	➢ To the extent accumulated profits of the company immediately before its liquidation, whether capitalised or not. ➢ Distribution after the date of the liquidation is not considered as dividend.
Sec.2(22)(d)	*Distribution on reduction of capital* - to the extent accumulated profits - Whether capitalised or not
Sec.2(22)(e)	*Advance or loan by a closely held company to its shareholder or to a specified concern* **Conditions -** ➢ Advance / loan given by Private limited company. ➢ Shareholder - who is the beneficial owner of 10% or more of the equity capital ➢ Specified concern - (i.e. HUF/ Firm/ AOP/ BOI/ Company) – in which such shareholder has substantial interest ➢ To the extent accumulated profits ➢ No exemption even if the loan is repaid before the end of the year. **Exceptions -** ➢ Loan is granted in the ordinary course of its business ➢ Where a loan had been treated as dividend and subsequently, the company declares and distributes dividend and the dividend so paid is set off by the company against the previous borrowing, the adjusted amount will not be again treated as a dividend ➢ Trade advances in the nature of commercial transactions.

General exceptions to above rule

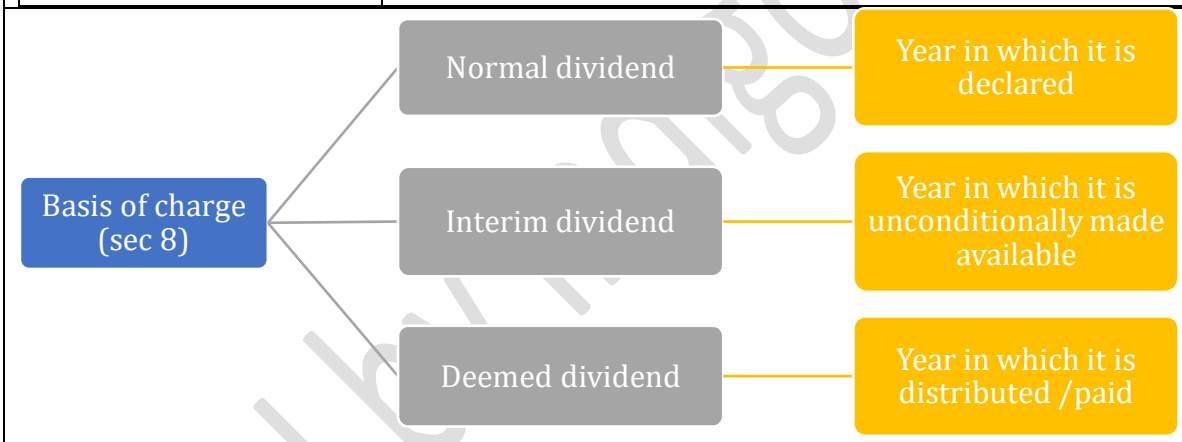
- Purchase of its own shares by the company
- Any distribution of shares on demerger by the resulting companies to the shareholders of the demerged company

Accumulated profits –

In case of company not in liquidation	up to the date of distribution or payment .

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In case of company in liquidation	up to the date of liquidation
In case liquidation is consequent to the compulsory acquisition	Shall not include any profits of the company prior to the 3 successive previous years immediately preceding the previous year in which such acquisition took place
In case of 2(22)(e)	Upto the date of grant of such loan or advance Trade advance not to be treated as deemed dividend under section 2(22)(e) [Circular No. 19/2017, dated 12.06.2017] • Dividend include any sum paid by a company in which public are not substantially interested by way of advance or loan to Shareholders.



Dividend shall be deemed to accrue or arise in India, if it is declared by an Indian company.

Taxability- Dividend (from foreign company, domestic company or co-operative society) is taxable in the hands of the recipient.

Deduction : Apart from interest expenses (max. upto 20% of dividend income), no deduction shall be allowed from dividend income.

If dividend is declared before 31st March 2020 on which the company is liable to pay Dividend Distribution Tax and is paid on or after 1st April 2020, the dividend would be exempt u/s 10(34)

Sec.115BBDA (applicable only for dividend declared, distributed or paid on or before the 31st day of March, 2020)

★ Applies to any person other than

➢ Domestic company ➢ A fund or institution or trust or any university or other educational institution referred u/s 10(23C) ★ Dividend includes dividend referred under section 2(22)(a) to (d) but shall not include sub-clause (e) thereof. ★ No deduction in respect of any expenditure or allowance or set-off of loss shall be allowed

4.5.3 Section 56

Sec.56 – Income chargeable under this head	
Sec.	**Income**
56(2)(i)	Dividend - Includes dividend defined u/s 2(22)(a) to (e)
56(2)(ib)	Casual income - winnings from lotteries, cross- word puzzles, races including horse races, card games and other games of any sort, gambling, betting etc.
56(2)(viib)	Consideration received in excess of FMV of shares issued by a closely held company to be treated as income of such company, where shares are issued at a premium.
56(2)(viii)	Interest received on compensation/enhanced compensation ➢ Taxed on receipt basis (irrespective of method of accounting followed by the assessee)
56(2)(ix)	Advance money forfeited – due to failure of negotiations for transfer of a capital asset
56(2)(x)	Any sum of money or value of property received without consideration or for inadequate consideration - Gift
56(2)(xi)	Compensation or any other payment received in connection with termination of his employment Includes compensation for the modification of the terms and conditions relating thereto.
Income, if not chargeable under the head "PGBP"	➢ Any sum received by an employer from his employees as contributions to any provident fund, superannuation fund or any other fund for the welfare of the employees ➢ Interest on securities ➢ Income from letting out on hire of machinery plant or furniture ➢ Where letting out of buildings is inseparable from the letting out of machinery, plant or furniture, the income from such letting
Income, if not	➢ Keyman insurance policy including bonus on such policy

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chargeable under the head "PGBP" & Salaries	(if such sum is received by any person other than the employer who took the policy and the employee in whose name the policy was taken) ➢ Any income chargeable to tax under the Act, but not falling under any other head of income
Residual income	Any income which is not chargeable under any other income. For eg. ➢ Interest on Deposits ➢ Salaries of MPs and MLAs ➢ Income from sub-letting ➢ Income from vacant plot ➢ Director's sitting fee ➢ Stipend

4.5.4 Points to remember regarding Casual Income

1. Taxed at a flat rate of 30% + surcharge + cess under section 115BB.
2. Expenses not allowed – except in case of owning & maintaining race horses.
3. No chapter VIA deductions.
4. No benefit of basic exemption limit
5. Taxed under this head even if the assessee deriving such income claims to carry on any trade/business
6. Losses cannot be set off except loss from owning & maintaining race horses.
7. Income of Jockey& winning from motor car rally – taxed as professional income – as it calls for skill.
8. Lottery held as stock – taxed as business income – incidental to business.
9. Grossed up in case TDS is deducted.

4.5.5 Section 56(2) (viib)

Sec. 56(2)(viib) - Share premium in excess of fair market value of shares

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1. Company, receiving, any consideration for issue of shares is not being a company in which the public are substantially interested.
2. Such consideration is received from a resident person
3. Such shares are being issued at premium (ie. above face value)
4. Taxable amount = consideration – FMV of such shares
5. Taxed in the hands of recipient company
6. The provision is not applicable when shares are issued at par or at discount even though issue price of such shares exceeds the fair market value.
7. The provision is not applicable if such company is converted into a company in which the public are substantially interested during the previous year itself after issuance of shares.
8. For the purpose of computation of FMV, the value of assets would include the value of intangible assets being goodwill, know-how, patents, etc.
9. **Exceptions**: - consideration for issue of shares is received:

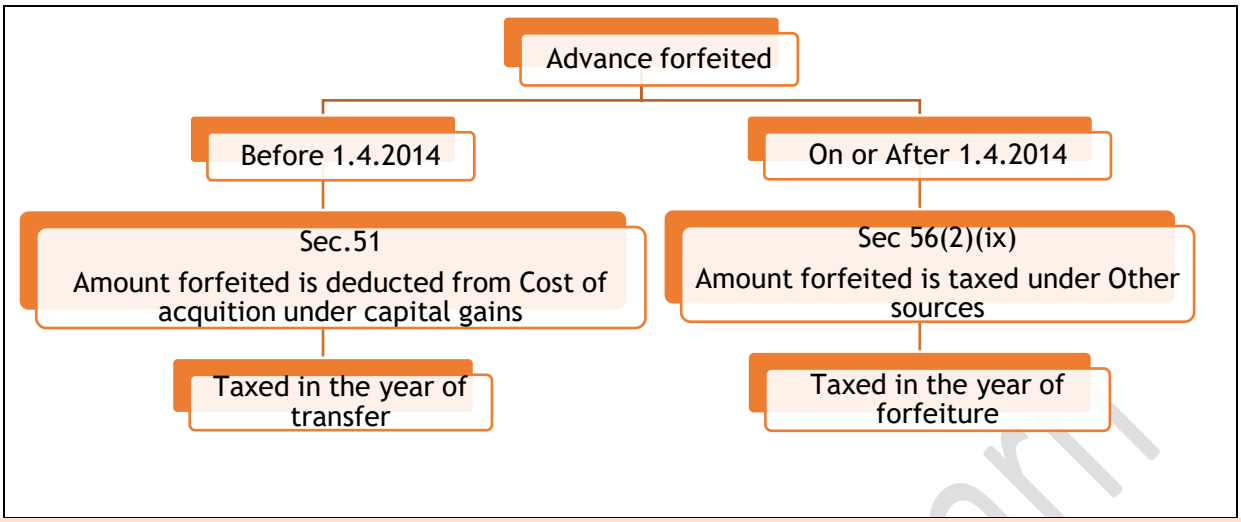
   (1) by a Venture Capital Undertaking (VCU) from a Venture Capital Fund (VCF) or Venture Capital Company (VCC); specified fund or

   (2) by a company from a class or classes of persons as notified by the Central Government for this purpose. On failure of fulfilling conditions, the company shall be deemed to have under-reported and it shall be deemed to be income in such year of non-fulfillment of conditions.

4.5.6 Section 56(2)(ix)

56(2)(ix) – Advance money forfeited

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4.5.7 Section 56(2)(x)

Sec 56(2)(x) - Gifts		
Nature of asset	Consideration	Taxable value
Money	Exceeding Rs.50,000.	The whole amount if the same exceeds Rs.50,000.
Movable property	Without consideration	The aggregate fair market value of the property, if it exceeds Rs.50,000.
	Inadequate consideration	The difference between the aggregate fair market value and the consideration, if such difference exceeds Rs.50,000.
Immovable property	Without consideration	The stamp value of the property, if it exceeds Rs. 50,000.
	Inadequate consideration	The difference between the stamp duty value and the consideration, if such difference is more than the higher of Rs. 50,000 and 10% of consideration.

Gifts received in the following circumstances is not taxable u/s 56(2)(x)

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer or donor, as the case may be; or

(e) from any local authority; or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution; or

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(g) from or by any trust or institution *registered*; or

(h) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution*9*.

(i) by way of transaction not regarded as transfer under section 47(i)/ (iv)/ (v)/ (vi)/(vib)/(vid)/(vii).
Transfer of money or property between a holding company and its wholly owned Indian subsidiary company or between a subsidiary company and its 100% Indian holding company, shall not be subject to tax by virtue of the provisions contained in section 56(2)(x).

(j) from an individual by a trust created or established solely for the benefit of relative of the individual.

Definition for the purpose of above section

★ **Property** - Capital asset being

- Immovable property being land or building or both,
- Shares and securities,
- jewellery,
- Archaeological collections,
- Drawings,
- Paintings,
- Sculptures,
- Any work of art or
- Bullion.

Relative -

★ In case of an individual

- Spouse,
- Any lineal ascendant or descendant of the individual or spouse
- Siblings of the individual or spouse
- brother or sister of either of the parents of the individual
- spouse of any of the persons referred above

★ In case of HUF – any member of family

4.5.8 Section 57

Sec. 57 – Allowable deductions

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Sr.no	Income	Deductions
1.	Dividend(Mutual funds) or Income in respect of units of Mutual funds/Specified company	Interest Expense only - Up to 20% of such income included in Total income for that year without deductions under this section
2.	Contributions received by employer from employees towards P.F./ Superannuation./ other funds	Amount remitted before the due date under the respective acts, as per sec.36(1)(va)
3.	Income derived from letting of P&M and furniture	Current repairs, Insurance premium & Depreciation / unabsorbed depreciation.
4.	Family pension	1/3rd of the income or Rs.15,000, whichever is less
5.	Interest on compensation or enhanced compensation	50% of such income
	Other Income	Any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income

4.5.9 Section 58

Sec.58 - Deductions not allowed	
Sr.No.	Deductions
1.	Personal expenses
2.	Interest payable outside India and from which income tax has not been paid or deducted at source.
3.	Salaries payable outside India but on which tax has been paid or deducted there from at source
4.	30% of payment made to a resident on which TDS is applicable but not deducted.
5.	Disallowance u/s 40A – Eg. 1.Payment to relative in excess of reasonable amount 2. Cash payment in excess of Rs.10,000 other than by account payee cheque/bank draft or ECS through bank account or

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	other electronic modes(Credit card, Debit card, net banking, IMPS, UPI, RTGS, NEFT and BHIM Aadhar pay).
6.	No deduction on casual income except from owning & maintaining race horses.

4.5.10 Section 59

Sec.59 – Deemed income
➢ Remission or cessation of a trading liability or receipt of any amount in respect of any loss or expense allowed as deduction in any previous year will be deemed to be income for the PY in which such remission or receipt take place. ➢ Similar to sec 41(1) ➢ This holds good even in case of succession or remission.

4.5.11 Method of Accounting

Sec.145 – Method of accounting
Income chargeable under this head is computed as per cash or mercantile system of accounting regularly employed by the assessee.

Exemptions relevant to this chapter:
➢ The family pension received by ○ any member of the family of such individual who has been awarded 'Param Vir Chakra' or 'Vir chakra' or other notified gallantry award. [Sec 10(18)(ii)] ○ the widow or children or nominated heirs, of a member of the armed forces (including para-military forces) [sec 10(19)] ➢ Notified interest u/s 10(15)

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Lesson 5: Clubbing Provisions and Set off and/or Carry forward of losses

Part I - Income of Other Persons included in Assessee's Total Income

5.1.1 Introduction

Sec. 60 to 64 deals with the provisions of clubbing of income, under which an assessee may be taxed in respect of income accrued to other person, e.g. certain income of minor child shall be clubbed in the hands of his parents, income from asset transferred to spouse for inadequate consideration shall be clubbed in the hands of the transferor, etc. These provisions have been enacted to counteract the tendency on the part of the taxpayers to dispose off their income or income generating assets to escape tax liability.

5.1.2 General Points to Remember

- The income, which is to be clubbed, shall be first computed in the hands of recipient, all expenditure related to such income shall be allowed as per the respective provisions of the Act, and thereafter the net income shall be clubbed.
- Clubbing shall be made head wise.
- If the clubbed income is eligible for deduction u/s 80C to 80U, then such deduction shall be allowed to the assessee in whose hands such income is clubbed.
- Includes clubbing of negative income.
- Clubbing provisions is mandatory and shall be applied even in those cases where the application of such provision causes loss of revenue to the Income tax department.
- The credit of TDS shall be given to the person in whose hands the income is taxable.
- The advance tax paid by the income earner (say spouse or minor child) with reference to such income is not eligible for adjustment towards the tax liability of the individual in whose hands such income has been clubbed. In such case, it is open to the payer of advance tax to apply for refund of advance tax so paid.
- sec. 65 empowers the income tax authorities to serve demand notice (in respect of tax of clubbed income) upon transferee.

5.1.3 Section 60

Sec 60 - Transfer of income without transferring assets

- Where an income is transferred without transferring the asset yielding such income - Such income is clubbed in the hands of the transferor.
  - whether the transfer is revocable or not; or

- whether the transaction is affected before or after the commencement of this Act.

5.1.4 Section 61

Sec 61 – Revocable transfer

- If an assessee transfers an asset under a revocable transfer, then income generated from such asset, shall be clubbed in the hands of the transferor.
- Transfer shall be deemed to be *revocable* if -
  - It contains any provision for the retransfer (directly or indirectly) of any part or whole of the income/assets to the transferor; or
  - It, in any way, gives the transferor a right to re-assume power (directly or indirectly) over any part or whole of the income/assets.

5.1.5 Section 62

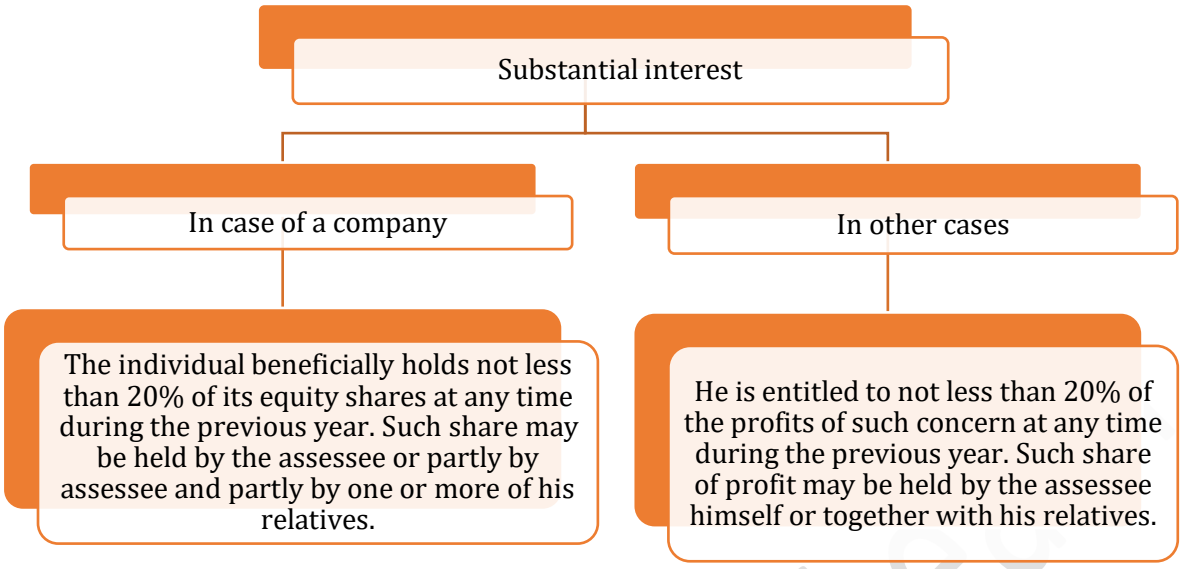
- Sec 62 – **Exceptions to the above rule**
  Sec. 61 shall not apply to an income arising to a person by virtue of
  - A transfer by way of creation of a trust which is irrevocable during the lifetime of the beneficiary
  - Any transfer which is irrevocable during the lifetime of the transferee
  - Any transfer made before 1.4.61, which is not revocable for a period exceeding 6 years

5.1.6 Remuneration to Spouse [Sec. 64(1)(ii)]

Sec. 64(1)(ii) - Remuneration to spouse

- Income of spouse by way of salary, commission, fees or any other remuneration (whether in cash or in kind) from a concern in which such assessee has substantial interest will be included in the total income of the assesse.
- Any other income, which is not specified above is not clubbed.
- Income generated through technical or professional qualification of the spouse is not to be clubbed in the total income of the individual.
- Where both, husband and wife, have substantial interest in a concern and both are drawing remuneration from that concern without possessing any specific qualification.
  - Remuneration from such concern will be included in the total income of husband or wife, whose total income excluding such remuneration, is higher
  - In any subsequent years such income cannot be included in the total income of the other spouse without prior intimation by the Assessing officer.
  - If both are not having any other income then income will not be clubbed.

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- Relative here includes spouse, brother or sister or any lineal ascendant or descendant of that individual [Sec. 2(41)].

5.1.7 Income from asset transferred to spouse [Sec. 64(1)(iv) & (vii)]

Sec. 64(1)(iv) - Income from asset transferred to spouse

- Income arising from assets transferred to spouse without adequate consideration, shall be included in the income of that individual.
- Clubbing provision shall not be attracted
  - When such transfer is for adequate consideration
  - The transfer is under an agreement to live apart
  - Where the asset transferred is house property (as such transfer will be governed by Sec. 27)
  - The relationship of husband and wife does not subsist either on the date of transfer of assets or on the date of accrual of income
  - Income from assets acquired by spouse out of pin money or household savings
- Points to remember with regard to house property
  - Where house property is transferred with adequate consideration & not in pursuance to an agreement to life apart - Income generated from such property is clubbed in the hand of the transferor by virtue of sec 27
  - When such asset is sold - Capital gain generated will be clubbed in the hand of the transferor by virtue of sec 64 (1)(iv).
  - When money is gifted and the spouse purchases house property from such amount - Income generated from such property is clubbed in the hand of the transferor by virtue of sec 64(1)(iv)

Sec. 64(1)(vii)] - Assets transferred to AOP or other person for the benefit of spouse

- In case an asset is transferred to another person or an AOP,

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- otherwise than for adequate consideration,
- for immediate or deferred benefit of spouse,
- then income on such asset shall be clubbed in the hands of the transferor

5.1.8 Section 64(1)(vi) & (viii) - Income from assets transferred to son's wife

Sec. 64(1)(vi) & (viii) - Income from assets transferred to son's wife

- Assets transferred to son's wife (after 31.5.1973), without adequate consideration - Income from such asset clubbed with the income of the transferor.
- Aforesaid relationship must subsist on the date of transfer of assets as well as on the date of accrual of income
- Asset is transferred to other person or an association of persons (after 31.5.1973), without adequate consideration, for immediate or deferred benefit of son's wife - then income on asset so transferred shall be clubbed in the hands of the transferor

5.1.9 Income of minor child [Sec. 64(1A)]

Sec. 64(1A) - Income of minor child

- All Income of a minor child shall be clubbed with income of the parent as follows

Case	Clubbing
When marriage subsists	Parent whose total income (excluding this income) is higher.
When marriage does not subsist	That parent who maintains the minor child in the previous year

- Child includes a stepchild, adopted child and a minor married daughter
- When child attains majority and afterwards, it is taxable in the hands of the child itself.
- Once clubbing is done with that of one parent will continued to be clubbed with the same parent in subsequent years.(Can be clubbed with other parent, if approved by AO)
- **Exceptions**

  The above clubbing provision shall not apply in the following cases -
  - The income arises or accrues to the minor child due to any manual work done by him; or
  - The income arises or accrues to the minor child due to his skill, talent, specialised knowledge or experience; or
  - The minor child is suffering from any disability of nature specified u/s 80U.
- **Exemption [Sec. 10(32)]** - The assessee (parent) can claim exemption of (i) Amount clubbed or (ii) Rs. 1500 whichever is less

5.1.10 Conversion of self-acquired property into HUF Property [Sec. 64(2)]

Sec. 64(2) - Conversion of self-acquired property into HUF property

- Asset was originally self-acquired property of the individual
- Such asset is transferred directly or indirectly to HUF (in which he is member) for inadequate consideration

Case	Income to be clubbed in hands of transferor
Before partition	The entire income from such property
After partition	Income from the assets attributable to the spouse of transferor.

5.1.11 Common points to remember for all transfers

- Consideration must be measurable in terms of money.
- If property has been transferred for inadequate consideration then only the part of income which is attributable to transfer for inadequate consideration, shall be clubbed.
- Income arising to the transferee from the accretion of such property shall not be clubbed in the total income of the transferor.
- Profit on sale of property, which is gifted to spouse, minor child or son's wife, shall be clubbed in hands of the transferor.
- Where an asset is transferred under a trust for the benefit of spouse or son's wife the provision of sec. 64(1) shall be applicable.
- In case of cross transfers, the income is assessed in the hands of the deemed transferor. If the transfer is intimately connected to form of single transaction and each transfer is made with an intention to avoid the provisions of this section.

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Lesson 5 : Part II - Set off and Carry forward of losses

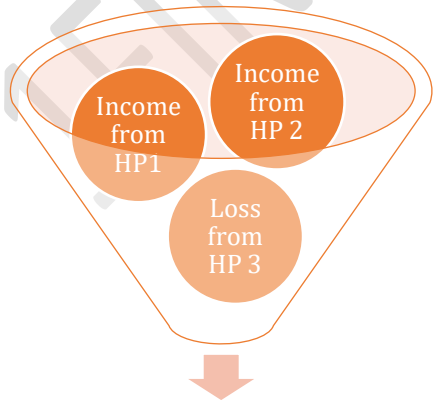
5.2.1 Introduction

For computation of Gross Total Income (GTI), income from various sources is computed under the five heads of income. If all the sources and heads are having positive income (i.e. profit) then the same can simply be added to compute GTI. However, if certain source(s) or certain head(s) have negative income (i.e. loss) then such loss needs to be adjusted with income of another source(s) or head(s). Set off means adjustment of loss from one source or one head against income from another source or another head. If a negative income is not fully set off in the current year, then the unabsorbed loss shall be carried forward to subsequent years subject to certain restrictions and conditions [e.g. Income from other sources (other than losses from activity of owning and maintaining horse races) cannot be carried forward].

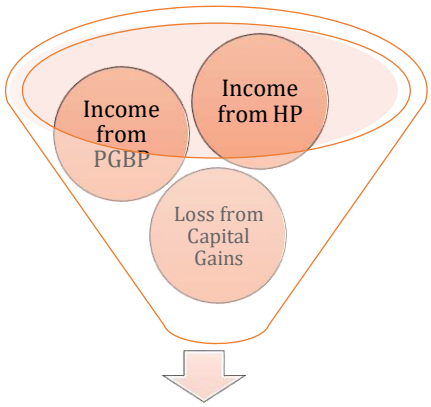
5.2.2 Section 70 & 71

Sec 70 & Sec 71 - Inter source and Inter head set off

- For computation of Gross Total Income (GTI), income from various sources is computed under the five heads of income and aggregated. If certain source(s) or certain head(s) have negative income (i.e. loss) then such loss needs to be adjusted with income of another source(s) or head(s). Set off means adjustment of loss from one source or one head against income from another source or another head.



Sec 70 - Set off of losses from sources covered under same head. Also called Intra head set off



Sec 71 - Set off of losses from sources covered under different head. Also called Inter head set off

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- Loss which could not be adjusted shall be carried forward to next year subject to certain conditions and exceptions.
- Sec 71 will be applicable after application of sec. 70.
- Losses which cannot be carried forward should be adjusted first
- Sec. 70 and 71 are mandatory ie. there is no choice or option whether to set off the loss or not.
- From the clubbed income, one can set off the losses

Exceptions to sec.70	**Exceptions to sec.71**
Long term capital loss can be set off only against long term capital gain. short-term capital loss can be set off against any capital gains	Loss under the head 'Capital gains' cannot be set off against income under any other head.
Loss of a speculation business can be set off only against the profits of a speculation business.	Loss from speculation business cannot be set off against any other income except profits of speculation business.
Loss of a specified business covered u/s 35AD can be set off only against the profits of other specified business.	Loss of a specified business covered u/s 35ADcannot be set off against income taxable under other head.
Loss incurred in activity of owning and maintaining race horses can be set off against income from such activity only	Loss due to activity of owning and maintaining race-horses cannot be set off against any other income except profit from activity of owning and maintaining race-horses
Loss from a source, income of which is exempt u/s 10, cannot be set off against any income	Loss in excess of Rs.2,00,000 under the head 'Income from house property' cannot be set off with income under other heads of income.
No loss can be set off against casual income	Loss under the head "Profits and gains of business or profession" cannot be setoff from income under the head "Salaries"
	Loss from a source, income of which is exempt u/s 10, cannot be set off against any income
	No loss can be set off against casual income
Sec 70 - Loss from any normal business can be set off against income from specified business or income from speculation business.	
Sec 71- Loss under any other head can be set of against income under above exceptions.	

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For e.g. business loss, shall be allowed to be set off against income under the head 'Capital gains', Loss under 'House property' can be set off against any business income including specified business or speculation business.

5.2.3 Carry forward of Loss

* **CARRY FORWARD OF LOSS**

Section	Loss under the head	Carried forward and set off against	Period for which carry-forward shall be allowed	file return of income on or before time specified u/s 139(1)	own the same house or continue the same business to carry forward
71B	House property	House property	8 assessment years	No.	No.
72	PGBP other than speculation loss	PGBP other than speculation loss	8 assessment years	Yes	No.
32(2)	Unabsorbed depreciation	Any income other than salaries & casual income	Indefinite period	No	No.
73	speculation business	speculation business	4 assessment years	Yes	No.
73A	specified business	specified business	Indefinite period	Yes	No.

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	covered u/s 35AD	covered u/s 35AD			
74	Long term Capital loss	Long term Capital gains	8 assessment years	Yes	NA
	Short term Capital loss	Any capital gain	8 assessment years	Yes	NA
74A	Activity of owning and maintaining race horses	Activity of owning and maintaining race horses	4 assessment years	Yes	Such Activity must be carried on in the previous year in which set off is claimed

Loss of assessee claiming deduction u/s 35AD in respect of specified business can be set-off against profit of another specified business u/s 73A irrespective of being eligible u/s 35AD.

5.2.4 Points to remember

Points to remember

Sec 41(5)

- Where any part of loss (not being a speculation loss), which arose during the previous year remains unabsorbed in the previous year in which business ceased to exist
- Such loss shall be allowed to be carried forward for any number of years (without restriction of 8 years) against income chargeable to tax u/s 41(1); (3); (4); (4A).
- Such loss can be set off even if the return of loss is not submitted in time

Sec 72

- The business losses can be carried forward, even the business in respect of which the loss was originally computed, is not carried on during the previous year.

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- Unabsorbed depreciation, unabsorbed scientific research expenditure and unabsorbed family planning expenditure are not covered by sec. 72. Such losses can be carried forward for any number of years.

- In case of insufficient profit, losses shall be set off in the following order:
  a) Current year's depreciation [Sec. 32(1)], capital expenditure on scientific research [Sec. 35(1)] and capital expenditure on family planning [Sec. 36(1)(ix)];
  b) Brought forward business or profession losses [Sec. 72(1)],
  c) Unabsorbed depreciation [Sec. 32(2)], unabsorbed expenditure on family planning [Sec. 36(1)(ix)], unabsorbed capital expenditure on scientific research [Sec. 35(4)]

Sec 73

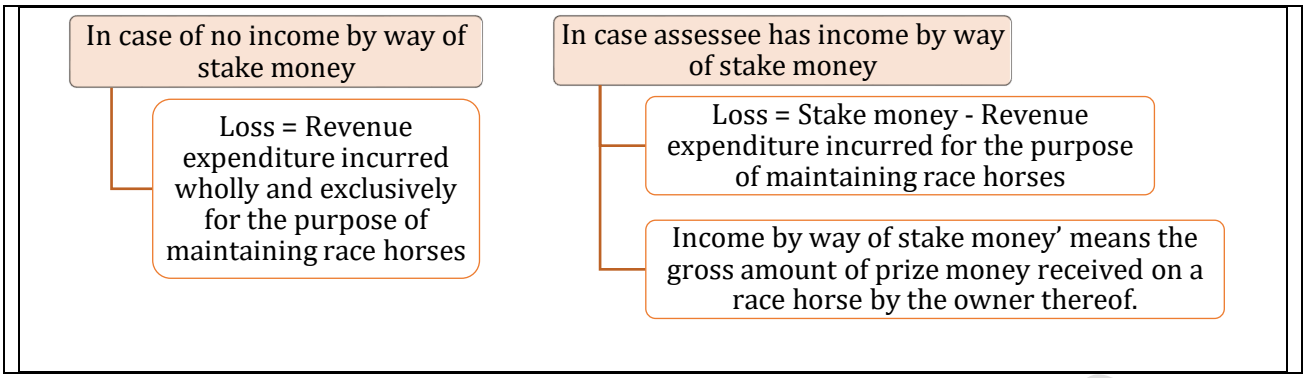
- Speculative transaction means a transaction in which contract for purchase and sale of any commodity including stock and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scripts.

- where any part of the business of a company consists of purchase and sale of shares of other companies,
- such company shall be deemed to be carrying on speculation business to the extent of purchase and sale of shares.
- However, this rule is not applicable in case of companies -
  a) of which gross total income mainly consists of income which is chargeable under the head "Income from house property", "Capital gains", and "Income from other sources"; or
  b) of which principal business is the business of trading in shares or banking or granting of loans and advances.
- Notes: Above explanation covers only transactions of purchase and sale of shares. Debentures, units of UTI or of Mutual Funds are not covered by this explanation.

Sec 74A

- Sec. 74A states only about losses from activity of owning and maintaining race horses, other race animals are governed by sec. 72.

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Lesson 6 : Deductions from Gross Total Income

6.1 Basic Rules

1. Deductions not available from: Deductions under chapter VIA are not available from
   - long-term capital gain
   - short term capital gain covered u/s 111A (i.e., STCG on which STT is charged); and
   - casual income like winning from lotteries, races, etc.
2. Limit of deduction: The aggregate amount of deduction under chapter VIA cannot exceed Gross Total Income of the assessee excluding
   - long term capital gain
   - short term capital gain covered u/s 111A
   - casual income like winning from lotteries, card-games, horse races, etc.; and
   - income referred in Sec.115A, 115AB, 115AC, 115ACA, etc.
3. Deduction must be claimed: Deduction under chapter VIA shall be available only if the assessee claims for it.
4. Double deduction not permissible: Where deduction under any section of chapter VIA has been claimed then the same shall not qualify for deduction in any other section.

6.2 General Provisions

General provisions

- The deductions specified in sections 80C to 80U, shall be allowed from his gross total income.
- Deductions under chapter VIA are not available from -
  - Long-term capital gain;
  - Short term capital gain covered u/s 111A (i.e., STCG on which STT is charged); and
  - Casual income like winning from lotteries, races, etc. and
  - Income referred in Sec.115A, 115AB, 115AC, 115ACA, etc
- Deduction under chapter VIA shall be available only if the assessee claims for it.
- The aggregate amount of the deductions cannot exceed the gross total income of the assessee.
- In the case of AOP/BOI, if any deduction is admissible under section 80G/80GGA/80GGC[1], no deduction under the same section shall be made in computing the total income of a member of the AOP or BOI.

- Where deduction under any section of chapter VIA has been claimed then the same shall not qualify for deduction in any other section.
- Once the assessee has claimed the benefit of deduction under section 35AD for a particular year in respect of a specified business, he cannot claim benefit under Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" for the same or any other year and vice versa
- Sec 80AC - Section 80AC stipulates compulsory filing of return of income on or before the due date specified under section 139(1), as a pre-condition for availing benefit of deductions under any provision of Chapter VI-A under the heading "C. – Deductions in respect of certain incomes".
- **The heading "C. - Deductions in respect of certain incomes" consists of following sections - 80-IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, 80-IC, 80-IE, 80JJA, 80JJAA, 80LA, 80M, 80P, 80PA, 80QQB and 80RRB.**

6.3 Section 80C

Sec 80C - Deduction in respect of investment in specified assets

* **Applicable to -**
  - **Only to a**n Individual or a Hindu Undivided Family

Investment made	**Conditions**
Life insurance premium	➢ Insurance policy can be taken on life of the following: (a) **In case of an individual**: Himself, spouse and child (whether major or minor) of such individual; (b) **In case of HUF**: Any member of the HUF. **Maximum limit:** Premium on insurance policy in excess of following % of the actual sum assured shall be ignored.

Policy issued	Insured is disable* or suffering from disease specified u/s 80DDB	Insured is any other person
Upto 31-03-2012	20%	20%
During P.Y. 2012-13	10%	10%
On or after 01-04-2013	15%	10%

➢ For the purpose of calculating the actual capital sum assured,

- The value of any premiums agreed to be returned or
- The value of any benefit by way of bonus or otherwise, over and above the sum actually assured,

shall not be taken into account.

➢ **Note- Applicability of exemption-**

- Any sum received under a LIP including the sum allocated by way of bonus is exempt u/s 10(10D). However exemption would not be available if the premium payable for any of the years during the term of the policy

	exceeds the limits specified in the above table • Exemption u/s 10(10D) is not available in respect of amount received from an insurance policy taken for disabled person under section 80DD. • Exemption is not available in respect of the sum received under a Keyman insurance policy
Premium paid in respect of a contract for deferred annuity	➢ **Applicable to Individual only** ➢ Annuity may be taken in the name of the individual, spouse and any child of such individual. ➢ Such contract does not contain a provision for the exercise by the insured of an option to receive a cash payment in lieu of the payment of the annuity.
Any sum deducted from the salary payable of a Government employee for securing a deferred annuity	**Maximum limit:** 20% of salary of the employee
Contribution to SPF/PPF/RPF	Contribution can be made in the name of the individual, his spouse and any child of the individual; and any member of the family, in case of a HUF. Contribution must not be in form of repayment of loan.

	The maximum limit for deposit in PPF is ₹1,50,000 in a year.
Contribution to approved superannuation Fund	
Contribution to approved annuity plan of LIC	
Subscription towards notified units of mutual fund or UTI	
Any sum paid or deposited in Sukanya Samridhi Account	
Contribution in Unit-linked Insurance Plan 1971	
Contribution in Unit-linked Insurance Plan of LIC Mutual Fund	
Subscription to National Savings Certificates VIII	
Contribution to National Housing Bank (Tax Saving) Term Deposit Scheme, 2008	
Subscription to notified deposit scheme	The deposit scheme should be notified by the Central Government, for example, public deposit scheme of HUDCO.
Payment of tuition fees to any university, college, school or other educational institutions within India for full-time education for maximum 2 children	Such payment does not include any payment towards any development fees or donation or payment of similar nature. **Private tuition fee** is not covered
5 year time deposit in an account under the Post Office Time Deposit Rules, 1981	

Investment as term deposit for a period of 5 years or more with a scheduled bank.	
Notified Bonds issued by the National Bank for Agriculture and Rural Development (NABARD)	
Senior Citizens Savings Scheme Rules, 2004	
Any payment for purchase or construction of a residential house property including stamp duty, registration fee and other expenses and Repayment of housing loan	➢ This deduction can only be claimed for repayment of home loan taken from specified entity like banks, Housing Finance Companies. Etc. ➢ The following are not admissible for deduction under this section. 1. Any expenditure in respect of which deduction is allowable u/s 24 2. Repayment of loan borrowed for acquiring commercial property 3. Repayment of loan taken for repair, alteration, renovation, addition 4. Admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming a shareholder or member;
Contribution to a specified account of the pension scheme u/s 80CCD	➢ Central Govt. Employee to make the contribution ➢ For a period not less than 3 yrs

	➢ Scheme notified by the central govt.
* **Quantum of deduction – lower of** a. Aggregate of the eligible expenditure or investments OR b. Rs. 1,50,000	
* **Further points** ➢ In case of Termination of Insurance Policy or Unit Linked Insurance Plan or transfer of House Property or withdrawal of deposit ➢ The amount allowed as deduction shall be deemed to be the income chargeable to tax in the Previous year in which such transfer happens. ➢ For the purpose of Deduction u/s 80C, amount paid, invested or deposited shall be considered on payment basis.	

6.4 Section 80CCC

Sec. 80CCC - Deduction in respect of contribution to pension fund

* **Applicable to**
  - An individual only.
* **Conditions to be satisified**

- During the previous year, assessee has paid or deposited a sum under an annuity plan of the Life Insurance Corporation of India (LIC) or any other insurer for receiving pension from the fund referred to in Sec. 10(23AAB).
- The amount must be paid out of income which is chargeable to tax. However, it is not necessary that such income relates to current year.
- Taxable at the time of withdrawal from such fund. Interest or bonus received from such fund shall also be taxable.
- Deduction u/s 80C will not be available

* **Quantum of deduction**

a. Amount deposited or

b. 1,50,000

Whichever is less.

6.5 Section 80CCD

80CCD - Deduction in respect of contribution to pension scheme notified by Central Government

* **Applicable to**
  - An individual
* **Condition to be satisfied**

- Assessee has paid or deposited any amount in his account under a pension scheme notified by the Central Government (New Pension System and Atal Pension Yojna)

* **Deemed Income**

- The amount standing to the credit of the assessee in the pension account (for which deduction has already been claimed by him under this section) and accretions to such account, shall be taxed as income in the year in which such amounts are received by the assessee on -

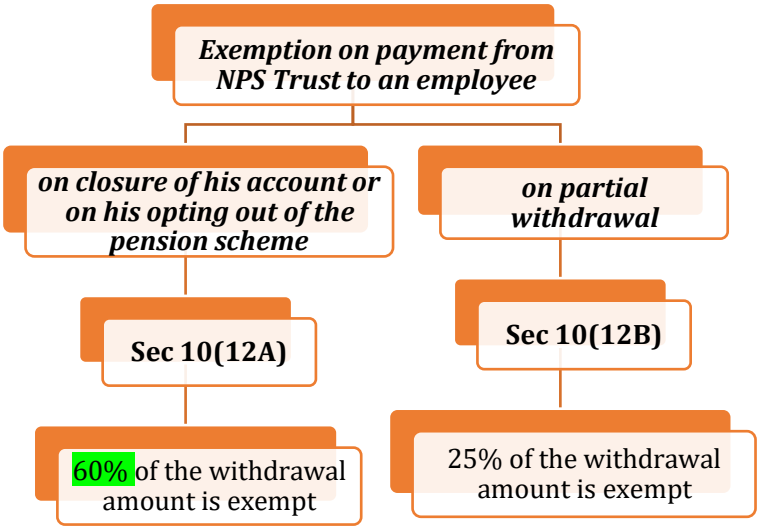
  (a) closure of the account or

  (b) his opting out of the said scheme or

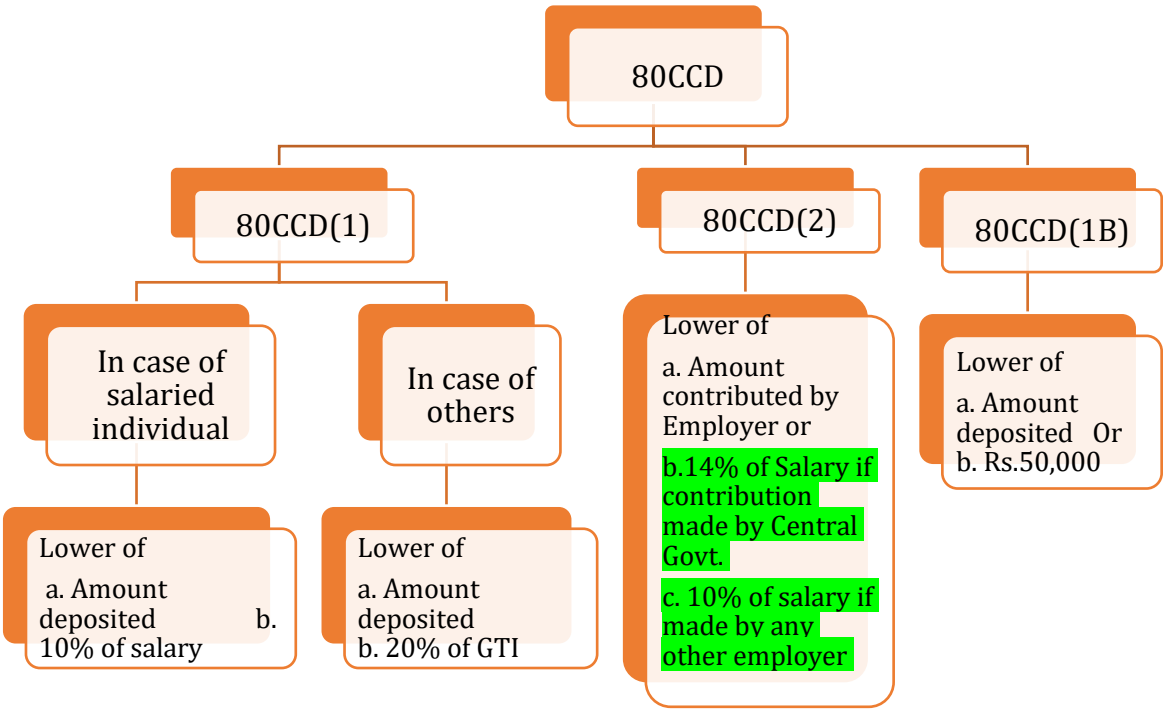
  (c) receipt of pension from the annuity plan purchased or taken on such closure or opting out.

- If the amount is received by the nominee on the death of the assessee under the circumstances referred to in (a) and (b) above, shall not be deemed to be the income of the nominee.

- Where amount withdrawn is used for purchasing an annuity plan in the same previous year (i.e. year of withdrawal), such receipt shall not be taxable.



* **Quantum of deduction**



- Salary = Basic + DA (if forms part of retirement benefit)

6.6 Section 80CCE

80CCE: limit on deductions U/S 80C, 80CCC and 80CCD

Particulars	Amount
Deduction u/s 80C	xx
Deduction u/s 80CCC	xx
Deduction u/s 80CCD [Other than deduction in respect of Employer's Contribution and additional deduction u/s 80CCD(1B)]	xx
Total [Restricted to maximum of Rs.1,50,000 u/s 80CCE]	xx
Add: Contribution to the pension scheme by any individual allowable u/s 80CCD(1B) [Sub. to maximum of Rs. 50,000/-]	xx
Add: Employer's contribution to New Pension System referred to in Sec. 80CCD [Subject to max. of 10% of salary]	xx
Deduction available u/s 80C, 80CCC & 80CCD	xx

6.7 Section 80CCG

Sec. 80CCG - Deduction in respect of investment made under an equity savings scheme

* **Applicable to**

- A resident individual

* **Condition to be satisfied**

  - The gross total income of the assessee for the relevant assessment year should be less than or equal to ₹12 lakh.
  - The assessee should be a new retail investor as per the requirement specified under the notified scheme.
  - The investment should be in such listed equity shares or listed units of equity-oriented fund specified under the notified scheme.
  - The minimum lock-in period in respect of such investment should be three years from the date of acquisition. The fixed lock-in period would be one year from the end of the previous year in which the investment was made.
  - Any other condition as may be prescribed.

* **Quantum of deduction**

a. 50% Amount invested or

b. 25,000

Whichever is less.

* **Further points**

  - The deduction shall be allowed for 3 consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of equity oriented fund were first acquired.
  - No deduction under this section shall be allowed from A.Y. 2018-19.
  - The Central Government has, in this regard notified the Rajiv Gandhi Equity Savings Scheme, 2013.
  - **Consequences of failure to comply with the conditions** - the deduction earlier allowed shall be deemed to be the income of the previous year in which he fails to comply with the condition

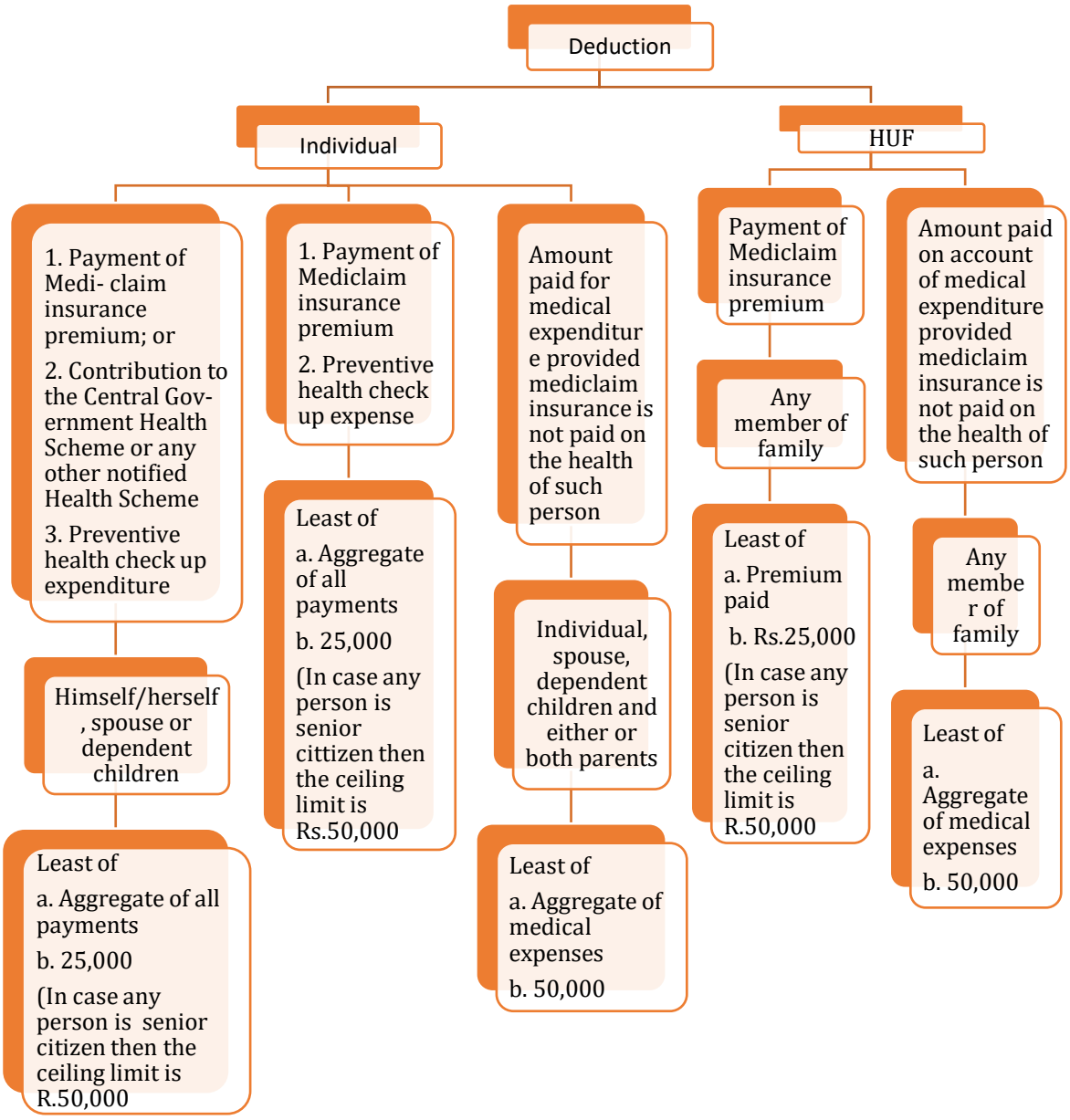
6.8 Section 80D

Sec. 80D- deduction in respect of medical insurance premium

* **Applicable to**

- Individual and HUF

* **Quantum of deduction**



* **Conditions to satisfy**

- Deduction in respect of payment towards preventive health check-up - to the extent of ₹ 5,000 shall be allowed.

- ₹5,000 is within the overall limit of ₹25,000 or ₹ 50,000 specified above.

- For claiming deduction under section 80D, the payment can be made by any mode other than cash in all other cases.
- However preventive check-up can be made in cash.
- The medical insurance should be in accordance with a scheme made in this behalf by GIC approved by Central government or IRDA.
- The amount must be paid out of income, which is chargeable to tax.
- Where lumpsum health insurance premium is paid (single premium) covering insurance for more than a year, then, deduction is available on proportionate basis.
- Senior citizen means an individual resident in India who is of the age of 60 years or more at any time during the relevant previous year

6.9 Section 80DD

Sec. 80DD - Deduction in respect of maintenance of dependent disable relative

* **Applicable to** -
  - A resident individual (irrespective of citizenship) or a resident HUF
* **Conditions to be satisfied**
  - Assessee has a dependent disable relative.

In the case of	Relative includes
Individual	Spouse, children, parents, brothers and sisters of the individual
HUF	Any member of the Hindu Undivided Family

  - No benefit u/s 80U to disable relative
  - Assessee has -
    - Incurred any expenditure for the medical treatment (including nursing), training and rehabilitation of a dependent, being a person with disability; or

- Paid or deposited any amount in an approved scheme for the maintenance of a disable dependent being framed by the Life Insurance Corporation or any other insurer or the Administrator or Unit Trust of India.

➢ Deduction shall be irrespective of actual expenditure incurred i.e. deduction is statutory in nature.

➢ Furnish a copy of the certificate issued by the medical authority$ along with the return of income

* **Quantum of deduction**

Relative is suffering from severe disability (more than 80% disability)	₹1,25,000
Relative is suffering from disability but not severe disability	₹75,000

➢ Any amount received from annuity plan shall be deemed to be the income of the assessee of the previous year in which such amount is received if the dependent person predeceases.

6.10 Section 80DDB

Sec. 80DDB - Deduction in respect of medical treatment

* **Applicable to**

➢ A resident individual (irrespective of citizenship) or a resident HUF

* **Conditions to be satisfied**

➢ The assessee has, during the previous year, actually paid any amount for the medical treatment of a specified disease or ailment as prescribed in rule 11DD for treatment of himself or for a dependent relative.

➢ Dependent - same as 80DD

- Assessee should obtain the prescription for such medical treatment from the prescribed specialist.

Quantum of deduction

- **Minimum of the following -**

a) Actual expenditure incurred by the assessee; OR

b) Rs.40,000 (Rs.1,00,000 in case of senior citizens)

- Deduction shall be reduced by the amount received, if any -
  - under an insurance from an insurer; or
  - reimbursed by an employer,

6.11 Section 80E

Sec. 80E - Deduction in respect of repayment of loan for higher education

* **Applicable to**

- An Individual (irrespective of residential status and citizenship of the individual).

* **Conditions to be satisfied**

- The assessee has taken a loan for the purpose of pursuing higher education of

  a) himself/herself b) spouse c) Children (dependent or not) d) the student for whom the individual is the legal guardian

- The loan is taken from a financial institution or an approved charitable institution
- The amount must be paid out of income chargeable to tax. However, it is not necessary that such income relates to the current year.

* **Quantum of deduction**

- Amount paid during the year by way of payment of interest.
- The deduction is available for a maximum period of 8 consecutive years.

- The period starts from the year in which the assessee starts paying the interest on such loan.

6.12 Section 80EE

Sec. 80EE - Deduction in respect of interest on loan taken for residential house property

* **Applicable to**
  - An Individual (resident or non-resident).
* **Conditions to be satisfied**
  - The assessee has taken loan for acquisition of the residential house property
  - The loan has been sanctioned by the financial institution during the PY 2016-17
  - The amount of loan sanctioned does not exceed Rs.35 lakhs.
  - The value of the residential house property does not exceed Rs.50 lakhs.
  - The assessee does not own any residential house property on the date of sanction of the loan.
* **Quantum of deduction**
  - **Minimum of**
    a. Interest payable
    b. Rs.50,000
  - In case of self-occupied property any interest over and above ₹2,00,000 can be claimed under this section.

6.13 Section 80EEA

Sec. 80EEA- Deduction in respect of interest on loan taken for residential house property

* **Applicable to**

  - An Individual (resident or non-resident) who is not able to claim deduction u/s 80EE.

* **Conditions to be satisfied**

  - The assessee has taken loan for acquisition of the residential house property
  - The loan has been sanctioned by the financial institution during the period 1/4/2019 to 31/3/2021
  - The value of the residential house property does not exceed Rs.45 lakhs.
  - The assessee does not own any residential house property on the date of sanction of the loan.
  - Interest is not claimed elsewhere under any other provision.

* **Quantum of deduction**

  - **Minimum of**

    a. Interest payable

    b. Rs.150,000

  - In case of self-occupied property any interest over and above ₹2,00,000 can be claimed under this section.

6.14 Section 80EEB

Sec. 80EEB- Deduction in respect of interest on loan taken for electric vehicle

* **Applicable to**

  - An Individual (resident or non-resident).

* **Conditions to be satisfied**

  - The assessee has taken loan for purchase of electric vehicle
  - The loan has been sanctioned by the financial institution during the PY 2019-23

Quantum of deduction

- **Minimum of**
  a. Interest payable
  b. Rs.1,50,000

Electric Vehicle - A Vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle. The vehicle should have electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy.

6.15 Section 80G

Sec. 80G - Deduction in respect of donations to certain funds, etc.

* **Applicable to**

  - All assessee.

* **Conditions to be satisfied**

  - The assessee must donate (not in kind) to specified Funds or Organisations
  - Donation in excess of Rs. 2,000 shall not be made in cash
  - Proof of donation, in original, should be attached with the return of income.
  - Where deduction under this section has been allowed, the same shall not qualify for deduction under any other section for the same or any other Assessment Year.
  - **Donation by employees through employer** –
    - where employees make donations to the Prime Minister's National Relief Fund, the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund
    - through their respective employers,

- in the form of a consolidated cheque
- claim in respect of such donations is admissible on the basis of the certificate issued by the Drawing and Disbursing Officer (DDO)/Employer in this behalf.

There are four categories of deductions. The following table gives the details of the institutions and funds to which donations can be made for the purpose of claiming deduction under section 80G:

I - Donation qualifying for 100% deduction, without any qualifying limit
The National Defence Fund
Prime Minister's National Relief Fund.
Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND
Prime Minister's Armenia Earthquake Relief Fund
The Africa (Public Contributions-India) Fund
The National Children's Fund
Chief Minister's Earthquake Relief Fund, Maharashtra
Any Zila Saksharta Samiti constituted in any district
National Blood Transfusion Council or any State Blood Transfusion Council
Any State Government Fund set up to provide medical relief to the poor
The Army Central Welfare Fund or Indian Naval Benevolent Fund or Air Force Central Welfare Fund
The Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996
The National Sports Fund
The National Cultural Fund
The Fund for Technology Development and Application
The Swachh Bharat Kosh, & The Clean Ganga Fund - contribution made not in pursuance to sec 135(5) of Companies Act 2013
The National Fund for Control of Drug Abuse
II - Donation qualifying for 50% deduction, without any qualifying limit
The Jawaharlal Nehru Memorial Fund
Prime Minister's Drought Relief Fund
Indira Gandhi Memorial Trust
Rajiv Gandhi Foundation
III Donation qualifying for 100% deduction, subject to qualifying limit
The Government or to any approved local authority, institution or association for promotion of family planning
Sum paid by a company as donation to the Indian Olympic Association or any other association/institution established in India, as may be notified by the Government for the development of infrastructure for sports or games, or the sponsorship of sports and games in India
IV Donation qualifying for 50% deduction, subject to qualifying limit
The Government or any local authority or Any Institution or Fund established in India for charitable purposes fulfilling prescribed conditions

Any Corporation established by the Central Government or any State Government for promoting the interests of the members of a minority community
for renovation or repair of Notified temple, mosque, gurdwara, church or other place of historic, archaeological or artistic importance
An authority constituted in India by or under any other law enacted either for dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or both.

Steps for computation of qualifying limit

Step 1:	Compute adjusted total income i.e., the GTI as reduced by the following: (i) Deductions under Chapter VI-A, except under section 80G (ii) Short-term capital gain taxable under section 111A (iii) Long-term capital gains taxable under sections 112 & 112A (iv) Any income on which income-tax is not payable
Step 2:	Calculate 10% of adjusted total income
Step 3:	Calculate the actual donation, which is subject to qualifying limit (Total of Category III and IV donations, shown in the table above)
Step 4:	Lower of Step 2 or Step 3 is the maximum permissible deduction.
Step 5:	The said deduction is adjusted first against donations qualifying for 100% deduction (i.e., Category III donations). Thereafter, 50% of balance qualifies for deduction under section 80G.

Quantum of deduction

Category I and II donations	xxx
Category III and IV (as computed above)	xxx
Deduction u/s 80G	xxx

6.16 Section 80GG

Sec. 80GG - Deduction in respect of house rent paid

* **Applicable to**
  - An Individual (irrespective of the residential status and citizenship of the individual)

* **Conditions to be satisfied**

  - Assessee is not receiving House Rent Allowance (HRA).
  - He or his spouse or minor child or HUF of which he is a member, should not own any residential house at a place where the assessee resides, perform the duties of his office, or employment or carries on his business or profession.
  - Assessee should not treat any residential house situated at other places as self-occupied property u/s 23(2)(a) or 23(4)(a).
  - A declaration in Form 10BA should be filed for expenditure incurred by him towards payment of rent.
  - Where an assessee has been provided an accommodation by his employer at concessional rent, then rent paid by him shall be
    - deducted while valuing such perquisite; and
    - eligible for deduction u/s 80GG.

* **Quantum of deduction**

  - **Minimum of the following:**

    a. ₹5,000 per month;

    b. Actual rent paid (-) 10% of the total income before allowing the deduction, or

    c. 25% of such total income (arrived at after making all deductions under Chapter VI A but before making any deduction under this section)

6.17 Section 80GGA

Sec.80GGA - Deduction in respect of donations for scientific research, etc.

* **Applicable to**

  - Any assessee not having income chargeable under the head "Profits and gains of business or profession

* **Conditions to be satisfied**

  - Any contribution made to approved association or institution, any approved university or college for the purposes mentioned u/s 35CCA(2); 35CCA(2A), 35CCA(1)(c), 35CCA(1)(d), 35(1)(ii), 35(1)(iii), 35AC(2)(a)

- Payment in excess of ₹2,000 to aforesaid purpose shall be made by any mode other than cash.
- Deduction shall not be denied merely on the ground that subsequent to the contribution made by the assessee, the approval granted (or notification notifying eligible projects) has been withdrawn.

* **Quantum of Deduction**

  - 100% of such contribution made in the previous year.

6.18 Section 80GGB

Sec.80GGB - Deduction in respect of contributions to political parties

* **Applicable to**

  - An Indian company

* **Conditions to be satisfied**

  - Assessee has contributed any sum (by any mode other than cash), in the previous year, to any political party or an electoral trust.

* **Quantum of Deduction**

  - 100% of such contribution made in the previous year.

6.19 Section 80GGC

Sec.80GGC - Deduction in respect of contributions given by any person to political parties

* **Applicable to**

  - All assessee except local authority and every artificial juridical person wholly or partly funded by the Government

* **Conditions to be satisfied**

- Assessee has contributed any sum (by any mode other than cash), in the previous year, to any political party or an electoral trust.

* **Quantum of Deduction**

  - 100% of such contribution made in the previous year.

6.20 Section 80JJAA

Sec 80JJAA -Deduction in respect of employment of new workmen

* **Applicable to**

  - Any assessee subject to tax audit under sec. 44AB

* **Conditions to be satisfied**

  - New Business: Business is not formed by splitting up, or the reconstruction, of an existing business.
  - No business reorganization: Business is not acquired by the assessee by way of transfer from any other person or as a result of any business reorganization.
  - Audit: Books of account should be audited and report thereof should be submitted before 30th Sep of A.Y., being the specified date referred to in Sec 44AB (i.e., one month prior to due date for filing return of income u/s 139(1).
  - Claimed in the return: No deduction shall be allowed if the deduction has not been claimed in the return of income.

* **Quantum of Deduction**

  - 30% of additional employee cost incurred in the previous year, for 3 assessment years including the assessment year relevant to the previous year in which such employment is provided.

* **Important definitions**

- **Additional employee cost** - Total emoluments paid or payable to additional employees employed during the previous year.

- The additional employee cost shall be nil, if:

  - There is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

  - Emoluments are paid in cash or bearer cheques.

- **Additional employee** - Employee who has been employed during the previous year but does not include –

  1. Employee whose total emoluments are more than ₹25,000 per month; or

  2. Employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme
  3. Employee employed for a period of less than 240 days (150 days in case of an assessee who is engaged in the business of manufacturing of apparel or footwear or leather products) during the previous year; or
  4. Employee who does not participate in the recognised provident fund.

- **Emoluments** - any sum paid or payable in lieu of his employment by whatever name called, but does not include:

  1. Any employer contribution to any pension fund or provident fund or any other fund

  2. Any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

6.21 Section 80QQB

Sec 80QQB - Deduction in respect of royalty income of authors of books

* **Applicable to**

  - A resident individual

* **Conditions to be satisfied**

  - Assessee is an author or joint author of a book.
  - The book should be a work of literary, artistic or scientific nature. It shall not include brochures, commentaries, diaries, guides, magazines, journals, newspapers, pamphlets, text-books for school, tracts and other publications of similar nature, by whatever name called.
  - Gross total income includes any lump sum consideration for the assignment or grant of any of his interest in the copyright of book; or any other copyright fees
  - However, when such income is earned from a source outside India then –
    - Such receipts should be brought into India in convertible foreign exchange within 6 months from the end of the previous year or within such further period as the competent authority may allow in this behalf; and
    - The assessee must furnish a certificate in the Form 10H (obtained from the prescribed authority) along with his return of income.

* **Quantum of Deduction**

Income earned and received in Lumpsum		**Income received in a mode other than lump sum**	
Income earned in India	**Income earned outside India**	**Income earned in India**	**Income earned outside India**
Minimum of – a)100% of such income (Receipts(-) Expense b) ₹ 3,00,000	Minimum of – a) Money brought into India in convertible foreign exchange within time limit (-)	Minimum of – a)100% of such income (Receipts (-)) Expense relating to such income) b) ₹ 3,00,000	Minimum of - a) Money brought in India in convertible foreign exchange within time limit

	Expenditure incurred relating to such income b) ₹ 3,00,000	c) 15% of sale value of the book - Expense relating to such income	(-) Expense incurred relating to such income b) 15% of sale value of the book (-) Expense incurred relating to such income c) ₹ 3,00,000

6.22 Section 80RRB

Sec 80RRB - Deduction in respect of royalty on patents

*__Applicable to__

- A resident individual being a patentee who is registered as first inventor of the invention and whose name is entered on the Patent register in accordance with the Patent Act, 1970 and includes co-owner of a patent.

*__Conditions to be satisfied__

- Assessee has earned income (either in India or outside India) by way of royalty in respect of patent registered on or after 1-4-2003 under the Patents Act, 1970.
- It does not include any capital sum received for sale of patent, which is chargeable under the head Capital gains.
- when such income is earned from a source outside India, then
- Such receipts should be brought into India by the assessee in convertible foreign exchange within 6 months from the end of the previous year or within such further period as the competent authority may allow in this behalf and
- The assessee must furnish a certificate in the Form 10H from the prescribed authority along with his return of income

- Earlier deduction allowed under this section shall be deemed to be wrongly allowed and Assessing Officer has the power to rectify the assessment-order within 4 years from the end of the previous year in which such order of the High Court or the Controller was passed

*__Quantum of Deduction__

Income earned in India	**Minimum of the following** - a. 100% of such income; OR b. ₹3,00,000
Income earned outside India	**Minimum of the following** - a. Income in respect of money brought into India in convertible foreign exchange within 6 months or b. ₹3,00,000

6.23 Section 80TTA

Sec 80TTA - Deduction in respect of interest on deposits in savings account

*__Applicable to__

- An individual (other than senior citizen covered u/s 80TTB) or a Hindu Undivided Family

*__Conditions to be satisfied__

- Gross total income includes any income by way of interest on deposits with
  - A banking company
  - A co-operative society engaged in carrying on the business of banking
  - A Post Office

- Interest on Post Office Saving Bank is exempt u/s 10(15(i) to the extent of the interest of ₹ 3,500 (in case of single account) and ₹ 7,000 (in case of joint account)
- Where such income is derived from any deposit held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed.

*__Quantum of Deduction__

- **Minimum of**

a. Interest amount

b. ₹10,000

6.24 Section 80TTB

__Sec 80TTB - Deduction in respect of interest on deposits in case of senior citizens__

*__Applicable to__

- Senior Citizen

*__Conditions to be satisfied__

- Gross total income includes any income by way of interest on deposits with
  - A banking company
  - A co-operative society engaged in carrying on the business of banking
  - A Post Office
- Where such income is derived from any deposit held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed.

*Quantum of Deduction

- **Minimum of**

a. Interest amount

b. ₹ 50,000

6.25 Section 80U

Sec 80U - Deduction in respect of person with disability

*Applicable to

- A resident individual (irrespective of citizenship of the individual)

*Conditions to be satisfied

- Assessee is a disabled individual.
- Assessee must furnish a copy of the certificate issued by the medical authority in the prescribed form along with the return of income, in respect of the assessment year for which the deduction has been claimed.
- Deduction under this section is irrespective of actual expenditure incurred

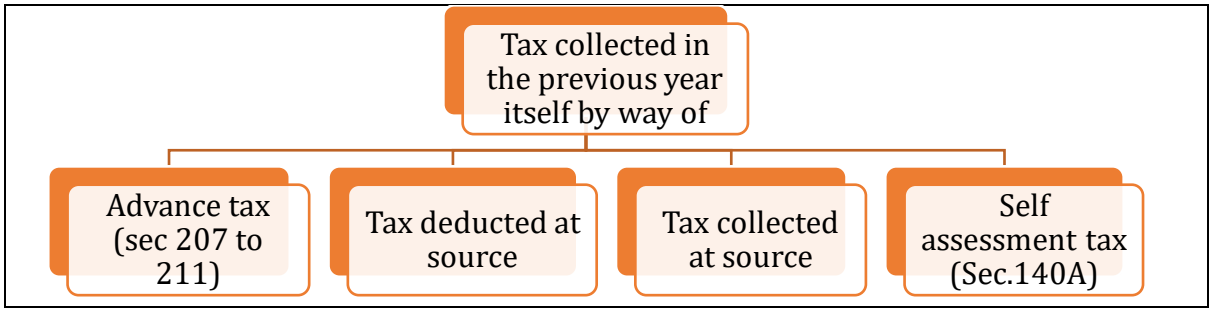
*Quantum of Deduction

disability but not severe disability	₹75,000
severe disability (i.e. disability to the extent of 80% or more)	₹1,25,000

Lesson 9 - Procedural Compliance

Lesson 9: Part I - Tax Deducted at Sources (TDS)

9.1.1 General Provisions



9.1.2 Summarized TDS Provisions

Sec.	Income	Threshold limit for deduction	Payer	Payee	Tax rate	Time of deduction
192	Salary	Basic exemption limit (₹2,50,000/ ₹3,00,000) as the case may be).	Employer	Employee	Average rate of income-tax computed on the basis of the rates in force	At the time of payment
192	ESOP - Perquisite u/s17(2)(vi)		Eligible start-up referred to in section 80-IAC,	Employee	Average rate of income-tax computed on the basis of the rates in force in the year shares are allotted / transferred	Within 14 days a. after the expiry of 48 months from the end of the relevant AY; or b. from the date of the sale of such specified security or sweat equity share

						by the assessee; or c. from the date of which the assessee ceases to be the employee of the person; - whichever is the earlier.
192A	Premature withdrawal from Employee Provident Fund	Payment or aggregate payment ≥ ₹ 50,000	Trustees of EPF scheme or any authorised person under the Scheme	Individual (Employee)	10% [In case of PAN not furnished TDS@ Maximum Marginal Rate]	At the time of payment
193	Interest on securities	> ₹ 10,000 in a F.Y., in case of interest on 8% Savings (Taxable) Bonds, 2003/7.75% Savings (Taxable) Bonds, 2018. > ₹ 5,000 in a F.Y., in case of interest on debentures issued by a public company No threshold specified in any other case.	Any person responsible for paying the income	Any resident	10% [In case of PAN not furnished TDS@ 20%]	At the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.
194	Dividend Distributed or paid	For individual > Rs.5,000 (paid by mode other than cash) For Insurance	Principle officer of domestic company	Resident Shareholder	10% (reduced to 7.5% for the period 14/5/20	Before payment or distribution

		Co. – No TDS For others – No limit			to 31/3/21)	
194A	Interest other than interest on securities	> ₹ 40,000 in a F.Y., in case of interest credited or paid by – (i) A banking Co. (ii) A Co-opera tive society engaged in banking business (iii) A post office on any deposit under a notified scheme. In all the above cases, if the payee is resident senior citizen, tax deduction limit is ₹50,000. >₹50,000 interest on the compensation amount awarded by the Motor Accidents Claims Tribunal > ₹5,000 in a F.Y., in other cases.	Any person (other than an individua l or HUF whose e total sales, gross receipts or turnover from the business or professio n carried on by him exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of professio n)	Any Resident	10% (reduced to 7.5% for the period 14/5/20 to 31/3/21)	At the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.
194B	Winnings from any lottery, crossword puzzle or card games or	> ₹10,000	The person responsib le for paying the income	Any Person	30%	At the time of payment

	other games of any sort					
194BB	Winnings from horse race	> ₹ 10,000	Book maker or a person holding licence for horse racing or for arranging for wagering or betting in any race course.	Any Person	30%	At the time of payment
194C	Payments to contractors	Single sum credited or paid > ₹ 30,000 (or) The aggregate of sums credited or paid to a contractor during the FY > ₹1 lac Individual or HUF need not deduct tax where sum is credited or paid exclusively for personal purposes.	Central/state govt., Local authority, Central/State provincial corp., company, firm, trust, Co-operative society, university established under Central/State provincial act, Govt of foreign state or foreign entp. Individual/ HUF	Any Resident contractor for carrying out any work (including supply of labour)	1% [From 14-05-2020 to 31-03-2021: 0.75%] of sum paid or credited, if the payee is an Individ. or HUF 2% [From 14-05-2020 to 31-03-2021: 1.5%] of sum paid or credited, if the payee is any other person.	At the time of credit of such sum to the account of the payee or at the time of payment whichever is earlier.

			liable whose gross receipts / turnover in the immeidate PFY exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of professio n d			
194D	Insurance Commissio n	> ₹15,000 in a FY	Any person responsib le for paying any Income by way of remu-neration or reward for soliciting or procuring insur.busi n.	Any Resident	5% [From 14-05-2020 to 31-03-2021: 3.75%]	At the time of credit of such sum to the account of the payee Or the time of payment whichever is earlier.
194D A	Any su m under a Life Insurance Policy	≥ ₹1,00,000 (aggregate amount of payment to a payee in a financial year)	Any person responsi ble for paying any sum under a LIP, includin g the sum allocate d by way of bonus	Any resident	5% [From 14-05-2020 to 31-03-2021: 3.75%]	At the time of payment

194E	Payment to non-resident sportsmen or sports association of income referred to in sec. 115BBA		Any person responsible for making the payment	Non-resident sportsman (including Athlete) or enter-tainer who is not a citizen of India or non-resident sports associ. or institution	20%	At the time of credit of such sum to the account of the payee or at the time of payment, Whichever is earlier.
194EE	Payment of deposit under National Saving Scheme	≥ ₹ 2,500 in a FY	Any person responsible for paying	Individual or HUF	10% [From 14-05-2020 to 31-03-2021: 7.5%]	At the time of payment
194G	Commission on sale of lottery tickets	> ₹ 15,000 in FY	Any person responsible for paying any income by way of commission remuneration, prize on lottery tickets	Any person stocking, distributing purchasing, or selling lottery tickets.	5% [From 14-05-2020 to 31-03-2021: 3.75%]	At the time of credit of such sum or at the time of payment, Whichever is earlier.
194H	Commission or brokerage	> ₹ 15000 in a FY	Any person (other than an Ind./ HUF whose total sales, gross receipts or turnover in the immeida te PFY	Any resident	5% [From 14-05-2020 to 31-03-2021: 3.75%]	At the time of credit of such sum to the account of the payee or at the time of payment, Whichever is earlier.

			exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of profession) responsible for paying commission or brokerage.			
194-I	Rent	> ₹2,40,000 in a financial year	Any person (other than Indiv./HUF whose gross receipts / turnover in the immeidate PFY exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of profession d) responsible for paying rent.	Any resident	For P & M or equip.- 2%[From 14-05-2020 to 31-03-2021: 1.5%] For L&B, land appurt-enant to a building, furniture or fittings -10% [From 14-05-2020 to 31-03-2021: 7.5%]	At the time of credit of such sum to the account of the payee or at the time of payment, Whichever is earlier.
194-IA	Payment on transfer of certain immovable property	> ₹50 lacs (Consideration includes club membership	Any person being transferee other than a person	Resident transferor	1% [From 14-05-2020 to 31-03-2021: 0.75%]	At the time of credit of such sum to the account of the payee or at

	other than agricultur e land	fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property	referred in sec. 194LA, responsibl e for paying the compensa tion compulsor y acquisitio n of immovabl e property. (No requireme nt to obtain TAN u/s 203A for the payer)			the time of payment, Whichever is earlier.
194-IB	Payment of rent by certain individual s or HUF	> ₹ 50, 000 for a month or part of a month	Individu al/ HUF (other than Individu al/ HUF whose gross receipts / turnover in the immeida te PFY exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of professio n d) responsi ble for	Any Resident	5% [From 14-05-2020 to 31-03-2021: 3.75%] [In case of PAN not furnished TDS@ 20%]	At the time of credit of rent, for the last month of the PY or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment, whichever is earlier

			paying rent. (No requirement to obtain TAN u/s 203A for the payer)			
194-IC	Payment under specified agreement referred to in section 45(5A)	No threshold specified.	Any person responsible for paying any sum by way of consi-deration not being in kind under a registered agreement, where in L or B or both are handed over by the owner for development of real estate project, for a consideration, being a share in L or B or both in such project, with payment of part	Any Resident	10% [From 14-05-2020 to 31-03-2021: 7.5%]	At the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier

			consideration in cash.			
194J	1.Fees for Professional Services. 2. Fees for technical services, 3. Royalty 4. Non-compete fees, 5. Director's remunertion	> ₹ 30,000 in a FY, for each category of income. (However, this limit does not apply in case of payment made to director of a company).	Any person, other than an individual or HUF; However, in case of fees for professional or technical services paid or credited by individual / HUF whose gross receipts / turnover in the immeidate PFY exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of professio n d is liable to deduct tax u/s 194J, except where such fees credited or paid exclusively for his personal	Any Resident	2% [From 14-05-2020 to 31-03-2021: 1.5%] - In case Payee engaged only in the business of operation of call centre 2% [From 14-05-2020 to 31-03-2021: 1.5%]- fee for technical service (not being professional services) or royalty in the nature of consideration for sale/ distribution / exhibition of cinematographic films 10% [From 14-05-2020	At the time of credit of such sum to the account of the payee or at the time of payment, Whichever is earlier.

			purposes		to 31-03-2021: 7.5%]- In all other cases	
194LA	Compensa-tion on acquisition Of certain immovable property other than agricultur e land	> ₹ 2,50,000 in a FY	Any person responsible for paying any sum in the nature of compensation or enhanced compensation on compulsory acquisition of immovable property	Any Resident	10% [From 14-05-2020 to 31-03-2021: 7.5%]	At the time of payment
194M	Contractual commission (not being insurance commission referred to in section 194D) or brokerage or by way of fees for professional services during the financial year,	> ₹ 50,00,000 in a FY	Any person, being an individual or a Hindu undivided family (other than those who are required to deduct income-tax as per u/s 194C, 194H or 194J)	Any resident	5% [From 14-05-2020 to 31-03-2021: 3.75%]	At the time of credit of such sum or at the time of payment whichever is earlier
194N	Amounts in Cash	Cash > Rs. 1 crore (Rs. 20	Banking company,	Any person	2% - Aggregate payment	At the time of payment

		lakh in case of defaulter)	Cooperative Society into banking, Post office		between Rs.20 lakhs & Rs.1 Cr 5% - if aggregate payments > Rs.1 Cr	
194-O	Payments by E-commerce operator	Gross sales > Rs.5,00,000	E-Commerce operator	E commerce participant - Individual or HUF	Participant intimates PAN - 1% [From 14-05-2020 to 31-03-2021: 0.75%] Participant doesn't intimate PAN - 5%[From 14-05-2020 to 31-03-2021: 3.75%]	At the time of payment or crediting the payee, whichever is earlier.

COVID Impact - the deduction of tax shall be made at the rate being the three-fourth of the rate specified in the sections 193, 194, 194A, 194C, 194D, 194DA, 194EE, 194F, 194G, 194H, 194-I, 194-IA, 194-IB, 194-IC, 194J, 194K, 194LA, sub-section (1) of section 194LBA, clause (i) of section 194LBB, sub-section (1) of section 194LBC, sections 194M and 194-O for the period 14/5/20 to 31/3/21

9.1.3 Additional points to remember

Sec 191 -
Direct payment of tax

- In the following cases, tax is payable by the assessee directly –

(1) in the case of income in respect of which tax is not required to be deducted at source; and

(2) income in respect of which tax is liable to be deducted but is not actually deducted.

- The proceedings for recovery of tax necessarily had to be taken against the assessee whose tax was liable to be deducted, but not deducted.
- If any person, including the principal officer of the company –

(1) who is required to deduct tax at source; or

(2) an employer paying tax on non-monetary perquisites under section 192(1A),

does not deduct the whole or part of the tax, or after deducting fails to pay such tax deducted, then, such person shall be deemed to be an assessee-in-default.

However, if the assessee himself has paid the tax, this provision will not apply.

- If the income includes ESOPs as perquisites u/s 17(2)(vi) and assessee has to pay directly, then the assessee shall pay within fourteen days of

(i) after the expiry of forty-eight months from the end of the relevant assessment year; or

(ii) from the date of the sale of such specified security or sweat equity share by the assessee; or

(iii) from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity share,

whichever is the earliest.

Sec 192 -

- For computation of total income in case of employee intents to opt for concessional rate of tax u/s 115BAC and the employee
  - intimates the employer, then deductor has to consider the provisions of Sec 115BAC,
  - doesn't intimate, deductor shall not consider the concessional rates of 115BAC

- In cases where an assessee is simultaneously employed under more than one employer

  or the assessee takes up a job with another employer during the financial year, he may furnish the details of the income under the head "Salaries" due or received by him from the other employer, the tax deducted therefrom and such other particulars to his current employer.

- Thereupon, the subsequent employer should take such information into consideration and then deduct the tax remaining payable in respect of the employee's remuneration from both the employers put together for the relevant financial year.

- Deduction of tax at source should be made after allowing relief under section 89(1), where eligible.

- A tax payer can declare the following additions information for allowing to the employer to compute TDS:

  - particulars of such other income;
  - particulars of any tax deducted under any other provision;
  - loss, if any, under the head 'Income from house property'. (only loss from house property is considered and not losses under other head)

- The employer shall furnish to the employee (whose salary exceeds ₹ 150,000), a statement in Form No. 12BA giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof.

- It is the responsibility of the employer to obtain from the assessee, the following evidence or proof or particulars of prescribed claims

House Rent Allowance	Name, address and PAN of the landlord(s) where the aggregate rent paid during the previous year exceeds ₹ 1 lakh.
Leave Travel Concession or Assistance	Evidence of expenditure
Deduction of interest under the head "Income from house property"	Name, address and PAN of the lender
Deduction under Chapter VI-A	Evidence of investment or expenditure.

Sec 192 A -

- The withdrawal of accumulated balance by an employee from the RPF is exempt from taxation.

- However premature withdrawal, before continuous service of five years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.) is subject to tax.

Sec 193 -

- No tax deduction is to be made from any interest payable:
  - on 4¼% National Defence Bonds 1972, held by resident
  - on 4¼% National Defence Loan, 1968 or 4¾% National Defence Loan, 1972
  - on National Development Bonds
  - on 7-year National Savings Certificates (IV Issue)
  - on debentures issued by any institution or authority or any public sector company or any co-operative society as notified by the Central Govt.
  - on securities to LIC, GIC, subsidiaries of GIC or any other insurer in which they have full beneficial interest
  - on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India.

Sec 194

- Non – applicability
  - Insurance Company
  - Individual
    - Dividend paid by any other mode than cash and
    - Dividend given (particular amount or aggregate) during the FY ≤ Rs.5,000
- Exemption or relaxation from the provision:
  - When the recipient applies to the Assessing Officer in Form No. 13 and gets a certificate authorizing the payerto deduct tax at lower rate or deduct no tax [Refer sec.197]
  - When a declaration in Form 15G (in duplicate) is furnished by the assessee to the payer [Refer sec.197A]

Sec 194A -

- Where the bank or co-operative society is following core banking system, tax shall be deducted at source on
  - accrual of interest at the end of financial year or
  - at periodic intervals as per practice of the bank or
  - as per the depositor's / payee's requirement or
  - on maturity or on encashment of time deposits,
  - whichever event takes place earlier,
- whenever the aggregate of amounts of interest income by the banks exceeds the limits specified in section 194A.
- **Non-applicability of TDS under section 194A**

(a) Interest paid or credited by a firm to any of its partners;

(b) Income paid or credited by a co-operative society (other than a co- operative bank) to a member thereof or to any other co-operative society;

(c) Interest paid or credited in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf;

(d) Interest income credited or paid in respect of deposits (other than time deposits made after 1.7.1995) with a bank for which the Banking Regulation Act, 1949 applies.

(e) Interest credited or paid in respect of deposits with primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank.

(f) Interest income credited or paid by the Central Government under any provisions of the Income-tax Act, 1961, the Estate Duty Act, the Wealth- tax Act, 1957, the Gift-tax Act, the Companies (Profits) Surtax Act or the Interest Tax Act.

(g) Interest paid or credited to the following entities:

(i) banking companies, or co-operative societies engaged in the business of banking, including co-operative land mortgage' banks

(ii) Financial corporations established under any Central, State or Provincial Act.

(iii) Life Insurance Corporation of India.

(iv) Companies and co-operative societies carrying on the business of insurance.

(v) the Unit Trust of India; and

(vi) notified institution, association, body or class of institutions, associations or bodies (National Skill Development Fund has been notified by the Central Government for this purpose) [No notification to be issued in this regard on or after 1.4.2020]

(h) income paid or payable by an infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank in relation to a zero coupon bond issued on or after 1.6.2005.

(i) A Co-operative society other than a co-op bank when paying to member or and primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank is liable to deduct tax if:

(i) Total sales, gross receipts or turnover > Rs.50 Crores in the FY in which interest is credited and

(ii) The amount/ aggregate of interest credited or paid during FY is > Rs.50,000 for a senior citizen and > Rs.40,000 in any other case .

(j) Central Govt. is entitled to issue notification for non-deduction of tax at source or at lower rate from such payment to such class of persons specified in such notification

Sec 194 C

- This section will apply only in relation to 'works contracts' and 'labour contracts' and will not cover contracts for sale of goods.
- Work includes –

(a) advertising;

(b) broadcasting and telecasting including production of programmes

(c) carriage of goods or passengers by any mode of transport other than by railways;

(d) catering;

(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such

customer or associate, being a person related to the customer as defined u/s 40A(2)(b). If goods are purchased from some other supplier then it would become sale.

- Where the material component has not been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value
- Non-applicability of TDS
  - TDS is not applicable to a contractor, who fulfills the following three conditions cumulatively:
    - is engaged in the business of plying, hiring or leasing goods carriages
    - owns ten or less goods carriages at any time during the previous year
    - has furnished a declaration to this effect along with his PAN

Sec 194E

- **Income referred to in section 115BBA**

(i) income received or receivable by a non-resident sportsman (including an athlete) by way of-

(a) participation in any game or sport in India (However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein); or

(b) advertisement; or

(c) contribution of articles relating to any game or sport in India in newspapers, magazines or journals.

(ii) Guarantee amount paid or payable to a non-resident sports association or institution in relation to any game or sport played in India. However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein.

(iii) income received or receivable by a non-resident entertainer (who is not a citizen of India) from his performance in India.

Sec 194H -

- Non-applicability of TDS
  - Amount payable to person carrying on specified profession as per Sec 44AA
  - Commission or brokerage payments by BSNL or MTNL to their public call office (PCO) franchisees

- In case of advertising business –
  - Payment by client to the advertising agency – TDS is deductible u/s 194C
  - Fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements - subject to 194H

Sec 194 I -

- "Rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) of P&M / L&B / F&F whether or not they are owned by the payee.
- Non-applicability of this section -
  - Cooling charges paid by the customers of the cold storage. However 194C would apply to such case.
  - Payment of PSF (Passenger service fee) by an airline to Airport Operator.
  - Lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property
- 194-I would be required to be made on the amount of rent paid/payable without including the GST component.

Sec 194 J -

- **"Professional services" includes**
  1. Those defined u/s 44AA (specified professions)
  2. Notified by the CBDT for the purposes of section 44AA (authorised representatives, film artist & company secretary)
  3. Persons in relation to the sports activities , as notified by the CBDT (Umpires and Referees, Coaches and Trainers, Team Physicians and Physiotherapists, Event Managers, Commentators, Anchors and Sports Columnists). Therefore, all other professions would be outside the scope of section 194J.
- Fees for technical services includes:
  - Managerial services
  - Technical services
  - Consultancy services

- Provision of services of technical or other personnel.

➢ Following are excluded from technical services:

- Consideration for any construction, assembly, mining or like project, or
- Consideration which is chargeable under the head 'Salaries'

➢ TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes sec. 194J is applicable.

➢ The consideration for use or right to use of computer software is royalty. Hence, 194J would be attracted in respect of consideration for use or right to use computer software.

Sec 194N

➢ Applicability to amounts paid in cash (in aggregate) in excess of

- Rs. 20 lakh for defaulter
- Rs. 1 crore for other than defaulter

during the previous year, to any person from one or more accounts maintained by the recipient with it

➢ Defaulter means the recepient who has not filed the returns of income for all of the 3 assessment years relevant to the 3 previous years, for which the time limit to file return of income u/s 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made to him

➢ Deduction not required when payment made to

- Government
- Banking Co. Cooperative society into banking business or Post office
- Business correspondent of above as per RBI Act, 1934
- White label ATM operator
- Notified persons

Sec 194-O

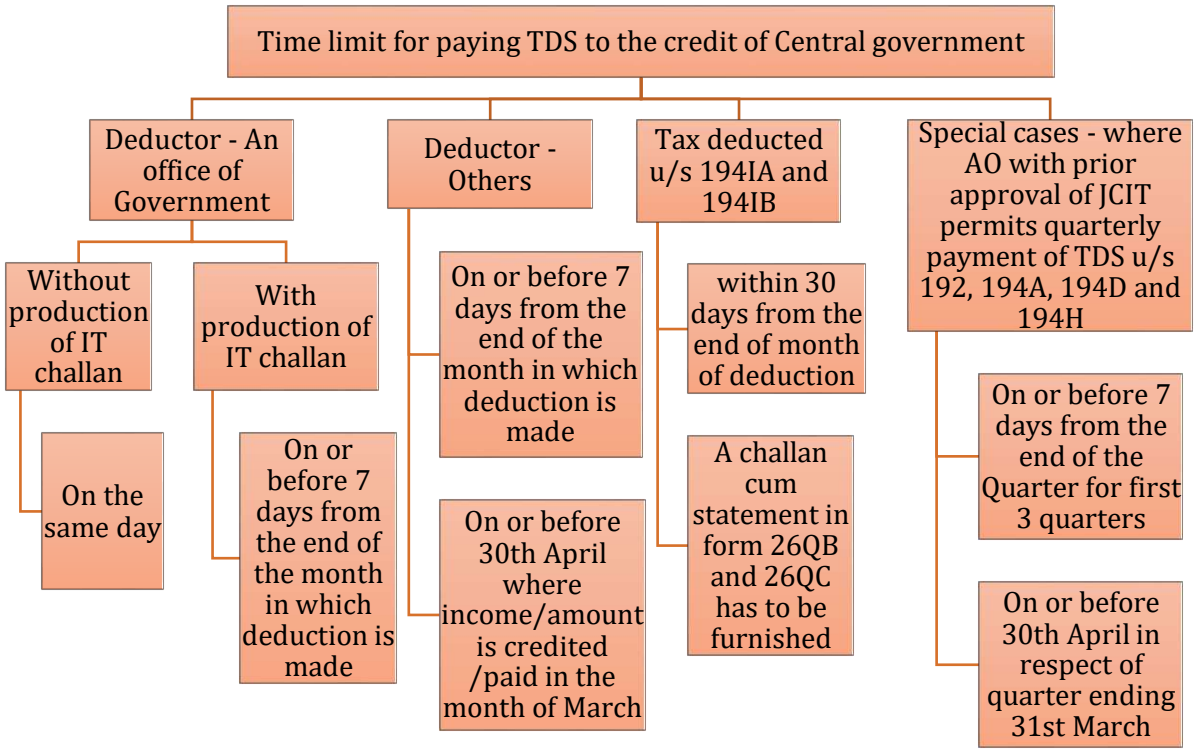
➢ Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the

amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of tax

- A transaction in respect of which tax has been deducted by the e-commerce operator (or which is not liable to deduction due to threshold limit), shall not be liable to TDS under any other provisions.
- Any amount received is or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services, other provision relating to TDS, if any, is applicable.
- When the recipient applies to the Assessing Officer in Form 13 and gets a certificate authorising the payer to deduct tax at lower rate or deduct no tax then recipient is exempted from the provisions of this section

Sec 200 -

- The persons responsible for deducting the tax at source should deposit the sum so deducted to the credit of the Central Government.



- TDS returns have to be furnished by the due dates specified below:

For the quarter ending 30th June	31st July

For the quarter ending 30th September	31st October
For the quarter ending 31st December	31st January
For the quarter ending 31st June	31st May of the AY

TDS return forms

For TDS on salaries	Form 24Q
For TDS on all payments other than salaries	Form 26Q
For TDS on interest, dividends to non residents	Form 27Q
For TCS	Form 27EQ

Sec 234E -

- **A fee of ₹ 200 for every day would be levied for late furnishing of TDS statements from the due date of furnishing to the date of actual date of furnishing.**
- **However the total amount of fee cannot exceed the total amount of TDS / TCS.**
- **Such fee has to be paid before delivering the TDS statements.**

Sec 200A -

- All statements and returns in respect of TDS and TCS is made in electronic mode.
- During computerised processing, a correction of any arithmetic error or adjustment to an incorrect claim can be made.
- The sum payable by, or the amount of refund due to, the deductor has to be determined after adjustment of interest and fee against the amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee.
- An intimation will be prepared and generated and sent to the deductor, specifying his tax liability or the refund due, within one year from the end of the financial year in which the statement is filed. The refund due shall be granted to the deductor.

Sec 201-

* **Consequences of failure to deduct or pay**

- Any person who is obligated per above sections, does not deduct the whole or any part of the tax or after deducting fails to pay the tax will deemed as 'Assessee in default.'
- However such person shall not be deemed to be an assessee-in-default in respect of such tax if such payee –

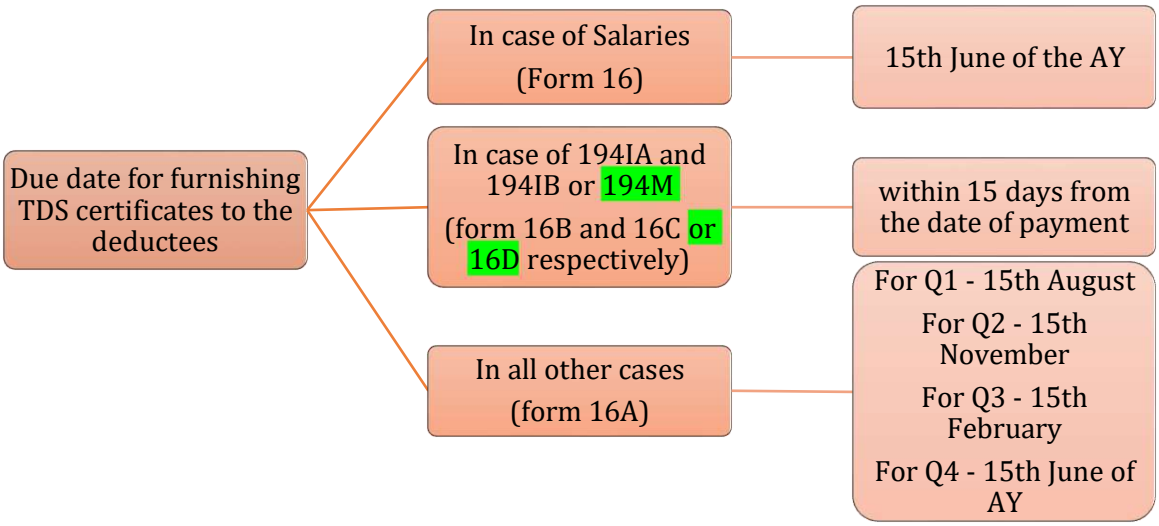
- has furnished his return of income under section 139;
- has taken into account such sum for computing income in such return of income; and
- has paid the tax due on the income declared by him in such return of income,
- and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

➢ Assessee-in-default has to pay interest

- @ 1% per month or part of month on such tax from the date on which tax was deductible to the date on which such tax was actually deducted and
- @1.5 % for every month or part of month from the date on which tax was deducted to the date on which such tax is actually paid

Sec 203 - Certificate for TDS

➢ Every person deducting tax at source shall issue a certificate to the effect that tax has been deducted and specify the amount so deducted, the rate at which tax has been deducted and such other particulars as may be prescribed.



➢ The deductee can also view the details of his TDS/TCS in an electronic form called **form 26AS**

9.2.1 Advance tax - Sec 207 to Sec 211

- The scheme of advance tax is based on the concept "Pay as you earn".
- Under this scheme assessee needs to estimate its income and tax liability of the previous year and pay tax on basis of such estimation in the previous year itself.

* **Applicable to**
  - All assesse whose advance tax payable is ₹ 10,000 or more.

* **Not applicable to**
  - Senior citizens (age being 60 years or more) not having any income chargeable under the head "Profits and gains of business or profession"

* **Computation of advance tax**

A. On assessee's own motion

1. Make an estimate of current year's income (excluding income covered u/s 44AD or 44ADA), considering brought-forward losses, after deducting all allowable deductions under chapter VIA.

(The estimate is not required to be filed with the tax authorities.)

2. Compute the tax liability on above estimated income at the rates in force during the financial year and reduce rebate, If any.
3. Add surcharge (if applicable). And Health and Education cess.
4. Deduct tax deducted or collected at source.
   (only if tax has actually been deducted at source, the same can be reduced for computing advance tax liability of the payee. Tax deductible but not so deducted cannot be reduced for computing advance tax liability of the payee)
5. The amount so derived is the advance tax payable.
6. For subsequent installment, check if estimate of income made earlier requires revision.
7. If so revise the estimation and recompute tax liability.
8. From the advance tax payable for that instalment deduct the amount already paid.

9. Pay the remaining amount.

B. On receipt of order from the Assessing Officer

Conditions to be satisfied for issuing such order

1. The assessee has already been assessed by way of a regular assessment in any previous year.
2. The Assessing Officer is of opinion that such person is liable to pay advance tax.
3. Such order can be passed at any time during the financial year but not after last day of February.
4. Such order must be made in writing.
5. Such order also specifies the amount of advance tax and the installments thereof to be paid by the assessee.

Note: Such order can be issued even if assessee has paid any installment of advance tax during the year, which is, in the opinion of the Assessing Officer, not as per provision of sec. 211.

The above order can be served by the Assessing Officer at any time during the financial year but not later than the last date of February.

Determination of advance tax by the Assessing Officer

The amount determined by the Assessing Officer shall be the higher of the following –

1. Tax on latest assessed income as per regular assessment; **or**
2. Tax on income declared by the assessee in the return relating to the previous year subsequent to the previous year for which regular assessment has been made.

* **Procedure to be followed by assessee on receipt of such order**

Case	Advance tax to be paid by the assessee	Whether intimation to AO is required
Where income estimated by the Assessing Officer is correct	On the basis of the order of the Assessing Officer	No
Where assessee estimates his current income to be higher than that estimated by the Assessing Officer	On the basis of his own estimate	No
Where assessee estimates his current income to be lower than that estimated by the Assessing Officer	On the basis of his own estimate	Yes, Assessee shall submit his own estimate to the

		Assessing Officer (in Form 28A)

* **Due date for payment of advance tax [Sec. 211]**

Assessee	Due date of installment (of previous year)	Minimum amount payable
An eligible assessee referred to in sec. 44AD or 44ADA	On or before March 15	100% of advance tax liability
Other Assessee	On or before June 15	Upto 15% of advance tax liability
	On or before September 15	Upto 45% of advance tax liability
	On or before December 15	Upto 75% of advance tax liability
	On or before March 15	Upto 100% of advance tax liability

- Any amount paid u/s 211 on or before 31st March of the previous year, shall be treated as advance tax paid during the financial year.
- Where it is not possible to estimate capital gain or casual gain or where income under the head "Profits and gains of business or profession" accrues for the first time, the assessee can pay whole of the amount of tax payable in respect of such income -
  - by March 31 of the financial year immediately preceding the assessment year,
- Net agricultural income has to be considered for the purpose of computing advance tax.
- If any assessee does not pay any installment within due date he shall be deemed to be an assessee in default in respect of such instalment.
- Any sum, other than a penalty or interest, paid by an assessee as advance tax shall be treated as a payment of tax and credit for such shall be given to the assessee in the regular assessment.
- If advance tax payable is less than ₹ 10,000 then interest u/s 234B and 234C for defaults in payment of advance tax is not applicable. However, interest u/s 234A regarding interest for belated filing of return would be attracted.

Sec 234B - Interest for non-payment or short-payment of advance tax

* **Applicability -**

- Interest under section 234B is attracted for
  - non-payment of advance tax or
  - payment of advance tax of an amount less than 90% of assessed tax.

* **Interest -**

- The interest liability would be 1% per month or part of the month from 1st April following the financial year upto the date of determination of income under section 143(1).
- Such interest is calculated on the amount of difference between the assessed tax and the advance tax paid.
- However, where self-assessment tax is paid by the assessee under section 140A or otherwise, interest shall be calculated upto the date of payment of such tax and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section.

Sec 234C - Interest payable for deferment of advance tax

Assessee	Due date	Shortfall in advance tax	Period
An eligible assessee referred to in sec. 44AD or 44ADA	On or before March 15	100% of tax due on returned income (-) advance tax paid	Simple Interest @ 1% per month or part of the month

Assessee	Due date	Shortfall in advance tax	Period
Other Assessee	On or before June 15	15% of tax due on returned income (-) advance tax paid up to 15th June ➢ If the advance tax paid is not less than 12% of the tax due on the returned income then no interest is payable	Simple Interest @ 1% per month or part of the month for 3 months
	On or before September 15	45% of tax due on returned income (-) advance tax	Simple Interest @ 1% per month or part of

		paid up to 15th September ➢ If the advance tax paid is not less than 36% of the tax due on the returned income then no interest is payable	the month for 3 months
	On or before December 15	75% of tax due on returned income (-) advance tax paid up to 15th December	Simple Interest @ 1% per month or part of the month for 3 months
	On or before March 15	100% of tax due on returned income (-) advance tax paid up to 15th March	Simple Interest @ 1% per month or part of the month for 1 month

* **Non-applicability of interest under section 234C in certain cases:**

➢ where such shortfall is on account of under-estimate or failure to estimate –

(i) The amount of capital gains;

(ii) Casual Income

(iii) Income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time;

(iv) Income of the nature referred to in section 115BBDA i.e., dividend in aggregate exceeding of ₹10 lakhs received during the previous year.

➢ However, the assessee should have paid the whole of the amount of tax payable in respect of such income, by 31st March of the financial year.

9.2.2 Miscellaneous provisions

Sec 195A –

➢ Where any income is paid 'net of tax' (i.e., tax chargeable on such income shall be borne by the payer), then for the purpose of deducting tax, such income is required to be grossed up .

➢ However, grossing up is not required in case of tax on non-monetary perquisite paid by the employer.

Sec 196 –

- No deduction of tax shall be made by any person from any sums payable to-

(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation established by or under a Central Act, which is, under any law for the time being in force, exempt from income-tax on its income; or

(iv) a Mutual Fund specified u/s 23D

Sec 197 -

- On an application being made (in form 13), the Assessing Officer shall issue a certificate for deduction of tax at such lower rate or no deduction of tax. Wherever he is satisfied that it is justified by the Assessee.
- Such an application can be made in case of income receivable u/s 192, 193,194, 194A, 194C, 194D, 194G, 194H, 194I, 194J, 194K and 194LA, 194LLB, 194LLC, 194M and 194O
- Such certificate shall be valid for such period of the previous year as may be specified in the certificate, unless it is cancelled by the Assessing Officer at any time before the expiry of the specified period.
- The certificate shall be valid only with regard to the person responsible for deducting the tax and named therein.
- The certificate shall be issued direct to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificate

Sec 197A -

- No deduction shall be made under any section from any payment made to New Pension System Trust referred to in sec. 10(44).
- No deduction of tax shall be made u/s 194 (Dividend) and 194EE (NSS), u/s 192A(payment of accumulated balance of provident fund) or 193 (interest on securities) or 194A (other interest) or 194D (insurance commission) or 194DA (payment in respect of life insurance policy) or 194-I (rent), if
  1. The payee is a resident individual;
  2. The aggregate amount of income paid or credited does not exceed basic exemption limit
  3. Such individual furnishes to the payer, a declaration in writing in duplicate in the Form 15G (Form 15H in case of senior citizen).
  4. Such declaration states that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

5. On receipt of the declaration, the person responsible for making payment should deliver one copy to Chief commissioner or Commissioner on or before 7th of the month following the month in which it is received.

- No tax will be deducted from interest payments by an offshore banking unit to a non-resident or not ordinarily resident in India.
- No deduction shall be made from such specified payment to notified institution, association or body as notified by Central government. E.g. specified payment (like bank guarantee commission, clearing charges, etc.) made to bank.

Sec 198-

- All sums deducted under this chapter shall be deemed as income for the purpose of computing the assessee's total income.

However

- tax u/s192A on non-monetary perquisites shall not be deemed as income.
- the sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall not be deemed to be income received.

Sec 199-

- Tax deducted at source in accordance with above provisions and paid to the credit of central

government shall be treated as payment of tax on behalf of the person from whose income it is deducted. Thus the person can claim credit of the same while filing his return of income.

- CBDT has powers to frame rules in this behalf. It can also specify the AY for which such credit may be taken.
- Where whole or part of income is assessable in the hands of another person, credit of the tax deducted from such income shall be given to such other person and not the deductee.
- The deductee should file a declaration with the deductor and the deductor should report the tax deduction in the name of the other person.

Lesson 9 : Part III - Tax collection at source (TCS)

Sec 206C – Tax collection at source

- **Applicability**
- Seller, shall collect tax from the buyer of any specified goods
- Every person, who grants a lease or a license or enters into a contract or otherwise transfers any right or interest in-
- any parking lot; or
- toll plaza; or
- mine or quarry excluding mines or quarrying of mineral oil (mineral oil includes Petroleum and Natural gas),

to another person (other than a public sector company) for the use of such parking lot or toll plaza or mine or quarry for the purpose of business

- **Time of collection**
- Debiting the amount payable by the buyer to the account of the buyer/ licensee / lessee or
- Receipt of such amount

whichever is earlier

- In case of sale of motor vehicle exceeding Rs.10 lacs or Rs. 50 lakhs on sale of goods, tax shall be collected at the time of receipt of such amount.
- **Meaning**
- Overseas tour program package : For section 206C(1G) Any tour package which offers visit to a country/(ies) or territory/(ies) outside India. It includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.
- Seller

- 1)For Sec 206C(1H): A person whose total sales, gross receipts or turover from Business carried on by him exceed Rs. 10 crore during the F.Y immediately preceding the F.Y in which sales are carried out.
  2)For Section 206C(1) and 206(1F): It does not include an individual or HUF whose books of accounts is not required to be audited u/s 44AB during the FY immediately preceeding the FY in which goods are sold.
  With effect from 1st Oct, 2020 seller include an individual or HUF whose total sales, gross receipts or turover from Business or Profession carried on by him exceed Rs. 1 crore in case of business and Rs. 50 lacs in case of profession.

- Buyer For sec 206C(1H) means a person who purchase any goods but does not include:
  (a) The Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
  (b) a local authority; or
  (c) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to stipulated conditions
- Buyer" (for specified goods other than motor car) - means a person who obtains in any sale (by way of auction, tender or any other mode) specified goods or the right to receive any such goods but does not include, —

(i) A public sector company, the Central Government, a State Government and an embassy, a High Commission, Legation, Commission, consulate and the trade representation, of a foreign state and a club; or

(ii) A buyer in the retail sale of such goods purchased by him for personal consumption.

- Buyer in case of motor car means a person who obtains in any sale, motor care, but does not include:

(a) The Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(b) a local authority; or

(c) a public sector company which is engaged in the business of carrying passengers

- Rate of TCS in case of collection by Authorized dealer

S. No.	Amount and purpose of remittance	Rate of TCS
(i)	a. Where the amount is remitted for a purpose other than purchase of overseas tour programme package; **and** b. the amount or aggregate of the amo unts being remitted by a buyer is less than Rs. 7 lakhs in a financial year	Nil (No tax to be collected at source)

(ii)	a. where the amount is remitted for a purpose other than purchase of overseas tour programme package; **and** b. the amount or aggregate of the amounts in excess of Rs. 7 lakhs is remitted by the buyer in a financial year	5% of the amt or agg. of amts in excess of Rs. 7 lakh
	(a) where the amount being remitted out is a loan obtained from any financial institution, for the purpose of pursuing any education; and (b) the amount or aggregate of the amounts in excess of Rs. 7 lakhs is remitted by the buyer in a financial year	0.5% of the amt or agg. of amts in excess of Rs. 7 lakh

Cases where no tax to be collected

(i)	No TCS by the authorized dealer on an amount in respect of which the sum has been collected by the seller
(ii)	No TCS, if the buyer is liable to deduct tax at source under any other provision of the Act and has deducted such tax
(iii)	No TCS, if the buyer is the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority or any other person notified by the Central Government, subject to fulfillment of conditions stipulated thereunder

Sale of goods of value exceeding ` 50 lakh [w.e.f. 1.10.2020]

- As per section 206C(1H), tax is also required to be collected by a seller, who receives any amount as consideration for sale of goods of the value or aggregate of such value exceeding Rs. 50 lakhs in a previous year [otherthan exported goods or goods covered under sub-sections (1)/(1F)/(1G)].
  a. Tax is to be collected at source @0.1% u/s 206C(1H) {reduced to 0.075%(i.e., 3/4th of the specified rate) for the period up to 31st March,2021(Section 206C(10A)). of the sale consideration exceeding Rs. 50 lakhs, at the time of receipt of consideration.
  b. Tax is required to be collected if required by any other the provisions of the Act
  c. In case of non-furnishing of PAN or Aadhar number by the buyer to the seller, tax is required to be collected at the higher of –
    i. twice the rate specified in this sub-section; and
    ii. 1%.

Power to the CBDT to issue guidelines

- In case of any difficulty arises to give effect to the provisions of section 206C(1G)/(1H), the CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty.
- Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to collect tax

➢ **Specified goods and Tax rates**

Nature of Goods	1/4/20 to 13/5/20	14/5/20 to 31/3/21 [Sec 206(10A)]
Alcoholic liquor for human consumption	1%	1%
Tendu leaves	5%	3.75%
Timber obtained under a forest lease	2.5%	1.875%
Timber obtained by any mode other than under a forest lease	2.5%	1.875%
Any other forest produce (not being timber or tendu leaves)	2.5%	1.875%
Scrap	1%	0.75%
Specified minerals	1%	0.75%
Motor car value of which exceeds Rs. 10 lakhs	1%	0.75%
Parking lot, toll plaza, mining and quarrying	2%	1.5%

➢ However, where the purchaser or licensee or lessee is a non-resident non-corporate assessee or a non-domestic company, then surcharge (if any applicable), health and education cess is also required to be deducted alongwith aforesaid rates

➢ Overseas remittance or an overseas tour package (w.e.f. 1.10.2020)

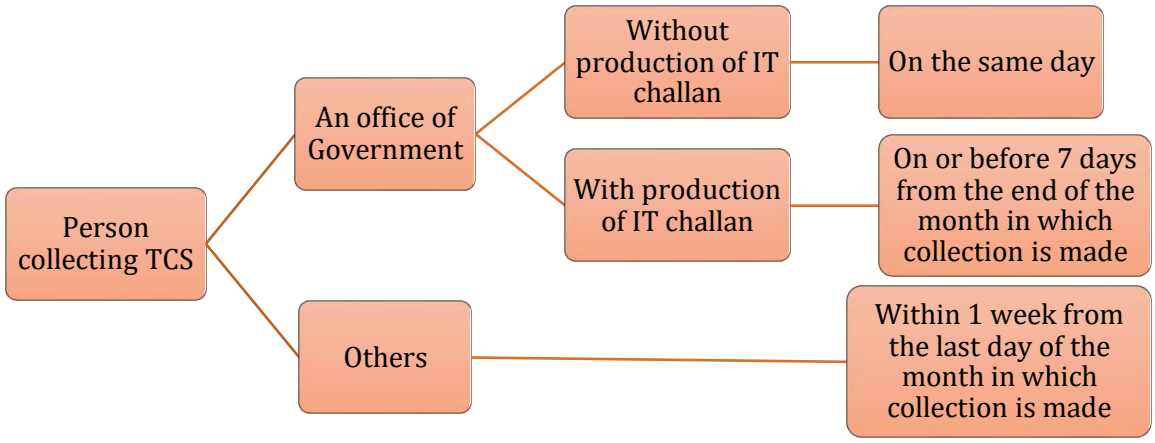
As per Sec 206C(IG) provides for collection of tax by every person being

➢ being an authorized dealer, who receives amount, under the Liberalised Remittance Scheme of the RBI, for overseas remittance from a buyer, being a person remitting such amount out of India;

➢ being a seller of an overseas tour programme package who receives any amount from the buyer who purchases the package

shall collect 5% of such amount as income tax

➢ **Time limit for paying TCS to the credit of Central government**



- **Points to remember**
- Any person paying any sum, on which tax is collectible at source shall furnish his PAN to the person responsible for collecting such tax, failing which tax shall be collected at the higher of the following rates:
- At twice of the specified TCS rate; or
- At the rate of 5%.
- No TCS in case of resident buyer, if
- Such buyer furnishes a declaration in writing in prescribed form
- That the goods are to be utilised for the purpose of manufacturing, processing, or producing articles or things or for the purpose of generation of power and not for trading purposes.
- TCS @ 1% on sale of motor vehicle is at retail level and not at manufactures or dealers level.
- An individual who is liable to audit u/s 44AB during the FY preceding the FY in which motor vehicle is sold shall be liable for TCS.

SEC.139(1) - COMPULSORY FILING OF RETURN OF INCOME

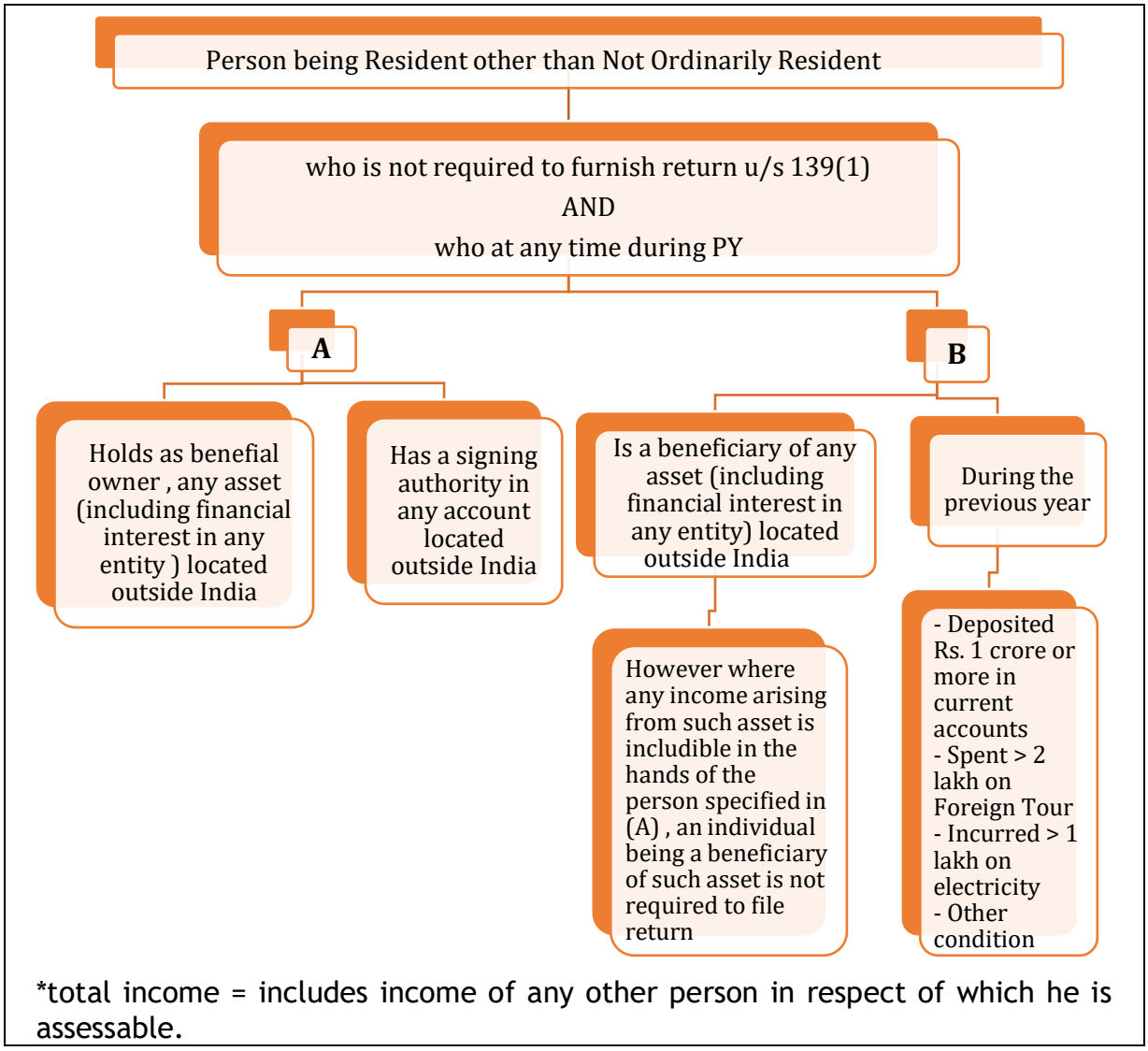
★ A return of income is the declaration of income by the assessee in the prescribed format.

★ The particulars of income earned under different heads, gross total income, deductions from gross total income, total income and tax payable by the assessee are generally required to be furnished in a return of income.

★ The format for filing of returns by different assesses is notified by the CBDT.

★ The following persons should mandatorily file return of income on or before the due date.

- ➢ Company
- ➢ Firms
- ➢ Individual, HUF, AOPs or BOIs and artificial juridical persons
  - Having total income* exceeding basic exemption limit
  - Before giving effect to the provisions of ChapterVI-A , Sec 10(38), sec 10A, sec 10B or Sec 10BA, 54 to 54GB
- ➢ Person being Resident other than Not Ordinarily Resident,
  - Who is not required to furnish a return of income u/s 139(1) AND
  - Who satisfies the below conditions.



*total income = includes income of any other person in respect of which he is assessable.

SEC. 139(1) - EXPLANATION 2 - DUE DATE FOR FILING RETURN OF INCOME

Assessee	Due date
Where the assessee is required to **furnish a report in Form 3CEB u/s 92E pertaining to international transaction(s)**	30th November
Where the assessee is a **Company** not having international transaction(s)	31st October
Any other assessee, where **accounts are required to be audited** under any law	
Where the assessee is a **partner in a firm** and the accounts of the firm are required to be audited under any law	
In **any other case**	31st July

SEC. 139(1A) - RETURN FILED TO EMPLOYER BY SALARIED EMPLOYEES / BULK FILING OF RETURN BY SALARIED EMPLOYEE

- The Scheme is optional and provides an additional mode of furnishing return of income by persons deriving salary income.
- Under the scheme, the employee may furnish his return of income in the prescribed Form together with relevant documents to his eligible employer.
- The employer will transcribe the data of such returns on computer readable media using an authorised Bulk Return Preparation Software (BRPS) and shall furnish these returns in specified form and in specified manner, including in a computer readable media (like floppy, CD- ROM, diskette, magnetic cartridge tape) to the designated Assessing Officer on or before the due date.
- The return furnished under such scheme shall be deemed to be a return furnished u/s 139(1).

SEC 139(1C) - SPECIFIED CLASS OR CLASSES OF PERSONS TO BE EXEMPTED FROM FILING RETURN OF INCOME

- For reducing the compliance burden of small taxpayers, the Central Government is empowered to notify the class or classes of persons who will be exempted from the requirement of filing of return of income, subject to satisfying the prescribed conditions.
- Every notification issued under section 139(1C) shall, as soon as may be after its issue, be laid before each House of Parliament while it is in sessio, for a total period of thirty days. If both Houses agree in making any modification in the notification, the notification will thereafter have effect only in such modified form. If both Houses agree that the notification should not be issued, the notification shall thereafter have no effect

SEC. 139(3) - RETURN OF LOSS

★ **Compulsory requirement:**

- The following losses cannot be carried forward if the return of loss is not submitted within the time allowed u/s 139(1) -
  - Sec 72(1) - Business loss
  - Sec 73(2) - Speculative business loss
  - Sec 73A(2) – Loss from business specified u/s 35AD
  - Sec 74(1) &(3) - Capital loss;
  - Sec 74A (3) - Loss from the activity of owning and maintaining race horses

Thus, any assessee suffering from any of the above loss must compulsorily file his return of
loss on or before the due date.

★ **Points to remember**

- Loss declared in belated return cannot be carried forward. However, set-off of losses of current year is not prohibited while computing the total income, even if the return of loss is filed after the due date.
- Delay in filing the return of loss may be condoned in certain cases
- Unabsorbed depreciation u/s 32 and loss under the head "Income from house property" can be carried forward even if the loss return is filed after the due date u/s 139(1).
- Although the loss of the current year cannot be carried forward unless the return of loss is submitted before the due date but the loss of earlier years can be carried forward if the return of loss of that year was submitted within the due date.

SEC. 139(4) - BELATED RETURN

- If an assessee fails to file return within the time limit allowed u/s 139(1) or within the time allowed under a notice issued u/s 142(1), he can file a belated return.
- Time limit: Assessee may file such return
  - before the end of the relevant assessment year; or
  - before the completion of assessment (u/s 144),

- whichever is earlier.

- However, if an assessee files a belated return, he would be liable to fee u/s 234F and interest u/s 234A.

SEC. 139(5) - REVISED RETURN

★ **Requirement**

- If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he can revise his return u/s 139(5).

★ **Time limit:**

- Assessee may file the revised return

●before the end of the relevant assessment year; or

● before completion of regular assessment,

whichever is earlier.

★ **Points to remember**

- Replacement of original return: Once a revised return is filed, it replaces the earlier return. This signifies that the revised return should be complete in itself and not merely an accessory to the original return.
- Revision of revised return: A revised return can again be revised i.e. a second revised return can be filed u/s 139(5) for correcting any omission or wrong statement made in the first revised return within specified time.
- A belated return u/s 139(4) can be revised.
- A loss return u/s 139(3) can be revised.
- Return filed pursuant to notice u/s 142(1) cannot be revised.

SEC. 139(6) - PARTICULARS TO BE FURNISHED WITH THE RETURN

- The prescribed form of the return shall, in certain specified cases, require the assessee to furnish the particulars of -

(i) income exempt from tax;

(ii) assets of the prescribed nature and value, held by him as a beneficial owner or otherwise or in which he is a beneficiary;

(iii) his bank account and credit card held by him;

(iv) expendse exceeding the prescribed limits incurred by him under prescribed heads; &

(v) such other outgoings as may be prescribed.

SEC. 139(6A)- PARTICULARS TO BE FURNISHED WITH RETURN OF INCOME IN THE CASE OF AN ASSESSEE ENGAGED IN BUSINESS OR PROFESSION

- The prescribed form of the return shall, in the case of an assessee engaged in any business or profession, also require him to furnish –
- The report of any audit referred to in section 44AB.

- The particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof.
- The names and addresses of his partners, if any, in such business or profession.
- If he is a member of an association or body of individuals,the names of the other members of the association or the body of individuals; andthe extent of the share of the assessee and the shares of all such partners or members, as the case may be, in the profits of the business or profession.

SEC. 139(9)- DEFECTIVE RETURN

★ **When a return is termed defective** –

- A return of income is said to be defective where all or any of the following conditions are fulfilled:

● The return is furnished without paying self-assessment tax along with interest,if any.
● The annexure,statements and columns in the return have not been duly filled in.
● The return is not accompanied by any of the following documents -

(i) A statement showing the computation of tax liability;

(ii) The audit report u/s 44AB (where the report has been submitted prior to the furnishing of return, a copy of audit report together with proof of furnishing the report);

(iii) The proof of tax deducted or collected at source, advance tax paid and tax paid on self-assessment;

Note: - However, the return will not be regarded as defective if
(a) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income,
(b) such certificate is produced within a period of 2 years).

(iv) where regular books of account are maintained by the assessee:

a) Copies of Manufacturing A/c, Trading A/c, Profit and Loss A/c or Income and Expenditure A/c or any other similar account and Balance Sheet;

b) In the case of –

- A proprietary business or profession – the personal account of the proprietor
- A firm, AOP or BOI – personal account of the partners or members; or

- A partner or member of the firm, AOP or BOI – his personal account in the firm, AOP or BOI

(v) where regular books of account are not maintained by the assessee:

- A statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession and
- the basis on which such amount have been computed; and
- the amount of sundry debtors, sundry creditors, stock and cash balance as at the end of the previous year.

(vi) where the accounts of the assessee have been audited, copies of the audited P&L A/c, Balance Sheet and a copy of the Auditor's report;

(vii) Cost audit report u/s 233B of the Companies Act, 1956 (if any).

★ **Effect:**

➢ Where the Assessing Officer considers that the return of income furnished by the taxpayer is defective, he may intimate the defect to the taxpayer and give him an opportunity to rectify the defect(s).

★ **Time limit for rectification**:

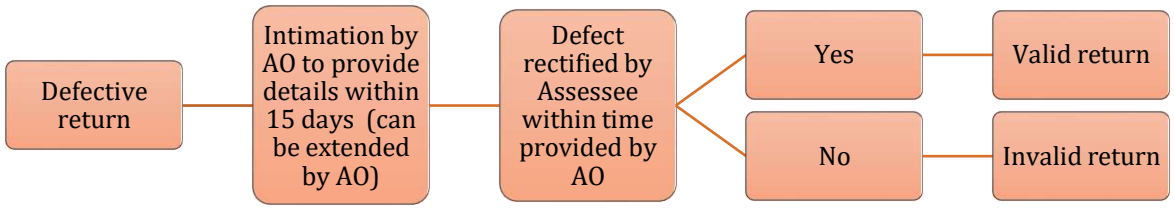
➢ The assessee must rectify the error within a period of 15 days from the date of intimation (served on the assessee) or within such extended time as allowed by the Assessing Officer. Where the taxpayer rectifies the defect after the expiry of the period of 15 days or such extended period but before the assessment is completed, the Assessing Officer can condone such delay.

➢ If defect is not rectified within the time limit, the AO will treat the return as an invalid return and provisions of the Act will apply as if the taxpayer had failed to furnish the return at all.

★ **Note:**

➢ Currently, the assessee is required to furnish paper-less return. i.e., no documents, proof or report (other than some specified report required to be furnished electronically) is required to be attached with return of income. In this

regard, return of income shall not be considered as defective return. However, the assessee should retain these documents, proof or report with himself. If called for by the income-tax authority during any proceeding, it shall be incumbent upon the assessee to furnish/produce the same.



SEC 139A – PERMANENT ACCOUNT NUMBER (PAN)

★ **Meaning**

- Permanent Account Number (PAN) is an alpha-numeric (ten characters) code given to a person by income tax department for the purpose of identification of the assessee.
- A person can have only one PAN.

★ **Compulsory application for allotment of PAN**

- As per sec. 139A & rule 114, following persons are under statutory obligation to apply for PAN within the time limit stated as under:

Who is to apply for PAN	When to apply for PAN
Any person whose total income exceeds maximum exempted limit.	On or before 31st May of the relevant assessment year.
Any resident person other than an individual, which enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more in a financial year	
Any person who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred above or any person competent to act on behalf of the person referred above	
Any person who intends to enter such transaction as may be prescribed by the Board in the interest of revenue	

Any person whose sales or turnover or gross receipts are likely to exceed Rs.5,00,000 in any previous year	On or before the end of the relevant financial year
Any person who is required to furnish return u/s 139(4A) i.e. trust and charitable institution	
Any person who is entitled to receive any sum or income, on which tax is deductible under in any financial year	
Any person who requires export-import code	Before making any export or import.
Assessee under the GST	Before making application for registration under GST.

★ **Sec 139A(1A) -** The Central Government is empowered to specify, by notification in the Official Gazette, any class or classes of persons by whom tax is payable under the Act or any tax or duty is payable under any other law for the time being is force. Such persons are required to apply within such time as may be mentioned in that notification to the Assessing Officer for the allotment of a PAN.

★ **Sec 139A(1B)** - For the purpose of collecting any information which may be useful for or relevant to the purposes of the Act, the Central Government may notify any class or classes of persons, and such persons shall within the prescribed time, apply to the Assessing Officer for allotment of a PAN.

★ **Sec 139A(2)** -The Assessing Officer, having regard to the nature of transactions as may be prescribed, may also allot a PAN to any other person (whether any tax is payable by him or not) in the manner and in accordance with the procedure as may be prescribed.

★ **Sec 139A(3) -** Any person, other than the persons mentioned in (1) or (4) above, may apply to the Assessing Officer for the allotment of a PAN and the Assessing Officer shall allot a PAN to such person immediately.

★ **Sec. 139A(5) - Mandatory provision**

➢ A person to whom a PAN is allotted, is required to quote that number in -

- All his returns to; or
- Any correspondence with; or

● Any other documents to,
- Income-tax authority.

➢ A person to whom a PAN is allotted, is required to quote that number in challans for payment of any sum due under this Act.

★ **Sec. 139A(5)(c) & Rule 114B**

➢ Every person shall quote its PAN in all documents pertaining to following transactions entered into by him –

1. Transactions relating to sale or purchase of a motor vehicle (other than two wheeled vehicles), which requires registration.
2. Opening an account [other than a time-deposit and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank.
3. Making application for issue of a credit card or debit card.
4. Opening of a demat account.
5. Payment in cash exceeding Rs. 50,000 to a hotel or restaurant against a bill or bills at any one time.
6. Payment in cash exceeding Rs. 50,000 in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time
7. Payment exceeding Rs. 50,000 to any mutual fund for purchase of its units.
8. Payment exceeding Rs. 50,000 to a company or an institution for acquiring debentures or bonds issued by it.
9. Payment exceeding Rs. 50,000 to RBI for acquiring bonds issued by it.
10. Deposit in cash exceeding Rs. 50,000 during any one day with a banking company or a co-operative bank.
11. Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank in cash for an amount exceeding Rs. 50,000 during any one day.
12. A time deposit of an amount exceeding Rs. 50,000 or aggregating to more than Rs. 5 lakhs during a financial year with:

    (i) a banking company or a co-operative bank; or

    (ii) a Post Office; or

(iii) a Nidhi referred to in section 406 of the Companies Act, 2013; or

(iv) a non-banking financial company

13. Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than Rs.50,000 in a financial year for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India u/s 18 of the Payment and Settlement Systems Act, 2007, to a banking company or a co-operative bank

14. Payment aggregating to more than Rs. 50,000 in a financial year as life insurance premium to an insurer.

15. A contract for sale or purchase of securities (other than shares) where transaction value exceeds Rs. 1 lakh

16. Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange where transaction value exceeds Rs. 1 lakh

17. Sale or purchase of any immovable property where amount exceeds Rs. 10 lakh or stamp value exceeds Rs.10 lakh

18. Sale or purchase, by any person, of goods or services of any nature other than those specified above where transaction value exceeds Rs. 2 lakhs.

★ **Sec.139A (5A)** - Every person who receives any amount from which tax has been deducted at source shall intimate his PAN to the person responsible for deducting such tax.

Every buyer or licensee or lessee referred u/s 206C shall intimate his PAN to the person responsible for collecting such tax.

★ **Sec.139A (5B)** – Deductor needs to furnish PAN in returns, statements and certificates

★ **Sec.139A (5C)** – Buyer shall furnish PAN to Seller in case of TCS.

★ **Sec.139A (5D)** – Person collecting tax at source shall quote PAN of buyer in all returns, statements and certificates

Every person collecting tax at source with the provisions of Sec 206C shall quote PAN in all returns, statements and certificates.

★ **Sec.139A (5E)** – Aadhar number can be used in lieu of PAN even when PAN has not been issued.

★ **Points to remember:**

- Where a person, entering into any of the aforesaid transaction, is a minor and who does not have any income chargeable to tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.
- Any person who does not have a PAN and who enters into any of the aforesaid transaction, he shall make a declaration in Form No.60 giving therein the particulars of such transaction.
- The provisions of this rule shall not apply to the following class or classes of persons, namely:
  - the Central Government, the State Governments and the Consular Offices;
  - the non-residents in respect of the transactions other than a transaction referred above with.
- If there is a change in the address or in the name and nature of the business of a person, on the basis of which PAN was allotted to him, he should intimate such change to the Assessing Officer.

SECTION 139AA – QUOTING OF AADHAR NUMBER

★ **Mandatory quoting of Aadhar Number**

- Every person who is eligible to obtain Aadhar Number is required to mandatorily quote Aadhar Number, on or after 1st July 2017:

  (a) in the application form for allotment of Permanent Account Number (PAN)

  (b) in the return of income

★ **Mandatory quoting of Enrolment Id, where person does not have Aadhar Number**

- If a person does not have Aadhar Number, he is required to quote Enrolment ID (28 digits) of Aadhar application form issued to him at the time of enrolment

  (a) in the application form for allotment of Permanent Account Number (PAN) or

  (b) in the return of income furnished by him.

★ **Intimation of Aadhar Number to prescribed Authority**

- Every person who has been allotted Permanent Account Number (PAN) as on 1st July, 2017, and who is eligible to obtain Aadhar Number, shall intimate his Aadhar Number to prescribed authority on or before on or before a 31st March 2021.

★ **Consequences of failure to intimate Aadhar Number**

- If a person fails to intimate the Aadhar Number, the permanent account Number (PAN) allotted to such person shall be made inoperative.
- However CBDT has notified that the permanent account number (PAN) of those who do not have Aadhaar and who do not wish to obtain Aadhaar for the time being, will not be cancelled so that other consequences under the Income-tax Act for failing to quote PAN may not arise

★ **Provision not to apply to certain persons or class of persons**

- The provisions of section 139AA relating to quoting of Aadhar Number would, however, not apply to an individual who does not possess the Aadhar number or Enrolment ID and is:

  (i) residing in the States of Assam, Jammu & Kashmir and Meghalaya;

  (ii) a non-resident as per Income-tax Act, 1961;

  (iii) of the age of 80 years or more at any time during the previous year;

  (iv)not a citizen of India

SEC.139B - SCHEME FOR SUBMISSION OF RETURNS THROUGH TAX RETURN PREPARERS

★ **Meaning:**

- A TRP is an individual who has been authorized to enable any specified class(es) of person

prepare and furnish their returns of income.

- The TRP shall also affix his signature on such return.
- Specified class(es)of person means resident individual and resident HUF other than person whose accounts are required to be audited.

- Such specified person may, at his option, furnish his return of income under section 139 for any assessment year after getting it prepared through a Tax Return Preparer

★ **CBDT has framed the Tax Return Preparer Scheme, 2006,**

★ **Person not eligible to become TRP**

- Accountant
- Any legal practitioner who is entitled to practice in any civil court in India.
- Any officer of a scheduled bank cannot be the TRP of the assessee who maintains a Current account or has other regular dealing with such bank.
- Any employee of the specified class(es)of persons

(Note - Employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force are eligible to act as TRPs)

★ **Educational Qualification of TRP**

- An individual, who holds a bachelor's degree from a recognised Indian University or institution, or
- has passed the intermediate level examination conducted by the ICAI or ICSI or ICMAI shall be eligible to act as Tax Return Preparer.

★ **When return cannot be filed through a TRP**

An individual or a HUF cannot furnish a return of income for an assessment year through a TRP

- who is carrying out business or profession during the previous year and accounts of the business or profession for that previous year are required to be audited under section 44AB or under any other law for the time being in force; or
- who is not a resident in India during the previous year
- an individual or a HUF cannot furnish a revised return of income for any assessment year through a TRP unless he has furnished the original return of income for that assessment year through such or any other Tax Return Preparer

SEC.140 - PERSONS AUTHORISED TO VERIFY RETURN OF INCOME		
Assessee	**Case**	**Verified by**
Individual	In general	Individual himself
	Where the individual concerned is absent from India	Individual himself or any person duly authorized person by him
	Where the individual is mentally Incapacitated	Guardian of such individual or any other person competent to act on his behalf
	Where by any other reason it is not possible for the individual to verify the return.	Any person duly authorised by him
Note: When return is verified by any authorised person in that case the return should be accompanied with power of attorney.		
HUF	In general	Karta
	Where the 'karta' is absent from India or is mentally incapacitated	Any adult member of the family.
Firm	In general	Managing partner
	If due to any reason it is not possible for managing partner to verify or where there is no managing partner	Any partner of the LLP or any other person as may be prescribed for this purpose
Limited liability partnership	In general	Designated partner
	If due to any unavoidable reason such designated partner is not able to verify the return, or where there is no designated partner as such	Any partner
Local authority		Principal Officer
Political party		Chief Executive Officer
Company	In general	Managing Director (MD)
	If due to any reason it is not possible for MD to verify or where there is no MD	Any director or any other person as may be prescribed for this purpose
	Non-resident company	A person holding a valid power of attorney. Copy of such power of attorney must be attached with the return.
	Company in process of winding up	Liquidator of the company

	where any person has been appointed as the receiver of any assets of the company	Liquidator of the company
	Where the management of the company has been taken over by the Central or State Government.	Principal officer
Any other association		Any member or principal officer
Any other person		Such person or any other person competent to act on its behalf.

Lesson 10 : Assessment Procedure

SEC 140A - SELF-ASSESSMENT

- In self-assessment, assessee itself is responsible to determine its taxable income, tax liability and to pay tax accordingly.
- Where any tax is payable (after deducting relief, rebate, advance payment of tax or tax deducted or collected at source or MAT or AMT credit, any tax or interest payable as per the provisions of 191(2) if any) on the basis of return furnished the assessee is required to pay such tax before filing the return.
- A return furnished without paying self-assessment tax & interest, if any, shall be treated as defective return.
- If any interest is payable for delayed filing of return (u/s 234A) or default in payment of advance tax (u/s 234B) or for deferment of advance tax (u/s 234C) or fee (u/s 234F) is payable for filing return after due date, then such interest or fee should be paid along with self-assessment tax.
- While calculating above interest for the purpose of self-assessment, tax on the total income declared in the return shall be considered.
- Where the amount paid by the assessee falls short of the aggregate of tax, interest and fee, the amount so paid shall first be adjusted towards fee and thereafter towards interest payable and the balance, if any, shall be adjusted towards tax payable.
- If an assessee fails to pay whole or any part of such tax or interest or both in accordance with the provisions of sec. 140A, he shall be deemed to be an assessee in default.

Sec. 234A - Interest for default in furnishing return of income

- Interest under section 234A is payable where an assessee furnishes the return of income after the due date or does not furnish the return of income.
- Assessee shall be liable to pay simple interest @1% per month or part of the month for the period commencing from the date immediately following the due date and ending on the following dates –

Circumstances	Ending on the following dates
Where the return is furnished after due date	The date of furnishing of the return
Where no return is furnished	The date of completion of assessment

- The interest has to be calculated on the amount of tax on total income as determined under section 143(1) or on regular assessment as reduced by the advance tax paid and any tax deducted or collected at source.
- where the assessee has paid taxes in full on or before the due date, interest under section 234A is not leviable.
- The interest payable under section 234A shall be reduced by the interest, if any, paid on self-assessment under section 140A towards interest chargeable under section 234A

Sec. 234F - Fee for default in furnishing return of income

- Where a person who is required to furnish a return of income under section 139, fails to do so within the prescribed time limit under section 139(1), he shall pay, by way of fee, a sum of
  - Rs. 5,000, if the return is furnished on or before the 31st December of the assessment year
  - Rs. 10,000 in any other case.
- However, if the total income of the person does not exceed Rs.5 lakhs, the fees payable shall not exceed Rs. 1,000.

PART B
INDIRECT TAX

Lesson 11 : Concept of Indirect Taxes at a Glance

11.1 OVERVIEW OF GOODS AND SERVICES TAX [GST]

France was the first country to introduce GST in 1954. Later it was implemented across 160 countries across the globe because this tax is transparent and more viable and neutral.

GST is extended to the whole of India including State of J&K.



What is GST - GST is a destination based tax on consumption of goods and services. It is a levy at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. Only value addition will be taxed, and burden of tax is to be borne by the final consumer.

Destination based tax: The tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

The GST would replace the following taxes:

- Taxes currently levied and collected by the Centre
  - Central Excise duty
  - Duties of Excise (Medicinal and Toilet Preparations)
  - Additional Duties of Excise (Goods of Special Importance)
  - Additional Duties of Excise (Textiles and Textile Products)
  - Additional Duties of Customs (commonly known as CVD)
  - Special Additional Duty of Customs (SAD)
  - Service Tax
  - Central Surcharges and Cesses as far as they relate to supply of goods and services

- State taxes that would be subsumed under the GST are:
  - State VAT
  - Central Sales Tax
  - Luxury Tax
  - Entry Tax (all forms)
  - Entertainment and Amusement Tax (except when levied by the local bodies)
  - Taxes on advertisements

- Purchase Tax
- Taxes on lotteries, betting and gambling
- State Surcharges and Cesses so far as they relate to supply of goods and services

The GST Council shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.

Commodities outside GST - Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. So alcohol for human consumption is kept out of GST by way of definition of GST on constitution.

Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST.

Furthermore, electricity has been kept out of GST.

The existing taxation system (VAT & Central Excise) will continue in respect of the above commodities.



Dual GST - It would be a dual GST with Centre and States simultaneously levying it on a common tax base. Centre will levy and administer CGST & IGST while respective states/UTs will levy and administer SGST/ UTGST –

- The GST to be levied by the Centre on intra-State supply of goods and / or services would be called the Central GST (CGST) and that to be levied by the States/ Union territory would be called the State GST (SGST)/ UTGST.
- Similarly, Integrated GST (IGST) will be levied and administered by Centre on every inter-state supply of goods and services. IGST will be sum total of CGST + SGST/UTGST.

Manner of dual GST: The Central GST and the State GST would be levied simultaneously

- On every transaction of supply of goods and services
- On the same value
- Except —
  - The exempted goods and services,
  - Goods which are outside the purview of GST and
  - The transactions which are below the prescribed threshold limits.

Examples on dual GST

Illustration 1: Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say Rs. 100, —

Solution:

- The dealer would charge CGST of Rs. 10 and SGST of Rs. 10 in addition to the basic price of the goods.
- He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government.
- Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs).
- But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Illustration 2: Suppose, again hypothetically, that the rate of CGST is 10% and that of SGST is 10%. When an advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say Rs. 100, —

Solution:

- The ad company would charge CGST of Rs. 10 as well as SGST of Rs. 10 to the basic value of the service.
- He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government.
- Of course, he need not again actually pay Rs. 20 (Rs. 10+Rs. 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his purchase (say, of

inputs such as stationery, office equipment, services of an artist etc.). But for paying CGST he would be allowed to use only the credit of CGST paid on its purchase while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Benefits/Advantages of GST:

Introduction of GST would be a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax and allowing set-off of prior-stage taxes, it would mitigate the ill effects of cascading and pave the way for a common national market. For the consumers, the biggest gain would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%. Introduction of GST would also make our products competitive in the domestic and international markets. Studies show that this would instantly spur economic growth. There may also be revenue gain for the Centre and the States due to widening of the tax base, increase in trade volumes and improved tax compliance. Last but not the least, this tax, because of its transparent character, would be easier to administer.

Concept of IGST - Under the GST regime, an Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. Under Article 269A of the Constitution, the GST on supplies in the course of inter- State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Rates of GST - The CGST and SGST would be levied at rates to be jointly decided by the Centre and States. The rates would be notified on the recommendations of the GST Council.

Rates of IGST would be sum of rates of CGST & SGST.

GST Council - A GST Council is constituted comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to make recommendations to the Union and the States on

- the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;
- the goods and services that may be subjected to or exempted from the GST;
- the date on which the GST shall be levied on petroleum crude, high speed diesel, motor sprit (commonly known as petrol), natural gas and aviation turbine fuel;
- model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;

- the threshold limit of turnover below which the goods and services may be exempted from GST;
- the rates including floor rates with bands of GST
- any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster;
- special provision with respect to the North- East States, J&K, Himachal Pradesh and Uttarakhand; and
- Any other matter relating to the GST, as the Council may decide.

Small taxpayers Exemption up to Rs. 10 or 20 lakhs or 40 Lakhs: Tax payers with an aggregate turnover in a financial year up to Rs.20 lakhs/ Rs.10 Lakhs/ 40 lakhs as the case may be would be exempt from tax.

Classification of goods & services

Goods: HSN (Harmonized System of Nomenclature) code shall be used for classifying the goods under the GST regime –

- Taxpayers whose turnover is below Rs. 1.5 crores are not required to mention HSN Code in their invoices.
- Taxpayers whose turnover is above Rs. 1.5 crores but below Rs. 5 crores, shall use 2-digit code and
- Taxpayers whose turnover is Rs. 5 crores and above, shall use 4-digit code.

Services: Services will be classified as per the Services Accounting Code (SAC)

Imports:

- will be treated as inter-state supplies and
- IGST will be levied thereon.

The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available on the GST paid on import on goods and services.

Exports - Exports will be treated as zero rated supplies. No tax will be payable on exports of goods or services; however credit of input tax credit will be available and same will be available as refund to the exporters. The Exporter will have an option to either pay tax on the output and claim refund of IGST or export under Bond without payment of IGST or claim refund of Input Tax Credit (ITC).

GSTN - GSTN stands for Goods and Service Tax Network (GSTN).

A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST. The GSTN shall provide a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST.

The functions of the GSTN would, inter alia, include:

- facilitating registration;
- Forwarding the returns to Central and State authorities;
- Computation and settlement of IGST;
- Matching of tax payment details with banking network;
- providing various MIS reports to the Central and the State Governments based on the tax payer return information;
- Providing analysis of tax payers profile; and
- Running the matching engine for matching, .

The GSTN is developing a common GST portal and applications for registration, payment, return and MIS/ reports. The GSTN would also be integrating the common GST portal with the existing tax administration IT systems and would be building interfaces for tax payers. Further, the GSTN is developing back-end modules like assessment, audit, refund, appeal etc. for 19 States and UTs (Model II States). The CBEC and Model I States (15 States) are themselves developing their GST back-end systems. Integration of GST front-end system with back-end systems will have to be completed and tested well in advance for making the transition smooth.

Compliance rating mechanism - As per Section 149 of the CGST/SGST Act, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall also be placed in the public domain. A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

Anti-Profiteering measure — Benefit of lowering tax effect to be passed over

As per section 171 of the CGST/SGST Act, —

- Any reduction in rate of tax on any supply of goods or services or
- The benefit of input tax credit

Shall be passed on to the recipient by way of commensurate reduction in prices.

An authority may be constituted by the government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

11.2 CONSTITUTION (101st AMENDMENT) ACT

The Constitution (101st Amendment) Bill. 2016 was brought before the Rajya Sabha and the same has received unanimous approval of the Rajya Sabha on 3rd August, 2016 and also of the Lok Sabha on 8th August, 2016. The bill was assented to by the President on 8-9-2016. The Act came into force on 16-9-2016 (Article relating to constitution of GST Council was notified on 12-9-2016). In the following year on 27th March 2017 the CGST bill, IGST bill, UTGST bill were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March 2017 and received President Assent on 12th April 2017. Telangana, Rajasthan etc. have also passed their state bills respectively.

New Article 246A

- Overriding effect: Article 246A overrides articles 246 and 254. Article 246 deals with distribution of power and Article 254 deals with effect of inconsistency between law of Parliament and law of State Legislature. This is done so as to provide a concurrent power to both Centre and States to levy GST without any issue of repugnancy or inconsistency, etc.
- Inter-state transactions - Power with Centre: In case supply of goods, or of services, or both takes place in the course of inter-State trade or commerce, the power to levy GST vests with Centre/Parliament exclusively.
- Other cases: As regards other cases, it is provided that Parliament and Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.
- Petrol, Diesel and ATF - Outside GST for now - Will come under GST from notified date: As per Article 279A(5), the GST Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. Accordingly, the provisions of article 246A, shall, in respect of goods and services tax take effect from the date recommended by the Goods and Services Tax Council.

Sunset of Article 269 - Article 269(1) provides that taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned to the States. Said article stands amended to provide that said article would be subject to Article 269A i.e., said article would cease to be in-force/applicable after GST.

New Article 269A-Sharing of Inter-state GST (IGST) - A new article 269A is inserted to provide that —

- Goods and services tax
- On supplies in the course of inter-State trade or commerce
- shall be levied and collected by the Government of India and
- such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Additional duty of customs also covered: For the purposes of Article 269A, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce. Thus, imports would be liable to IGST and revenue of additional duty of customs would also be shared as per Article 269A.

Parliament to make law to provide for principles to determine whether supply inter-state or not?

Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Other provisions - Cross-utilization of credits:

- The amount apportioned to a State shall not form part of the Consolidated Fund of India.
- If an amount collected as IGST has been used for payment of SGST, such amount shall not form part of Consolidated Fund of India.
- If amount collected as SGST has been used for payment of IGST, such amount shall not form part of Consolidated Fund of the State.

Amendment of Article 270 - Article 270 deals with distribution of tax proceeds. The said article is amended to provide that —

- In case of GST on inter-state supplies, the sharing will be as per Article 269A,
- The Central GST collected by the Union under article 246A shall also be distributed between the Union and the States; and

- The inter-state GST levied and collected by the Union, which has been used for payment of the Central GST levied by the Union and the amount apportioned to the Union under article 269A, shall also be distributed between the Union and the States.

No central surcharge on GST - Article 271 provides that the Centre may levy surcharge on various duties/taxes, which will not be shared.

It is provided that said Article 271 cannot be used to levy surcharge/cesses on GST under article 246A.

11.3 Goods and Services Tax Council (GSTC) -Article 279A –

A new article 279A is inserted to constitute GSTC. The relevant features would be:

1. Due date: The President shall constitute GSTC within 60 days from the date of commencement of the 101st Amendment Act. This Article came into force on 12-9-2016 & the GSTC was constituted on 15-9-2016.

2. Members: GSTC will have following members:

- The Union Finance Minister …….. Chairperson;
- The Union Minister of State in charge of Revenue or Finance…… Member;
- The State Finance Minister of each State (Finance or Taxation or any other nominated Minister)

3. Vice-Chairperson: The State Members of GSTC shall choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide. Thus, Vice-chairperson would be out of State Finance Ministers and Centre will have no role to play in his selection, appointment and tenure.

4. Role of GSTC: The GSTC shall make recommendations to the Union and the States on —.

a) The taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

b) The goods and services that may be subjected to, or exempted from the goods and services tax;

c) Model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;

d) The threshold limit of turnover below which goods and services may be exempted from goods and services tax;

e) The rates including floor rates with bands of goods and services tax;

f) Any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

h) Any other matter relating to the goods and services tax, as the Council may decide.

The aforesaid would show that:

Various taxes/surcharges to be subsumed into GST would be recommended by GSTC from time to time

Exemptions including threshold exemptions would be recommended by GSTC;

Model law and principles for levy and place of supply would be recommended by GSTC;

The rates of GST would have a floor rate with band of rates;

Special provisions may be made for North-eastern States and State of J&K.

5. Guidance for GSTC: While discharging the functions conferred by this article, the GSTC shall be guided by the need —

For a harmonized structure of goods and services tax and

For the development of a harmonized national market for goods and services.

6. Procedure: The GSTC shall determine the procedure in the performance of its functions.

7. Quorum and Meetings:

a. One half of the total number of Members of the GSTC shall constitute the quorum at its meetings.

b. Every decision of the GSTC shall be taken at a meeting.

c. The decision shall be taken by a majority of not less than 3/4th of the weighted votes of the members present and voting as follows:

(i) The vote of the Central Government shall have a weightage of 1/3rd of the total votes cast, and the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

Example: WT = WC+WS

Wherein—

WT = Total weighted votes of all members in favour of a proposal.

WC = Weighted vote of the Union = i.e., 33.33% if the Union is in favour of the proposal and be taken as "0" if, Union is not in favour of a proposal.

WS = Weighted votes of States in favour of a proposal = WST x SF ÷SP

SP = Number of States present and voting.

WST = Weighted votes of all States present and voting i.e., 66.67%

SF = Number of States voting in favour of a proposal.

Analysis: Thus, all states alone can make majority of 2/3rd, which is insufficient to take a decision at GSTC.

8. Vacancy, etc. not to invalid proceedings: No act or proceedings of the GSTC shall be invalid merely by reason of—

a) Any vacancy in, or any defect in, the constitution of the Council; or

b) Any defect in the appointment of a person as a member of the Council; or

c) Any procedural irregularity of the Council not affecting the merits of the case.

9. Resolution of disputes by GSTC: The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute—

a) Between the Government of India and one or more States; or

b) Between the Government of India and any State or States on one side and one or more other States on the other side; or

c) Between two or more States, Arising out of the recommendations of the Council or implementation thereof.

11.4 Definitions - Article 366

1. GST: As per new article 366(12A), "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption.

(Thus, alcoholic liquor would always remain outside scope of GST.)

2. Services: As per new article 366(26A) "Services" means anything other than goods. The new definition would put at rest all controversies 1as regards definition of services.

3. State: As per new article 366(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature.

Thus, article 366(29A) defining deemed sale continues.

Amendment of Union List - List I of Seventh Schedule stands amended as follows:

◆ Entry 84 relating to excise duty would deal with duties of excise on the following goods manufactured or produced in India, namely:— (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products.

◆ Entries 92 (Taxes on the sale or purchase of newspapers and on advertisements published therein) and 92C (Taxes on services, which was to be inserted from a date not yet notified) are omitted.

Amendment of State List - List II of Seventh Schedule stands amended as follows:

a) Entry 52 (Taxes on the entry of goods into a local area for consumption, use or sale therein) shall be omitted; and

b) Entry 54 dealing with intra-state sales-tax/VAT shall be substituted and would deal with —

- Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption,
- But not including sale in the course of —

Inter-State trade or commerce or

International trade or commerce of such goods.

c) Entry 55 (Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television) shall be omitted:

Entry 62, which deals with entertainment/amusement tax is substituted, such that taxes on entertainments and amusements can be levied by a Panchayat or a Municipality or a Regional Council or a District Council.

Transitional provisions

1. Compensation to States: As per section 18 of 101st Amendment Act, Parliament may, by law, on the recommendation of the GSTC, provide for compensation to the States for loss of revenue arising on account of implementation of the GST for such period which may extend to 5 years.

TEST YOURSELF:

1. Write a short note on various lists provided under seventh schedule to the Constitution of India.
2. Enumerate the deficiencies of existing indirect taxes which led to the need for ushering into GST.
3. Discuss the dual GST model introduced in India.
4. List the Central and state levies which will be subsumed in GST in India.

BASICS OF GOODS AND SERVICES TAX

Lesson 12: Part I - LEVY AND COLLECTION OF TAX

12.1.1 GENERAL DEFINITIONS

The provisions discussed herein are the provisions of the Central GST Act, 2017.

2(84) - Person "Person" includes—

- An individual;
- A Hindu Undivided Family;
- A company;
- A firm;
- A Limited Liability Partnership;
- An association of persons or a body of individuals, whether incorporated or not, in India outside India;
- Any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act
- Anybody corporate incorporated by or under the laws of a country outside India;
- A co-operative society registered under any law relating to co- operative societies;
- A local authority; [defined in section 2(69)]
- Central Government or a State Government;
- Society as defined under the Societies Registration Act, 1860;
- Trust; and
- Every artificial juridical person, not falling within any of the above;

Deemed Separate Persons - Where a person has,—

- An establishment in India and any other establishment outside India [Indian & Foreign Branches];
- An establishment in a State/Union-territory & any other establishment outside that State or Union territory [Branches in two States/UTs]; or
- An establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, [Branch & another registered business vertical] then such establishments are treated as establishments of distinct persons.

Branch or representational office amounts to 'establishment [Expl. 2 to section 8]: A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

Sec 25(4) Separate registrations make separate persons - A person who —

Has obtained or is required to obtain more than one registration, Whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Sec 25(5) Establishment in another state is separate person - Where a person who—

- has obtained or is required to obtain registration in a State or Union territory in respect of an establishment,
- has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

Expl. To **Sec. 15 Related persons** - For the purposes of this Act, persons shall be deemed to be "related persons" if—

I. such persons are officers or directors of one another's businesses;

II. Such persons are legally recognized partners in business;

III. Such persons are employer and employee;

IV. any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;

V. one of them directly or indirectly controls the other;

VI. Both of them are directly or indirectly controlled by a third person;

VII. Together they directly or indirectly control a third person; or

VIII. They are members of the same family;

Note 1: The term "person" also includes legal persons.

Note 2 — Sole distributors are deemed to be related : Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Note 3 — **Family [Section 2(49)]:** "Family" means,—

the spouse and children of the person, and

the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

Sec 2(107) Taxable person - "Taxable person" means a person who is registered or liable to be registered under section 22 or section 24.

Sec 2(20) Casual Taxable person - "Casual taxable person" means a person undertakes transactions

- Involving supply of goods or services or both who occasionally
- In the course or furtherance of business,
- Whether as principal, agent or in any other capacity,
- In a State or a Union territory where he has no fixed place of business.

Sec 2(77) Non-resident - "Non-resident taxable person" means any person who occasionally undertakes transactions —

Taxable person

- Involving supply of goods or services or both,
- whether as principal or agent or in any other capacity,
- But who has no fixed place of business or residence in Inc

Sec 2(94) Registered person - "Registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number.

12.1.2 SUPPLIER & RECIPIENT OF GOODS/SERVICES [Sections 2(93) & 2(105)]

Sec 2 (105) Supplier - "Supplier" in relation to any goods or services or both, shall mean

- The person supplying the said goods or services or both and
- shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

Sec 2 (93) Recipient - "Recipient" of supply of goods or services or both, means—

(a) Where a consideration is payable for the supply of goods or services or both the person who is liable to pay that consideration

(b) Where no consideration is payable for the supply of goods the person

- To whom goods are delivered or made available, or
- To whom possession or use of goods is given or made available

(c) Where no consideration is payable for supply of a service the person to whom the service is rendered

Person to whom supply is made = Recipient: Any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply.

Recipient to include his agent: Recipient shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.

12.1.3 GOODS & SERVICE

Sec 2(52) Goods - "Goods" means —

- Every kind of movable property
- Other than money and securities

But includes –

■ Actionable claims, growing crops, grass or things attached to land or forming part of land which are severed or agreed to be severed before supply or under contract of supply.

Securities – Not goods [Section 2(101)] : "Securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. Securities include -

- shares, scripts, stocks, bonds, debentures, debenture stock or other marketable securities of a company;
- derivative, options, futures, swaps, forward agreements, etc.

Money – Not goods [Section 2(75)]: "Money" means –

- The Indian legal tender or any foreign currency,
- Cheque,
- Promissory note,
- Bill of Exchange,
- Letter of credit,
- Draft,
- Pay order,
- Traveller cheque,
- Money order,
- Postal or electronic remittance or
- any other instrument recognized by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination.

  But shall not include any currency that is held for its numismatic value.

[**Numismatic means "collection and study of money (and coins in particular)". For example, a coin in force in ancient times and having denomination of a rupee shall not be regarded as 'money', as it is not held as a rupee, but, for its numismatic value.]

Actionable Claim – Goods [Section 2(1)]: "Actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882. Hence, actionable claims means a claim -

a) To any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or

b) To any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Illustrations of actionable claims are -

(i) Unsecured debts

(ii) Right to participate in the draw to be held in a lottery.

Analysis: Actionable claims are goods. However, they are excluded from charge of GST as per section 7 read with Schedule III of the CGST Act. But actionable claim being lottery, betting and gambling is liable to GST as supply of goods.

Sec 2 (102) - "Services" means —

- Anything other than goods, money and securities
- but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Analysis: Thus, while money is not service, however, transaction of exchange/ conversion of money are 'service'. Secondly, securities are neither goods and=nor services; hence, outside scope of GST.

An Explanation has been inserted to the definition of 'service under section 2(102) of the CGST Act to clarify that the expression "services" includes facilitating or arranging transactions in securities.

Since securities are excluded from the definition of both 'goods and 'services in the CGST Act, they are neither goods nor services. However, facilitating or arranging transactions in securities is liable to GST. In order to clarify the same, this explanation has been inserted.

12.1.4 SUPPLY — MEANING OF [Section 7]



As per section 7(1), for the purposes of this Act, the expression "supply" includes-

Supply includes

(a) **Supplies for consideration in course of business [Sec. 7(1)(a)]** - all forms of supply of goods or services or both —

- Such as sale, transfer, barter, exchange, licence, rental, lease or disposal
- made or agreed to be made for a consideration
- By a person
- In the course or furtherance of business.

(b) **Import for consideration [Sec. 7(l)(b)] -** Import of services —

- For a consideration
- Whether or not in the course or furtherance of business

(c) **Certain supplies without consideration [Sec. 7(l)(c)]** - The following activities specified in Schedule I, made or agreed to be made without a consideration —

1. Sale of business assets on which ITC has been availed: Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2. Supplies between related persons, except gift upto Rs. 50,000 to employees: Supply of goods or services or both —

- Between related persons (defined in Explanation to section 15 and discussed already in this Chapter) or
- between distinct persons as specified in section 25 (discussed already in this Chapter), when made in the course or furtherance of business.

Gifts upto Rs. 50,000 to employee — not taxable: However, gifts upto Rs. 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. It may be noted that employer-employee are deemed to be related.

3. Agent to principal or vice-versa, if agent supplies/receives on behalf of principal: Supply of goods—

(a) By a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) By an agent to his principal where the agent undertakes- to receive such goods on behalf of the principal.

"Agent" [Section 2(5)]: Agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

"Principal" [Section 2(88)] : Principal means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

4. Import from related parties: Import of services by a person —

- From a related person or
- From any of his other establishments outside India,
- In the course or furtherance of business.

Activity deemed to be supply of goods [Sec. 7(1A)] - Activities to be treated as supply of goods as referred to in Schedule II –

1. **Transfer of title**

(a) Any transfer of the title in goods;

(b)Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed.

2. **Permanent Transfer of business assets**:

(a) If goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, then, such transfer or disposal is a supply of goods by the person;

(b) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

I. The business is transferred as a going concern to another person; or

II. The business is carried on by a personal representative who is deemed to be a taxable person.

3. **Supply of Goods by 'unincorporated association or 'body of persons for consideration: The following shall be treated as supply of goods, namely: —** Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. This transaction is a deemed sale under Article 366(29A) of Constitution.

12.1.5 Activity deemed to be supply of services [Sec. 7(1A)] - Activities to be treated as supply of service as referred to in Schedule II –

1. **Transfer of right without transfer of title:** Any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services. Thus, transfer of right to use, which is a deemed sale under Article 366(29A), is a 'service' now.

2. **Land and Building**

(a) Any lease, tenancy, easement, license to occupy land is a supply of services;

(b) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process [Job-work, repair, maintenance, etc.]: Any treatment or process which is applied to another person's goods is a supply of services.

4. Personal/Non-business use of business assets is 'service': Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business

a) Are put to any private use or

b) Are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

5. Supply of services [Declared Services]: The following shall be treated as supply of services, namely:—

a) Renting of immovable property;

b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received

- after issuance of completion certificate, where required, by the competent authority or
- After its first occupation, Whichever is earlier.

"Competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, —

(i) An architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) A chartered engineer registered with the Institution of Engineers (India); or

(iii) A licensed surveyor of the respective local body of the city or town or village or development or planning authority;

"Construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;

(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply: The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract in relation to immovable property works contract as defined in clause (119) of section 2; and Works contract concept exists only for immovable property — No concept of works contract in relation to goods [Section 2(119)] : "Works contract" means a contract for —

- Building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning
- Of any immovable property
- Wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Immovable property transactions are always service; Therefore, construction etc. of immovable property (whether they amount to works contract or not) is always 'service'.

Transaction on goods of others is always service: Any treatment on goods of others is always a service.

(b) Restaurant or catering transactions: supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. Hence, restaurant or catering transactions are always and fully service.

12.1.6 Neither goods nor service [Section 7(2)]

The following shall be treated neither as a supply of goods nor a supply of services —

[a] activities or transactions specified in Schedule III

1. Services by an employee to the employer in the course of or in relation to his employment.

2. Services by any court or Tribunal established under any law for the time being in force.

Note: The term "court" includes District Court, High Court and Supreme Court.

3.(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) The duties performed by any person who holds any post in pursuance of provisions of the Constitution in that capacity; or

(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

5 a. Sale of land

b. Sale of building, but, subject to clause (b) of paragraph 5 of Schedule II [i.e., construction services are taxable]

6. Actionable claims, other than lottery, betting and gambling.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. It seeks to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non- taxable territory.

8. Supply of warehoused goods to any person before clearance for home consumption. Warehoused goods means goods deposited in a warehouse.

9. Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Examples

1. *Mr. A purchased goods from China and sold it to Mr. John in Canada without bringing the goods in India. This transaction is neither supply of goods nor supply of services.*
2. *Mr. X imported some goods in India but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Mr. X sold these goods to Mr. Y while they were in warehouse. This transaction between Mr. X and Mr. Y is neither supply of goods nor supply of services.*
3. *Mr. P of India imported some goods from Japan. While the goods were in high seas, Mr. P sold the goods to Mr. Q in India by way of endorsement of documents of title of goods. This transaction between Mr. P and Mr. Q is neither supply of goods nor supply of services.*

[b] Notified statutory activities: such activities or transactions undertaken by — Import

- The Central Government,
- A State Government or
- Any local authority

In which they are engaged as public authorities, as may be notified by the Central Government on the recommendations of the Council. **{Panchayat/ Municipality}**

Other transactions — Notification as 'goods' or 'services.[Section 7(3)] -

Subject to the provisions of sections 7(1) and 7(2), the Central Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

a) A supply of goods and not as a supply of services; or

b) A supply of services and not as a supply of goods

Clarification on various doubts related to treatment of sales promotion schemes under GST.

It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Taxability of two such schemes has been clarified as under:

A Free samples and gifts:

- It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.
- As per section 7(1)(a) of the CGST Act, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

Buy one get one free offer:

Sometimes, companies announce offers like 'Buy One, Get One free'.

For example, "buy one soap and get one soap free" or "Get one tooth brush free along with the purchase of tooth paste".

- As per section 7(1)(a) of the CGST Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act).
- It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

- Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the CGST Act.

12.1.7 TAX LIABILITY ON COMPOSITE AND MIXED SUPPLIES [Section 8]

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:

(a) Composite Supply



1. Composite Supply [Sec. 2(30)]: Composite supply means a supply —

- made by a taxable person
- To a recipient
- consisting of two or more taxable supplies of goods or services or both, or any combination thereof,

Which are naturally bundled and supplied in conjunction with each other in the ordinary course of business,

One of which is a principal supply

Principal supply [Section 2(90)]: "Principal supply" means the supply of goods or services —

- Which constitutes predominant element of a composite supply and
- To which any other supply forming part of that composite supply is ancillary

2. Composite supply to be taxed as 'principal supply [Sec. 8(a)]: A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.

Illustration. — Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply. In this case, entire transaction would be taxed as 'supply of goods',



(b) Mixed Supply

1. Mixed Supply [Section 2(74)]: "Mixed supply" means —

- Two or more individual supplies of goods or services, or any combination thereof,
- made in conjunction with each other
- By a taxable person
- For a single price
- Where such supply does not constitute a composite supply.

3. Mixed Supply to be taxed as 'highest rated supply [Sec. 8(b)]: A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Illustration.—

- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Hence, will be taxed at highest rate out of rates applicable to said items.

- Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately. In that case, each item will be taxable at rate applicable to said item.

Amendments:

- **Service by way of grant of alcoholic liquor license is neither a supply of goods nor a supply of service.** ***Circular No. 121/40/2019 GST dated 11.10.2019*** has clarified that the above special dispensation applies only to supply of service by way of grant

of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

- Activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "Zero rated supply" as per the provisions contained in section 16 of the IGST Act. ***[Circular No. 108/27/2019 GST dated 18.07.2019]***

- Service of display of name or placing of name plate of the donor in the premises of charitable organisations receiving donation or gifts from individual donors, no GST is leviable. ***Circular No. 116/35/2019 GST dated 11.10.2019]***

- Art works sent by Artists to Art Gallery for exhibition is not a supply since no consideration flows from Art Gallery to Artist. However, supply takes place when a buyer selects a particular art work displayed at the gallery.

- In case of goods sent by principal to agent, it is regarded as supply even though there is no consideration provided invoice for further supply is issued by agent in his own name. Agent is a person who supplies goods on behalf of the principal.

- Above provision will apply even in relation to del credre agent i.e., person who undertakes the responsibility to recover the outstanding dues. Interest charged for extension of credit period would be included in value of supply if the agent is covered under Section 7 i..e, invoice is issued by agent in his own name.

- In case of "buy one get one free offer", it appears that one is given free, but the fact is that price of two is charged in one product and be treated as composite/ mixed supply based on nature of supply.

- Sale of land/ building is not subject to GST, but GST would apply on renting or leasing of immovable property. In this regard, it is to be noted that GST would apply on transfer of tenancy rights against consideration in the form of tenancy premium. Transfer of tenancy rights concept is very popular in the state of Maharashtra and is known as Pagadi system.

- Service provided by employee to employer outside the course of employment is taxable.

- Inter-state movement of various modes of conveyance between distinct persons carrying goods or passengers or both (or) for repairs or maintenance shall neither be treated as supply of goods nor supply of service. However, GST would apply on repairs and maintenance done for such conveyance.

- In case of servicing of cars where the value of goods and services are shown separately, GST would apply at the rates applicable to them separately.

- In case of printing of books, pamphlets, brochures, annual reports etc where the content is supplied by publisher and paper used for printing belongs to the printer, supply of printing is the principal supply and would be regarded as supply of service.

- In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wallpapers etc by the printer using its physical inputs including paper, the predominant supply is supply of goods and printing is only ancillary.

- In general, principal supply would depend upon the facts and circumstances of each case.

- In case of rethreading activity, predominant element is supply of service and rubber used for rethreading is only ancillary. However, supply of rethreaded tyres where old tyre belong to the supplier would be regarded as supply of goods.

12.1.8 CONSIDERATION [Section 2(31)]

1. General Meaning - Consideration is defined in an inclusive sense.

As per section 2(d) of the Indian Contract Act, 1872, consideration is defined as: "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise".

2. Inclusive definition [Sec. 2(31)] - "Consideration" in relation to the supply of goods or services or both includes—

(a) Any payment made or to be made, whether in money or otherwise,

(b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, —

- Whether by the recipient or by any other person
- But shall not include any subsidy given by the Central Government or a State Government;

Deposit — Not consideration, unless appropriated by supplier: However, a deposit given in respect of the supply of goods or services or both —

- shall not be considered as payment made for such supply
- Unless the supplier applies such deposit as consideration for the said supply.

Analysis: Thus, consideration may flow from a third party as well. But, subsidy and refundable deposits are not consideration.

There shall be levied a tax

- called the "central tax" (Central Goods and Services Tax: CGST)
- on all intrastate supplies of —
  - Goods or
  - Services or
  - Both,
- Except on the supply of alcoholic liquor for human consumption

12.1.9 AGGREGATE TURNOVER, EXEMPT SUPPLY, INWARD SUPPLY, OUTWARD SUPPLY, TAXABLE SUPPLY & NON-TAXABLE SUPPLY [Section 2]

Sec. 2(108) Taxable supply - "Taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

Sec 2(78) Nontaxable supply - "Non-taxable supply" means a supply of goods or services or both which is nor leviable to tax —

i. Under this Act or
ii. Under the Integrated Goods and Services Tax Act

Sec 2(47) Exempt supply - "Exempt supply" means supply of any goods or services or both

- which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and
- includes non-taxable supply;

Sec 2(67) Inward supply - "Inward supply" in relation to a person, shall mean receipt of goods or services or both —
- Whether by purchase, acquisition or any other means
- With or without consideration;

Sec 2(83) Outward supply - "Outward supply" in relation to a taxable person, means supply of goods or services or both, —
- whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode,
- made or agreed to be made
- By such person
- In the course or furtherance of business;

Sec 2(6) Aggregate Turnover - "Aggregate turnover" means the aggregate value of —
- All taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- Exempt supplies,
- Exports of goods or services or both and
- Inter-State supplies

Of persons having the same Permanent Account Number, to be computed on all India basis but excludes CGST, SGST, UTGST and GST Compensation Cess.

LESSON 12 : PART II - CHARGE OF GST

As discussed in an earlier chapter, the taxable event under GST is SUPPLY. CGST and SGST/UTGST are levied on all intra-State supplies of goods and/or services while IGST is levied on all inter-State supplies of goods and/ or services.

12.2.1 Intra state supply: {Section 8 of IGST ACT}

Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as intra-State supply of goods or services respectively

However, the following are not treated as intra state supply:

- Supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- Goods imported into the territory of India till they cross the customs frontiers of India; or
- Supplies made to a tourist referred to in section 15

Ex: A tourist from UK visits India and purchases a shirt in Delhi. In this case, even though the place of supply and location of supplier are in the same State, it will be treated as inter-State supply and IGST would attract.

12.2.2 Inter-state supply: {Section 7 of IGST ACT}

- Where the location of the supplier and the place of supply of goods or services are in two different States or two different Union Territories or a State and a Union territory it is treated as inter-State supply of goods or services respectively.
- Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.
- Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
- Supply of goods or services or both,--

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Few relevant definitions:

Central tax: means the central goods and services tax levied under section 9 [Section 2(21) of the CGST Act].

Integrated tax: means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act [Section 2(58) of the CGST Act].

E-Commerce operator: means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. [Section 2(45) of CGST Act]

Exempt supply: means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47) of CGST Act].

Reverse charge: means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under section 9(3)/9(4), or under section 5(3)/5(4) of the IGST Act [Section 2(98) of CGST Act].

Supplies in territorial waters: {Section 9 of IGST ACT}:

Notwithstanding anything contained in this Act -

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or
(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

This section determines the location of supplier and/or the place of supply when such location of supplier and/or the place of supply is in territorial waters

Section 9 of the IGST Act provides that where the location of the supplier is in the territorial waters, it shall be deemed that location of such supplier is in the coastal State or Union Territory where the nearest point of the appropriate baseline is located. Similarly, in case where the place of supply is in territorial waters, the place of supply shall be deemed to be in the coastal State or Union Territory where the nearest point of the appropriate baseline is located.

12.2.3 Levy and collection of CGST {Section 9 of CGST Act}:

Section 9(1):

Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Section 9(2):

The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

Section 9(3):

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Section 9(4):

The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge

basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both

Section 9(5):

The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

12.2.4 Concept of E- commerce operators:

Electronic Commerce Operators (ECO) display products as well as services which are actually supplied by some other person to the consumer, on their electronic portal. The consumers buy such goods/ services through these portals. On placing the order for a particular product/ service, the actual supplier supplies the selected product/ service to the consumer. The price/ consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.

The Government may notify specific categories of services the tax on intra -State supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.

Notification No. 17/2017 CT (R) dated 28.06.2017 as amended has notified the following categories of services supplied through ECO for this purpose

- Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;

- Maxicab/ Motorcab/ Motor cycle: shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988.
- Maxicab: means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.
- Motorcab: means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.
- Motor car: means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.

❖ Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act

❖ Services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section 22(1) of the CGST Act.

12.2.5 Reverse charge mechanism:

Generally, the supplier of goods or services is liable to pay GST. However, in case of certain notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.

Supplies of goods taxable under reverse charge, i.e. the goods where tax is payable by the recipient: Goods like cashewnuts [not shelled/peeled], bidi wrapper leaves, tobacco leaves, supply of lottery, silk yarn, etc. are taxable under reverse charge, i.e. recipient is liable to pay tax.

Supply of services taxable under reverse charge, i.e. the services where tax is payable by the recipient: Notification No. 13/2017 dated 28.06.2017 as amended has notified the following categories of supply of services wherein whole of the CGST shall be paid on reverse charge basis by the recipient of services:

S.No	Supplier of service	Recipient of service
1.	Service provided by insurance agent	Insurance company
2.	CG/ SG/ UT/ Local authority except • Renting of immovable property • Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority • Service in relation to aircraft or vessel inside or outside the precints of a port or an airport • Transport of goods or passengers ***However, service by way of renting of immovable property to a registered person is covered under RCM***	To a business entity located in taxable territory
3.	Taxable service provided by a goods transport agency (By Road)	Person who pays freight other than individual who is not registered.
4.	An arbitral tribunal or an individual advocate including a senior advocate or a firm of advocates by way of legal services.	To a business entity.
5.	Sponsorship service provided to any bodycorporate or firm.	Body corporate or Firm, who receives such service.
6.	Services provided or agree to be provided by a director of a body corporate to body corporate.{Effective from 11.07.2014}	Service receiver (company)
7.	Services provided by Recovery Agents to Banks or Financial Institutions or NBFC	Banks or Financial Institutions or NBFC
8.	Author/ music composer/ photographer/ artist or the like	Publisher/ Music company/ producer or the like located in taxable territory
9.	Services by Individual DSA to Banks or NBFC	Banks or NBFC
10.	Service by members of overseeing committee of RBI to RBI	RBI

The said provisions have been amended stipulating that reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-

(a) a Department/establishment of the Central Government/ State Government/ Union territory; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

Amendment:

- Author can choose to pay tax under forward charge if-
  (i) he has taken registration under the CGST Act and filed a declaration, in the prescribed form, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) of the CGST Act and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;

  (ii) he makes a declaration on the invoice issued by him in prescribed form to the publisher.
- Services provided by way of renting of a motor vehicle provided to a body corporate is also taxable under RCM. **{Supplier should be any person other than a body corporate, who is paying CGST @ 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business}**
- Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India, as amended

New services covered under RCM:

S.No.	Category of supply of service	Supplier of service	Recipient of Service
1.	Services provided by Business facilitator to a banking company [Effective from 01.01.2019]	Business facilitator	A banking company, located in the taxable territory

2.	Services provided by an agent of business correspondent to business correspondent.	An agent of business correspondent	A business correspondent, located in the taxable territory
3.	Security services (services provided by way of supply of security personnel) provided to a registered person. However, nothing contained in this entry shall apply to: (i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under composition scheme. [Effective from 01.01.2019]	Any person other than a body corporate	A registered person, located in the taxable territory.
4.	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter [Effective from 01.04.2019]	Any person	Promoter
5.	Long term lease of land (30 years or more) by any person against consideration in the form of	Any person	Promoter

	upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter. [Effective from 01.04.2019]		

12.2.6 Levy and collection of IGST {Section 5 of IGST Act}:

It's the same as Section 9 of CGST Act

List of services taxable under reverse charge, i.e. the services where tax is payable by the recipient:

Notification No. 10/2017 IT (R) dated 28.06.2017 has notified specified categories of supply of services wherein whole of the IGST shall be paid on reverse charge basis by the recipient of services. All the services which have been notified for reverse charge purposes under CGST Act (as given in para 7 of this Chapter) have also been notified for reverse charge under IGST

S.No	Supplier of service	Recipient of service
1.	Any person located in a non-taxable territory	Any person located in taxable territory other than non-taxable online recipient
2.	Service supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto customs station of clearance in India	Importer in taxable territory

2.10 COMPOSITION LEVY [Section 10 of CGST Act]:

Turnover limit for determining the eligibility for composition scheme enhanced to 1.5 crore

Earlier, the Government had the power to increase the turnover limit for determining the eligibility for composition scheme (hereinafter referred to as eligibility turnover limit) upto 1 crore [First proviso to section 10 of CGST Act].
The said provision has been amended thereby empowering the Government to enhance the eligibility turnover limit for composition scheme upto 1.5 crore.

Consequently, in pursuance of aforesaid power, with effect from 01.04.2019, the eligibility turnover limit for composition scheme is enhanced from 1 crore to 1.5 crore. In other words, a registered person, whose aggregate turnover in the preceding financial year did not exceed 1.5 crore is eligible to opt for composition scheme.

Resultantly, henceforth the eligibility turnover limit for composition for 8 Special Category States - Arunachal Pradesh, Uttarakhand, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura is Rs.75 lakh while remaining 3 Special Category States – Assam, Himachal Pradesh and Jammu and Kashmir - had higher eligibility turnover limit of Rs.1.5 crore.

Not applicable in RCM case - This section applies notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9. In case of reverse charge falling u/s 9(3) [notified RCM] or 9(4) [purchases from unregistered supplier], benefit of this section cannot be availed.

Composition scheme taxpayers permitted to render services other than restaurant services upto a specified limit [Second proviso to section 10 of the CGST Act]

Under the erstwhile provisions, only a supplier of restaurant service was eligible for composition scheme. A person engaged in the supply of any service other than restaurant service was not eligible for composition scheme.

However, there are cases where a manufacturer/ trader is also engaged in supply of services other than restaurant service though the percentage of such supply of services is very small as compared to the supplies of goods. There may also be cases where a restaurant service provider is also engaged in supplying a small percentage of other services.

With a view to enable such taxpayers to avail of the benefit of composition scheme, second proviso has been added to section 10(1) which permits a registered person opting for composition scheme to supply services [other than restaurant services] of specified value. This specified value is value not exceeding:

- 10% of the turnover in a State/Union territory in the preceding financial year
  Or
- 5 lakh, whichever is higher.

Consequently, eligibility to opt for composition scheme as contained in section 10(2)(a) has also been amended to provide that the registered person shall be eligible to opt for the composition scheme provided:
either he is not at all engaged in supply of services other than restaurant services
or

in case he supplies services other than restaurant services, value of such services does not exceed 10% of the turnover in a State/Union Territory in the preceding financial year or 5 lakh, whichever is higher.

Under composition scheme, a (i) manufacturer, (ii) restaurant service provider and (iii) any other supplier (trader) eligible for composition levy, is required to pay tax @ (i) ½%, (ii) 2½% and (iii) ½% respectively.
Earlier, tax rate under category (iii) was ½% of turnover of taxable supplies of goods in the State or Union territory.

However, as discussed above, since now a supplier opting for composition scheme has also been permitted to supply services other than restaurant services marginally, with effect from 01.02.2019, tax rate under category (iii) is ½% of turnover of taxable supplies of goods and services in the State or Union territory [Notification No. 03/2019 CT dated 29.01.2019].

Option to pay concessional tax @ 3%:

With effect from 01.04.2019, Notification No. 2/2019 CT (R) dated 07.03.20198 has provided an option to a registered person whose aggregate turnover in the preceding financial year is upto 50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 3% on first supplies of goods and/or services upto an aggregate turnover of 50 lakh made on/after 1st April in any FY, subject to specified conditions.

Not applicable in RCM case - This section applies notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9. In case of reverse charge falling u/s 9(3) [notified RCM] or 9(4) [purchases from unregistered supplier], benefit of this section cannot be availed.

Aggregate turnover includes value of all outward supplies of persons i..e, taxable,, exempt, exports and also inter-state of persons having the same PAN be computed on all India basis but excludes CGST, SGST, UTGST, IGST, CESS, value of inward supplies on which tax is payable by reverse charge.

"Aggregate turnover" means the aggregate value of all taxable supplies, excluding the value of inward supplies on which tax is payable by a person on reverse charge basis, exempt supplies, exports of goods or services or both and inter-state supplies of persons having the same Permanent Account Number, to be computed on an all-India basis but excludes Central tax, State tax, Union territory tax, Integrated tax and cess.

Rate of composite tax - The composite tax may (i.e., optional) be paid in lieu of the tax payable by him. It is calculated at such rate as may be prescribed, but not exceeding,—

(a) in case of a manufacturer - 1% of the turnover in State/Union territory {Amended to 0.5%}

(b) in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II [i.e., restaurant and caterers] - 2.5% of the turnover in State/Union territory

(c) In case of other suppliers - 0.5% of turnover in State/Union territory {Turnover shall be taxable turnover}

Conditions in rules

Composition scheme may be availed, subject to such conditions and restrictions as may be prescribed.

Statutory conditions - The registered person shall be eligible to opt under sub-section(1), if:

a. He is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II; [therefore, except restaurant and caterers, other service providers are ineligible for composition schemes]
b. He is not engaged in making any supply of goods which are not leviable to tax under this Act;
c. He is not engaged in making any inter-State outward supplies of goods;
d. He is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source u/s 52; and
e. He is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council.

Scheme applies to all regd. persons with same PAN - If more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme unless all such registered persons opt to pay tax under that sub-section.

Option lapses, if turnover crosses limit - The option availed of by a registered person under this section shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under this section.

Composite tax, not be collected - A taxable person to whom the provisions of this section apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

No input credit - A taxable person to whom the provisions of this section apply shall not be entitled to any credit of input tax.

Penalty for wrong use of scheme - If the proper officer has reasons to believe that a taxable person has paid tax under this section despite not being eligible, such person shall, –

- in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and
- The provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

Other points:

- ❖ Suppliers who opted for composition scheme cannot issue any tax invoice, but simply need to issue a bill of supply.
- ❖ Payment of tax shall be on quarterly basis.

12.2.7 Composition Rules, 2017

1. Intimation within 30 days or extended period CMP-01 - Any person who has been granted registration on a provisional basis and who opts to pay tax u/s 10, shall electronically file an intimation in FORM GST CMP-01, duly signed, on the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to appointed day, but not later than 30 days after the said day, or such further period as may be extended by Commissioner in this behalf.

Appointed day [Sec. 2(10)]: "Appointed day" means the date on which the provisions of this Act shall come into force.

REG-01 Application of composite tax along with application for registration: Any person who applies for registration may give an option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.

CMP-02 & ITC-3 Declaration prior to start of year: Any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, duly signed, on the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised.

ITC declaration within 60 days: He shall also furnish the statement in FORM GST ITC-3 within sixty days from the commencement of the relevant financial year.

CMP-03 - Any person who files an intimation under this rule to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in FORM GST CMP-03, on the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, within 90 days of the date from which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.

Single intimation for one PAN - Any intimation under this rule in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

No fresh intimation every year - The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.

2. Effective date Composite levy - The option to pay tax under section 10 shall be effective from —

- appointed date, if intimation is filed in CMP-1;
- Beginning of the financial year, if intimation is filed in CMP-02.

Intimation filed in REG-01 is considered only after grant of registration and his option to pay tax u/s 10 is effective from the date fixed for registration.

3. Conditions and restrictions - The person exercising the option to pay tax under section 10 shall comply with the following conditions:—

(a) He is neither a casual taxable person nor a non-resident taxable person;

(b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised vide CMP-01;

(c) The goods held in stock by him have not been purchased from an unregistered person and where purchased, he pays the reverse charge tax under section 9;

(d) He shall pay tax under reverse charge under Section 9 on inward supply of goods or services or both received from unregistered persons;

(e) He was not engaged in the manufacture of goods as notified under section 10, during the preceding financial year **i.e., Ice cream and other edible ice whether or not containing cocoa, Pan masala, tobacco and manufactured tobacco substitutes, aerated waters.**

(f) He shall mention words "composition taxable person, not eligible to collect tax on supplies" at top of the bill of supply issued by him; and

(g) He shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Note: There is no restriction on composition supplier to procure goods from inter-state supplies.

4. **Validity** - The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and these rules.

5. **Withdrawal of option CMP-04** - Mandatory withdrawal on violation of conditions: The person shall be liable to pay normal tax from the day he ceases to satisfy any of the conditions mentioned in section 10 or these rules and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within 7 days of occurrence of such event. **However, such person shall be allowed to avail ITC in respect of stock of inputs and inputs contained in semi-finished goods or finished goods held in stock by him and on capital goods held by him on the date of withdrawal by furnishing a statement within 30 days of withdrawal of option, containing details of stock held.**

Optional withdrawal: The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed, electronically on the Common Portal.

CMP-05 Notice of withdrawal: Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or these rules, he may issue a notice to such person in FORM GST CMP-05 to show cause within 15 days of the receipt of such notice as to why option to pay tax under section 10 should not be denied.

CMP-06 Reply to notice: Reply to the show cause notice issued in Form GST CMP-05 from the registered person

CMP-07 Order : The proper officer shall issue an order in FORM GST CMP-07 within 30 days of receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of option or from the date of the event concerning such contravention, as the case may be.

Withdrawal applies to all units - Any intimation for withdrawal or denial of the option in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

12.2.8 POWER TO GRANT EXEMPTION FROM CGST [Section 11]

1. Power to exempt generally Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, —

- on the recommendations of the Council, by notification,
- exempt generally, —
  - either absolutely or
  - subject to such conditions as may be specified therein,

1. Goods or services or both of any specified description
2. From the whole or any part of the tax leviable thereon
3. With effect from such date as may be specified in such notification.

Special Order - Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, —

- On the recommendations of the Council,
- By special order in each case,

- Under circumstances of an exceptional nature to be stated in such order,
- Exempt from payment of tax any goods or services or both on which tax is leviable.

12.2.9 OIDAR Services {Section 14 of IGST Act}:

Section 14(1):

On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely :-

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
(c) the intermediary involved in the supply does not authorise delivery; and
(d) The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

Section 14(2):

The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government.

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier.

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax

Definition:

Section 2(17) of the IGST Act defines OIDAR as services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated involving minimal human intervention.

These include electronic services such as:

- Advertising on the internet
- Providing cloud services
- Provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet
- Providing data or information, retrievable or otherwise, to any person in electronic form through a computer network
- Online supplies of digital content (movies, television shows, music and the like)
- Digital data storage
- Online gaming

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer exempt from GST:

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

This will achieve a fair degree of taxation parity between under construction and ready to move property.

It is further clarified that nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI.

QUESTIONS:

1. What is the taxable event under GST?
2. What is the tax treatment of composite supply and mixed supply under GST?
3. Supply of all goods and/ or services is taxable under GST. Discuss the validity of the statement.
4. Whether transfer of title and/ Or possession is necessary for a transaction to constitute supply of goods?
5. Examine whether the following activities amount to supply under section 7 of the CGST Act:

a) Veena charitable trust, trust which gets the eye treatment of needy people done free of cost, donated clothes and toys to children living in slum area.

b) Siri manufacturers have a factory in Delhi and a Depot in Mumbai. Both these establishments are registered in respective states. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold.

c) Rahul is an electronic commerce operator in Chennai. His brother who is settled in London is a well-known lawyer. Rahul has taken legal advice from him free of cost with regard to his family dispute.

d) What your answer be different if in the above case, Rahul has taken advice in respect of his business unit in Chennai?

6. State whether the following supplies would be treated as supply of goods or supplier of service as per schedule II of the CGST act-

a) Renting of immovable property

b) Good forming part of business assets are transferred disposed of by or under directions of person carrying on the business, whether or not for consideration.

c) Transfer of right in goods without transfer of title in goods.

d) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.

7. Determine whether the following supplies amount to composite supplies-
a) Hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided along with the room accommodation.

b) A toothpaste company has offered the scheme of free toothbrush along with the toothpaste.

8. Good supplied on hire purchase basis will be treated as supply of goods or supply of services? Give reasons.

9. State person liable to pay GST on the following independent cases provided recipient is located in the taxable territory-

a) Services provided by an arbitral tribunal to any business entity.

b) Sponsorship services provided by a company to an individual.

c) Renting of immovable property service provided by the central government to a business entity.

10. Can any person other than the supplier or recipient be liable to pay tax under GST?

11. A person availing composition scheme in Haryana during a financial year crosses the turnover of Rs.150 lakhs during the course of the year in December. Will he be allowed to pay tax under composition scheme for the remainder of the year that is till 31st March?

12. Hotel owner provided accommodation in Haryana, through an electronic commerce operator-Ibibo trips. Hotel owner is not liable to get registered as per the provisions of section 22(1) of the CGST act.

Who is the person liable to pay GST in this case?

13. Determine whether the supplier in the following cases are eligible for composition levy provided their turnover in preceding year does not exceed Rs.150 lakhs:

a) Mishi is engaged in providing legal services in Rajasthan and is registered in the same state.

b) Sia manufacturers has registered offices in Punjab and Haryana and supplies goods in neighbouring states.

MCQs

1. What are different types of supplies covered under the scope of Supply?
(a) Supplies made with consideration
(b) Supplies made without consideration
(c) Both of the above
(d) None of the above
Ans. (c) Both of the above

2. What are the factors differentiating Composite Supply & Mixed Supply?
(a) Nature of bundling i.e. artificial or natural
(b) Existence of Principal Supply
(c) Both of the above
(d) None of the above
Ans. (c) Both of the above

3. What are the taxes levied on an intra-State Supply?
(a) CGST
(b) SGST *
(c) CGST and SGST
(d) IGST
Ans. (c) CGST and SGST

4. What is the maximum rate prescribed under CGST?
(a) 12%
(b) 28%
(c) 20%
(d) 18%
Ans. (c) 20%

5. Who will notify the rate of tax to be levied under CGST?
(a) Central Government suo moto
(b) State Government suo moto
(c) GST Council suo moto
(d) Central Government as per the recommendations of the GST Council
Ans. (d) Central Government as per the recommendations of the GST Council

6. What are the supplies on which reverse charge mechanism would apply?

(a) Notified categories of goods or services or both

(b) Inward supply of goods or services or both from an unregistered dealer

(c) Both of the above

(d) None of the above

Ans. (c) Both of the above

7. Which of the following taxes will be levied on Imports?

(a) CGST

(b) SGST

(c) IGST

(d) Exempt

Ans. (c) IGST

8. Which of the following taxes would be levied on an intra-State supply of goods or services or both

(a) CGST

(b) Union territory tax

(c) Both of the above

(d) IGST

Ans. (c) Both of the above

9. Is there any maximum rate prescribed under UTGST?

(a) 14%

(b) 28%

(c) 20%

(d) 30%

Ans. (c) 20%

10. _____ supply shall attract IGST?

(a) Intra-State

(b) Inter-State

(c) Both

Ans. (b) Interstate

11. Is there any ceiling limit prescribed on the rate under IGST?

(a) 14%

(b) 40%

(c) 26%

(d) 30%

Ans. (b) 40%

PRACTICE QUESTIONS:

Q1. Diligent Force, a professional training institute, gets its training material of 'Aptitute Quotient' printed from 'Durga Printing House'.- a printing press. The content of the material is provided by the Diligent Force who owns the usage rights of the same while the physical inputs including paper used for printing belong to the Durga Printing House.

Ascertain whether supply of training material by the Durga Printing House constitutes supply of goods or supply of services.

Q2. Agrawal Carriers is a Goods Transport Agency (GTA) which is engaged in transportation of goods by road. As per the general business practice, Agrawal Carriers also provides intermediary and ancillary services like loading/ unloading, packing/ unpacking, transshipment and temporary warehousing, in relation to transportation of goods by road.

With reference to the provisions of GST law, analyse whether such services are to be treated as part of the GTA service, being a composite supply, or as separate supplies.

Q3. Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January, 20XX:

(i) Supply of a laptop bag along with the laptop to a customer of Mumbai for Rs.55,000 (exclusive of GST).

(ii) Supply of 10,000 kits (at Rs.50 each) amounting to Rs.5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil, 1 beauty soap and 1 hair comb.

(iii) 100 kits are given as free gift to Jaipur customers on the occasion of Mrs. Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is Rs.35, but the open market value of such kit of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the goods contained in the kit.

(iv) Event management services provided free of cost to her brother for his son's marriage function in Indore (Madhya Pradesh). Cost of providing said services is Rs.80,000, but the open market value of such services and of services of like kind and quality is not available.

(v) 1,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) for Rs.3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers from Mrs. Kajal's godown at Jaipur to the Function Garden, Ajmer.

Mrs. Kajal has paid the cost of transportation of chairs and coolers to an unregistered Goods Transport Agency (GTA) [located in the State of Rajasthan] @ Rs.20 (exclusive of GST) for each chair and each cooler and in turn, has charged Rs.20 only for each chair and each cooler from Function Garden for transportation of the same.

Interest of Rs.6,400 (inclusive of GST) was collected by Mrs. Kajal in January from Ram Fancy Store, Kota for the payment received with a delay of 30 days.

Assume rates of GST to be as under:-

S. No.	Particulars	Rate of CGST (%)	Rate of SGST (%)	Rate of IGST (%)
1.	Laptop	9	9	18
2.	Laptop bag	14	14	28
3.	Hair oil	9	9	18
4.	Beauty soap	14	14	28
5.	Hair comb	6	6	12
6.	Event management service	2.5	2.5	5
7.	Service of renting of chairs and coolers	6	6	12
8.	Transportation service	2.5	2.5	5

From the above information, compute the GST liability (CGST and SGST and/ or IGST, as the case may be) of Mrs. Kajal for the month of January, 20XX.

Q4. Mr. Zombi, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the said activity of supply of goods by Mr. Zombi to customer in US is taxable under GST. If yes, determine the place of supply of the same.

Q5. Mayuri Enterprises has registered business verticals in Delhi. Its aggregate turnover for the preceding year for both the business verticals was Rs.90 lakhs. It wishes to pay tax under composition levy for one of the vertical in the current year while under normal levy for the other vertical. You are required to advise Mayuri enterprises weather can they do so?

Q6. Examine whether the suppliers are eligible for composition scheme in the following independent cases. Is there any other option available for concessional tax payment with any of these suppliers, wherever composition scheme cannot be availed?

(a) M/s. Devlok, a registered dealer, is dealing in intra-State trading of electronic appliances in Jaipur (Rajasthan). It has turnover of Rs.130 lakh in the preceding financial year. In the current financial year, it has also started providing repairing services of electronic appliances.

(b) M/s. Narayan & Sons, a registered dealer, is running a "KhanaKhazana" Restaurant near City Palace in Jaipur. It has turnover of Rs.140 lakh in the preceding financial year. In the current financial year, it has also started dealing in intra-State trading of beverages in Jaipur (Rajasthan).

(c) M/s. Indra & Bro, a registered dealer, is providing restaurant services in Uttarakhand. It has turnover of Rs.70 lakh in the preceding financial year. It has started providing intra-State interior designing services in the current financial year and discontinued rendering restaurant services.

(d) M/s. Him Naresh, a registered dealer, is exclusively providing intra-State architect services in Uttarakhand. It has turnover of Rs.40 lakh in the preceding financial year.

Q6. B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and an exempt product 'Q'. The firm supplies these products only in the eastern part of Maharashtra.

All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.

B & D Company has furnished the following details with respect to its turnover (exclusive of taxes) and stock (exclusive of taxes):

Particulars	Turnover for the quarter ended 30.06.20XX (Rs.)	Turnover for the quarter ended 30.09.20XX (Rs.)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

Particulars	Stock as on 30.06.20XX (Rs.)	Stock as on 30.09.20XX (Rs.)	Stock as on 31.10.20XX (Rs.)
'P'	(25,00,000	(10,00,000	3,60,000
'Q'	10,00,000	2,00,000	1,20,000

The entire stock of the products 'P' and 'Q' available with the firm as on 30.09.20XX is purchased during the said half year except a consignment of product 'P' valuing Rs.3,00,000, which was purchased in the April month of the preceding financial year. In the current financial year, in the month of October, no purchases were made, and the products were sold with a profit margin of 20% on sales [exclusive of taxes].

Bill No.	Date	Value of products (Exclusive of taxes)		
2306	01.10.20XX	2,00,000	3,000	2,03,000
2307	01.10.20XX	1,36,000	2,250	1.,38,250
2308	02.10.20XX	67000	39,250	1,06,250
2309	03.10.20XX	58,750	33,750	92,500
2310	05.10.20XX	1,00,000	-	1,00,000
2311	06.10.20XX	94,000	6,000	1,00,000
2312	06.10.20XX	-	17,000	17,000
2313	08.10.20XX	50,000	6,000	56,000
2314	09.10.20XX	60,000	9,000	69,000
2315	……..	……..	……..	……..
……..	……..	……..	……..	……..

The extract of the only bill book maintained by the firm showed the following details-

The details of services availed by B & D Company is as follows:

S. No.	Particulars	(Rs.)

(i)	Freight paid to Goods Transport Agency during the period April 20XX to October 20XX. Assume equal amount of freight is paid each month on the 10th day of each month. Also, assume that the goods for which the freight is paid on 10th day of the month are transported between 11th to 20thday of the month.	1,40,000
(ii)	Special packing charges paid to a Packing Company, having expertise in such specialized packing, during the period January 20XX to October 20XX. The packing charges are paid for the goods which are transported between 11th to 20thday of the month (as mentioned in point (i) above). The goods are packed on 10th day and then transported from 11th day onwards. Assume equal amount of packing charges are paid each month on the 9th day of each month.	3,00,000

All the above amounts are exclusive of taxes, wherever applicable.

Compute the net GST liability of B & D Company for the period April, 20XX to October, 20XX under composition scheme showing calculations for each quarter separately.

Note: Make suitable assumptions wherever required. Rate of CGST and SGST on service of transportation of goods by GTA is 2.5% each. Stock is valued at cost price.

Q7. XYZ Ltd., New Delhi, manufactures biscuits under the brand name 'Tastypicks'. Biscuits are supplied to wholesalers and distributors located across India on FOR basis from the warehouse of the company located at New Delhi. The company uses multiple modes of transport for supplying the biscuits to its customers spread across the country. The transportation cost is shown as a line item in the invoice and is billed to the customers with a mark-up of 2% on total amount of freight paid (inclusive of taxes).

Flour used for the production process is procured from vendors located in Madhya Pradesh on ex-factory basis. The company engages goods transport agencies (GTA) to transport the flour from the factories of the vendors to its factory located in New Delhi.

The company has provided the following data relating to transportation of biscuits and flour in the month of April 20XX:

- For sales within the NCR region (Rs.20,00,000), the company arranged a local mini-van belonging to an individual and paid him Rs.54,000.

- For sales to locations in distant States (Rs.1,78,00,000), the company booked the goods by Indian Railways and paid rail freight of Rs.3,17,000.

- For sales to locations in neighbouring States (Rs.55,00,000), the company booked the goods by road carriers (GTAs) and paid road freight of Rs.3,73,000. Out of the total sales to neighbouring States, goods worth Rs.10,00,000 were booked through a GTA which paid tax @ 12%. Freight of Rs.73,000 was paid to such GTA.

- For purchase of flour from Madhya Pradesh (Rs.25,00,000), the company booked the goods by a GTA and paid road freight of Rs.55,000.

- For purchase of butter from Punjab (Rs.15,00,000), the company booked the goods by a GTA and paid road freight of Rs.35,000.

- For local purchase of baking powder, the company booked the goods by a GTA in a single carriage and paid road freight of Rs.1,500.

- For transferring the biscuits (open market value - Rs.4,00,000) to one of its sister concern in Rajasthan, the company booked the goods by a GTA and paid road freight of Rs.40,000.

(i) Based on the particulars given above, compute the GST payable on the amount paid for transportation by XYZ Ltd. when it avails the services of different transporters.

(ii) Compute the GST charged on transportation cost billed by the company to its customers.

Note: - Assume the rate of GST on transportation of goods to be 5% [except where any other rate is specified in the question] and GST on supply of biscuits to be 12%.

Q8. Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the preceding financial year, it has a turnover of Rs.140 lakh from the restaurant service. You are required to advise Shubhlaxmi Foods whether it is eligible for composition scheme in the current year assuming that in the current financial year, his turnover is expected to be Rs.130 lakh from supply of restaurant services and Rs.10 lakh from the supply of farm labour in said State. Further, it also expects to earn bank interest of Rs.20 lakh from the fixed deposits.

Also compute the estimated tax payable by Shubhlaxmi Foods in the current FY.

Q9. Bansal and Chandiok started a partnership firm of Chartered Accountants in Jaipur (Rajasthan) on 1.04.20XX. The firm specializes in providing audit services to banks, in Rajasthan. It provided the following details of its turnover:

Quarter	Amount (in Rs.)
Apr-Jun	10 lakh
Jul-Sep	20 lakh

It crossed the threshold limit of Rs.20 lakh on 1.08.20XX. Bansal and Chandiok wishesto opt to pay tax at concessional rate under Notification No. 2/2019 CT (R) dated 07.03.2019. Examine whether the firm is eligible for this scheme? If yes, then determine the tax payable by it in quarters (i) Apr-Jun & (ii) Jul-Sep?

Q 10. Mr. Prem is running a restaurant in New Delhi. In the preceding financial year, it has turnover of Rs.120 lakh from the restaurant services. In the current financial year, apart from restaurant service, he also wants to provide food delivery services to other restaurants. He estimated the turnover of such services upto Rs. 5 lakh.

Mr. Prem wishes to opt for composition scheme in the current financial year. You are required to advise him for same. Further, also advise the documents to be issued by him for billing the restaurant services as well as food delivery services in case he opts for composition scheme.

Q 11. M/s Heeralal and Sons registered in Karnataka has opted to avail the benefit of composition scheme. It has furnished the following details for the tax period ended on 30-06-20XX.

S. No.	Items	Rs.
(i)	Taxable turnover of goods within the State	15,00,000
(ii)	Exempted turnover ended of goods within the State	17,00,000
	Total Turnover	32,00,000

Using the above information, calculate tax to be paid by the firm for the tax period ended on 30.06.20XX in following independent situations:

(i) M/s Heeralal and Sons is a manufacturer

(ii) M/s Heeralal and Sons is a trader

Q 12. Mr. Sanjay of New Delhi made a request for a Motor cab to "Super ride" for travelling from New Delhi to Gurgaon (Haryana). After Mr. Sanjay pays the cab charges using his debit card, he gets details of the driver Mr. Jorawar Singh and the cab's registration number.

"Super ride" is a mobile application owned and managed by D.T. Ltd. located in India. The application "Super ride" facilitates a potential customer to connect with the persons providing cab service under the brand name of "Super ride".

D.T. Ltd. claims that cab service is provided by Mr. Jorawar Singh and hence, he is liable to pay GST. With reference to the provisions of IGST Act, 2017, determine who is liable to pay GST in this case?

Would your answer be different, if D.T. Ltd. is located in New York (USA)? Also briefly state the statutory provisions involved.

Q 13. MN Ltd. has two registered places of business in the State of Haryana. Its aggregate turnover during the previous financial year for both the places of business was Rs.62 lakh. It wishes to opt for composition levy for one of the place of business in the current year and wants to continue with registration and pay taxes at the normal rate for the other place of business. Can MN Ltd. do so? Explain with reason.

Q 14. M/s. Ranveer Industries, registered in Himachal Pradesh, is engaged in making inter-State supplies of readymade garments. The aggregate turnover of M/s. Ranveer Industries in the preceding financial year is Rs.90 lakh. It has opted for composition levy in the current financial year and paid tax for the July-Sep quarter of current year under composition levy.

The proper officer has levied penalty for wrongly availing the scheme on M/s. Ranveer Industries in addition to the tax payable by it.

Examine the validity of the action taken by proper officer.

CONCEPT OF TIME, VALUE AND PLACE OF TAXABLE SUPPLY

LESSON 13: PART I - TIME OF SUPPLY

13.1.1 TIME OF SUPPLY (TOS) OF GOODS [Section 12]

12(1) Tax payable as per TOS

The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

12(2) Time of supply — general

DoI = Date of Issue of invoice by the supplier or the last date on which he is required under Section 31(1), to issue the invoice with respect to the supply.

As per Section 31, a registered person shall before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods or delivery of goods or making available thereof to the recipient in any other case issue a tax invoice showing all prescribed particulars. As per section 31(4), in the case of continuous supply of goods, the invoice should be issued before or when the statement of accounts is issued or as the case may be, each such payment is received.

Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

DoP = Date on which the supplier receives the payment with respect to the supply, being the earlier of —

DoPE = Date on which the Payment is Entered in his books of account

DoPB = Date on which the payment is credited to his bank account.

Time of Supply [ToS] = Earlier of: (a) DoI, or, (b) DoP.

However, it may be noted that Notification No. 66/2017 CT dated 15.11.2017 specifies that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a)

Small advances upto Rs. 1,000, then, ToS = DoI [Option of supplier]: Where the supplier of taxable goods receives an amount up to Rs. 1,000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Only 'part supply billed in invoice is considered : For the purposes of (a) and (b) above, "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. Hence, in case of part billing or part payment, only the part of the supply billed/paid is considered.

12(3) Reverse charge – ToS - In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—

(a) **DoR :** the date of the receipt of goods; or

(b) **DoP :** the date of payment as entered in the books of account

of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) DoI + 30 days : the date immediately following 30 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

Date of entry in books of recipient, if ToS can't be determined as per above : If it is not possible to determine the time of supply under (a) or (b) or (c) above, the time of supply shall be the date of entry in books of account of the recipient of supply.

12(4) Supply of vouchers by a supplier -ToS on issue/ redemption

In case of supply of vouchers by a supplier, ToS shall be—

(a) The date of issue of voucher, if the supply is identifiable at that point; or

(b) The date of redemption of voucher, in all other cases.

12(5) ToS not determinable — ToS — Due Date of return or date of paying tax

Where it is not possible to determine the time of supply under the provisions of section 12(2), (3) or (4), the ToS shall—

(a) In a case where a periodical return has to be filed, be the date on which such return is to be filed;

or

(b) In any other case, be the date on which the tax is paid.

12(6) Addition in value by interest, fee, etc. - ToS on receipt basis

The time of supply —

To the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

13.1.2 TIME OF SUPPLY (TOS) OF SERVICES [Section 13]

13(1) Tax payable as per TOS

The liability to pay tax on services shall arise at time of supply, as determined in accordance with the provisions of this section.

13(2) Certain acronyms

Dol = Date of Issue of invoice by the supplier.

DoP = Date of receipt of payment i.e., date on which the supplier receives the payment with respect to the supply, being the earlier of —

DoPE = Date on which the Payment is Entered in his books of account

DoPB = Date on which the payment is credited to his bank account.

DoS = Date of provision of service

DoR = the date on which the recipient shows the receipt of services in his books of account.

Only 'part supply billed/paid is considered: For the above purposes, "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. Hence, in case of part billing or part payment, only the part of the supply billed/paid is considered.

Sec 13(2) Time of Supply [ToS]: In general, ToS shall be –

If invoice is issued within period prescribed u/s 31(2)

ToS = Earlier of:

- DoI, or,
- DoP.

If invoice is not issued within period prescribed u/s 31(2)

ToS = Earlier of:

- DoS, or,
- DoP.

If (a) or (b) do not apply

ToS = DoR

Small advances upto Rs. 1,000, then,

ToS = DoI [Option of supplier]

If supplier of taxable services receives an amount up to Rs. 1,000 in excess of amount indicated in tax invoice, then, ToS of such excess amount shall, at the option of said supplier, be DoI in respect of such excess amount.

Reverse Charge

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be –

(a) General

Earlier of the following dates, namely:–

DoP : the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

DoI + 60 days : date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

(b) If ToS can't be determined above

Where it is not possible to determine the time of supply under aforesaid provision, the time of supply shall be the date of entry in the books of account of the recipient of supply.

Associated enterprises

In case of supply by associated enterprises, if supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

13(4) Supply of vouchers

In case of supply of vouchers by a supplier, ToS shall be—

(a) Date of issue of voucher, if the supply is identifiable at that point; or

(b) The date of redemption of voucher, in all other cases.

13(5) ToS not determinable — ToS — Due Date of return or date of paying tax

Where it is not possible to determine the time of supply under the provisions of section 13(2), (3) or (4), the ToS shall—

(a) In a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) In any other case, be the date on which the tax is paid.

13(6) Addition in value by interest, fee, etc. - ToS on receipt basis

The time of supply —

To the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration

Shall be the date on which the supplier receives such addition in value.

13.1.3 TIME OF SUPPLY (TOS) — CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICES [Section 14]

Sec.	Point	Provision
14	Applicability	This section applies where there is a change in the rate of tax in respect of goods or services or both.
14	Overriding effect	This section applies notwithstanding anything contained in section 12 or section 13
14	Certain acronyms	(a) DoI = Date of Issue of invoice by the supplier. (b) DoS = Date of supply of goods or services or both (c) DoC = Date of change in the rate of tax (d) DoP = Date of receipt of payment i.e., date on which supplier receives payment with respect to supply, being earlier of — ◆ DoPE = Date on which the Payment is Entered in his books of account ◆ DoPB = Date on which the payment is credited to his bank account. **DoP = DoPB, if 'DoPB'> 'DoC + 4 working days:** The date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

14. Time of supply (ToS)	Sec. 14	DoS is -	Dol is-	DoP is -	Then, ToS is -
	(a)(i)	Before DoC	After DoC	After DoC	ToS = DoP or Dol, whichever is earlier.
	(a)(ii)	Before Doc	Before Doc	After Aoc	ToS = Dol
	(a)(iii)	Before Doc	After Aoc	Before Doc	ToS = DoP
	(b)(i)	After Aoc	Before Doc	After Aoc	ToS = DoP
	(b)(ii)	After Aoc	Before Doc	Before Doc	ToS = DoP or Dol, whichever is earlier.
	(b)(iii)	After Aoc	After Aoc	Before Doc	ToS = Dol
	Section 14 propounds majority rule [Analysis] : Section 14 is based on majority rule, as follows — If two of three dates (DoS, Dol and DoP) fall on one side, ToS would lie on that side. Further, ToS would be Dol or DoP only. If Dol and DoP both fall on same side, then, ToS = Earlier of Dol and DoP.				

Special procedure for determining the time of supply of services in certain cases:

With effect from 01.04.2019, supply of services by a landowner to a developer by way of

(i) transfer of transferable development rights (TDR) or floor space index (FSI);

(ii) granting of long term lease,

for construction of residential apartments have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate or first occupation of the project, whichever is earlier, and tax is paid on them.

Such exemption for TDR, FSI, long term lease (premium) shall not be available in case of flats which remain un-booked on the date of issuance of completion certificate or first occupation of the project, whichever is earlier. The promoter (developer) shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of (i) value of development rights and/or FSI, or (ii) upfront amount paid for long term

lease, as is attributable to such un-booked residential apartments.

For such persons, the liability to pay tax on, -

(a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

(c) the upfront amount paid by him for long term lease of land relatable to construction of residential apartments in the project; and

(d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI),

shall arise on the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

[Notification No. 6/2019 CT (R) dated 29.03.2019/ Notification No. 6/2019 IT (R) dated 29.03.2019]

QUESTIONS:

1. Ramu Private Limited receives the order and advance payment on 05th January for carrying out an architectural design job. It delivers the designs on 23rd April. By oversight, no invoice was issued at that time, and it is issued much later, after expiry of prescribed period for issue of invoice. When is the time of supply of service?

2. Investigation shows that 150 cartons of ceramic capacitors were dispatched on 2ndAugust but no invoice was made and the cartons were not entered in the accounts. There was no evidence of receipt of payment. What is the time of supply of the 150 cartons?

3. Sodexo meal coupons are sold to a company on 9th August for being distributed to the employees of the said company. The coupons are valid for six months and can be used against purchase of food items. The employees can use them in various stores for purchases of various edible items on different dates throughout the six months. What is the date of supply of the coupons?

4. An Income tax and money laundering case against Mr X, working in a multinational company, reveals a large volume of undisclosed assets, which he claims as service income. On this basis, The GST authorities investigate the GST liability. Dates of provision of service, whether in the first half of the second half of the financial year being scrutinised by income tax authorities, are not known. Mr X pays GST during investigation. What is the time of supply of the service?

5. Determine the time of supply in the following cases assuming that GST is payable under reverse charge.

SNO	Date of receipt of goods	Date of payment by recipient of goods	Date of issue of invoice by supplier of goods
	(1)	(2)	(3)
1	July 1	August 10th	June 29
2	July 1	June 25th	June 29
3	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29
4	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
5	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29
6	August 1	August 10th	June 29

6. Determine the time of supply in the following cases assuming that GST is payable under reverse charge.

SNO	Date of payment by recipient of supply of services.	Date of issue of invoice by supplier of services
	(1)	(2)
1	August 10th	June 29th
2	August 10th	June 1st
3	Part payment is made on June 30th and balance amount paid on September 1st	June 29th
4	Payment is entered in the books of account on June 28th and debited in recipient's bank account on June 30th	June 1st
5	Payment is entered in the books of account on June 30th and debited in recipient's bank account on June 26th	June 29th

7. Chiku Traders is a registered supplier of plastic goods. On 10th April, 20XX, Chiku Traders received an order from Neelu Traders for supply of a consignment of plastic goods. Chiku Traders gets the consignment ready by 15th April, 20XX. The invoice for the consignment was issued the next day, 16th April, 20XX. Neelu Traders collects the consignment from the godown of Chiku Traders on 25th April, 20XX and hands over the cheque towards payment on the same date. The said payment is entered in the books of accounts of Chiku Traders on 26th April, 20XX and amount is credited in their bank account on 27th April, 20XX.

   Determine the time of supply of the plastic goods supplied by Chiku Traders to Neelu Traders as per the provisions of CGST Act, 2017.

8. Mr. Mahendra Sharma, an interior decorator registered at Ahmedabad (Gujarat), provided service to one of his clients XYZ Company Ltd., registered at Pune (Maharashtra). The provision of service was completed on 10-08-20XX and payment received was entered in the books of Mr. Mahendra Sharma on 11-08-20XX.

   With effect from 16/08/20XX, applicable GST rate was increased from 5% to 12%. However, payment for the service received was credited in his bank account on 17/08/20XX and invoice for the same was raised on 23-08-20XX.

   Mr. Mahendra Sharma claimed that he is liable to pay IGST @ 5%. But the department took the view that he is liable to pay IGST @12%.

Examine the correctness of Mr. Mahendra Sharma's contention and determine the time of supply and applicable rate of tax as per the statutory provisions.

Would your answer undergo any change in the above case if the payment was credited to the bank account on 14-08-20XX instead of 17-08-20XX?

Note: You may assume that all days are working days.

9. Determine the time of supply from the following particulars:

8th September	Community hall booked for a marriage, sum agreed Rs.1,20,000, advance Rs.20,000 recorded in the books of account.
10th September	Advance amount credited in bank account.
2nd November	Marriage held in the Community hall.
18th December	Invoice issued for Rs.1,20,000 indicating the balance of Rs.1,00,000 payable
22nd December	Balance Rs.1,00,000 recorded in the books of account
24th December	Payment Rs.1,00,000 credited to the bank account

Lesson 13 : Part 2 - Place of Supply

13.2.1 Place of Supply Introduction

The concept of place of supply is given under section 10 to 13 of IGST Act i.e., Chapter V of IGST Act. The place of supply provisions determine the place i.e., taxable jurisdiction where the tax should reach. The place of supply and the location of the supplier are the two determinants to ascertain the nature of supply i.e., whether a supply is intra-State or inter- State.

In other words, these two factors are required to determine whether a supply is subject to SGST/UTGST plus CGST in a given State/ Union Territory or else would attract IGST if it is an inter-State supply.

If an inter-State transaction is wrongly treated as intra -State or *vice-versa* and tax paid accordingly, the correct tax will need to be paid and refund claimed for tax wrongly paid. Though no interest is levied in such a case, procedural requirements increase and working capital gets blocked where the amount involved is huge. Hence, determining correct place of supply is of paramount importance.

Determining of place of supply for goods is not much complicated as compared to place of supply of services since services are intangible and can be provided form anywhere and anytime.

The various elements involved in a service transaction can be used as proxies to determine the place of supply. An assumption or proxy which gives more appropriate result than others for determining the place of supply, can be used for determining the place of supply. The same are discussed below:

(a) location of service provider;
(b) location of service receiver;
(c) place where the activity takes place/ place of performance
(d) place where the service is consumed; and
(e) place/person to which/whom actual benefit flows

Separate rules are given in the law in respect of B2B and B2C transactions.

Few relevant definitions:

- Continuous journey means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

  Explanation.--For the purposes of this clause, the term "stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time [Section 2(3) of IGST Act]. The term conveyance has been defined in section 2(34) of the CGST Act to include a vessel, an aircraft and a vehicle.

- Export of goods with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India; [Section 2(5)].

- Export of services means the supply of any service when
  - the supplier of service is located in India,
  - the recipient of service is located outside India,
  - the place of supply of service is outside India,
  - the payment for such service has been received by the supplier of service in convertible foreign exchange, and
  - the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 [Section 2(6)].

  As per Explanation 1 to Section 8, the following are treated as establishments of distinct persons:

  - an establishment in India and any other establishment outside India;
  - an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
  - an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory

- Fixed establishment means a place other than the place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(7)]

- Import of goods with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India [Section 2(10)]

- Import of services means the supply of any service, where

(a) the supplier of service is located outside India,
(b) the recipient of service is located in India, and
(c) the place of supply of service is in India [Section 2(11)].

✪ Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13)]

✪ Location of the recipient of services means:
- where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
- where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
- where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- in absence of such places, the location of the usual place of residence of the recipient [Section 2(14)].

✪ Location of the supplier of services means:

(a) where a supply is made from a place of business for which registration has been obtained, the location of such place of business;
(b) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
(d) in absence of such places, the location of the usual place of residence of the supplier [Section 2(15)]

✪ Online information and database access or retrieval services means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,--

(i) advertising on the internet;

(ii) providing cloud services;
(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
(v) online supplies of digital content (movies, television shows, music and the like);
(vi) digital data storage; and
(vii) online gaming [Section 2(17)].

- Place of business includes

  A place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

  A place where a taxable person maintains his books of account; or

  A place where a taxable person is engaged in business through an agent, by whatever name called; {Section 2(85)}

- Supply shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act [Section 2(21)]

- Words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts [Section 2(24)].

- Recipient of supply of goods or services or both, means—
  - where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
  - where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
  - where no consideration is payable for the supply of a service, the person to whom the service is rendered,
  - and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of the CGST Act].

- ✪ Supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of the CGST Act].

- ✪ Usual place of residence [S. 2(113) of CGST]: Means- a) In case of an individual, the place where he ordinarily resides; b) In other cases, the place where the person is incorporated or otherwise legally constituted.

3.2.2 PLACE OF SUPPLY OF GOODS [SECTIONS 10 AND 11 OF THE IGST ACT]

Sec 10(1) - Any other goods (i.e., other than imports and exports)

a) If supply involves *movement* of goods, whether by supplier or recipient or by any other person. Location of goods at the time at which movement of goods terminates for delivery to recipient

[Example: In case of supply of goods by X of Mumbai to Y of Delhi, the place of supply shall be = Location at time of termination of movement for delivery to recipient viz. Mr. Y = Delhi]

b) if goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, It shall be deemed that the said third person has received the goods and Place of supply of such goods = Principal place of business of such third person

[Example : If X Ltd. of Mumbai supplies goods to Y Ltd. of Delhi on directions of Z Ltd. of Chennai (Z Ltd. acting as agent or otherwise), then, Z Ltd. will be deemed to be recipient and place of supply = Location of Z = Chennai]

c) If supply does not involve movement of goods, whether by the supplier or the recipient - Location of such goods at the time of the delivery to the recipient

[Example: XZ Ltd. (Mumbai, Maharashtra) opens a new branch office at Gurugram, Haryana. It purchases a building for office from KTS Builders (Gurugram) along with pre-installed office furniture and fixtures. Though there will be no GST liability on purchase of building, office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient (XZ Ltd.) i.e., Gurugram]

D) Where the goods are assembled or installed at site - Place of such installation or assembly

[Example, if X Ltd of Hyd supplies goods to Y Ltd. of Hyd by installation or assembling at site of Y Ltd. at Delhi, then, place of supply = Delhi]

(e) Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle - Location at which such goods are taken on board

[Example, if a flight departs from Mumbai to Chennai & food is supplied during flight to passengers, then, place of supply of food = Mumbai.]

Ex: Mr. X (New Delhi) boards the New Delhi-Kota train at New Delhi. He sells the goods taken on board by him (at New Delhi), at Jaipur during the journey. The place of supply of goods is the location at which the goods are taken on board i.e., New Delhi and not Jaipur where it is sold

Sec 10(2) Where the place of supply of goods cannot be determined - Determined in such manner as may be prescribed

Place of Supply of goods imported or exported from India {Section 11}:

11(a): Place of supply for goods imported into India shall be the location of the importer

11(b): Place of supply of goods exported into India shall be the location outside India

13.2.3 PLACE OF SUPPLY OF SERVICES [SECTION 12 TO 14 OF THE IGST ACT]:

Place of Supply of Services if 'location of supplier as well as 'location of recipient of services is in India [Section 12 of the IGST Act]

Section 12(1): *The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.*

Section 12(2): The place of supply of services except the services specified in subsection 3 to 14 made to a registered person shall be the location of such person.

If made to any person other than registered person then the place of supply shall be location of the recipient where the address on record exists and location of supplier in other cases.

Sec 12(3) Services relating to immovable property/boat/vessel: Services Directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or By way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or

By way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

Any services ancillary to the services referred in (a), (b) and (c),

- Location at which the immovable property or boat or vessel is located or intended to be located:
- If the location of the immovable property or boat or vessel is —

(i) **Located or intended to be located outside India** - place of supply shall be the location of the recipient

(ii) **Located in more than one State or Union territory** - Supply of services shall be treated as made in each of respective States or Union territories, in proportion to:

- Value for services separately collected or determined in terms of contract or agreement entered into in this regard or
- In absence of such contract or agreement, on such other basis as may be prescribed.

However, in case where the immovable property or boat or vessel is located in more than one State/ UT, the service is deemed to have been supplied in each of the respective States/ UT, proportionately in terms of value of services determined as per rule 4 in the following manner:-

S. No.	Type of service in relation to immovable property	Factor which determines the proportionate value of service
(a)	Service provided by way of lodging accommodation by hotel, inn, guest house etc. and its ancillary services (other than the cases where such property is a single property located in 2 or more contiguous States/ UT or both)	Number of nights stayed in such property [Refer Example 1]
(b)	All other services provided in relation to immovable property including • services by way of accommodation in any immovable property for organising any marriage or reception etc. • supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in 2 or more contiguous States or/and UT • services ancillary to services mentioned above	Area of the immovable property lying in each State/ UT [Refer Example 2]
(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ UT, to be determined on the basis of declaration made by the service provider [Refer Example 3]

Example 1: A hotel chain X charges a consolidated sum of Rs.30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as Rs.20,000/- in the Union territory of Delhi and Rs.10,000/- in the State of Uttar Pradesh.

Example 2: There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

Example 3: A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka in as much as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.

Sec 12(4) Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery - Location where the services are actually performed

Sec 12(5) Services in relation to training and performance appraisal to—

(a) A registered person - Location of such person

(b) An unregistered person - Location where the services are actually performed

Sec 12(6) Supply of services provided by way of—

- Admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and
- Services ancillary thereto - Place where the event is actually held or where the park or such other place is located

Sec 12(7) Services provided by way of—

(a) Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or

(b) Services ancillary to organization of any of the events or services referred to in clause (a), or

(c) Assigning of sponsorship to such events

(i) Registered person - Location of such person

(ii) Unregistered Person

- Place where event is actually held
- Held outside India, then, location of the recipient.

(iii) Event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event - Place of supply of such services shall be taken as being in each of respective States or Union territories in proportion to :

- Value for services separately collected or determined in terms of the contract or agreement entered into in this regard or,
- In absence of such contract or agreement, on such other basis as may be prescribed.

In the absence of any such contract or agreement, the value is determined in accordance with rule 5 by the application of generally accepted accounting principles.

Example: An event management company E has to organize some promotional events in States S1 and S2 for a recipient R (unregistered). 3 events are to be organized in S1 and 2 in S2. They charge a consolidated amount of Rs.10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 4,00,000/- in S2.

Sec 12(8) Services by way of:

- Transportation of goods,
- Including by mail or courier

(i) Registered person - Location of such person

(ii) Unregistered person - Location at which such goods are handed over for their transportation

Place of supply of goods transported outside India when both supplier and recipient is in India [Section 12(8) of IGST Act]:

Section 12 of the IGST Act prescribes the provisions for determination of place of supply of services when the location of supplier of the services and the location of recipient of the services is in India.

As per sub-section (8) of the said section, the place of supply of services by way of transportation of goods, including by mail or courier, provided to a registered person, is the location of such person and where such services are provided to an unregistered person, the place of supply is the location at which such goods are handed over for their transportation.

A new proviso has been inserted in this sub-section to lay down that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods. Therefore, in case where the location of supplier and recipient is in India and goods are transported to a place outside India, the place of supply of transportation service shall be the place of destination of such goods, i.e. outside India.

Sec 12(9) Supply of passenger transportation service

Return journey is a separate journey: The return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

(i) Registered person - Location of such person

(ii) Unregistered person - Place where the passenger embarks on the conveyance for a continuous journey

(iii) If Right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage - Place of supply of such service shall be determined in accordance with the provisions of section 12(2) [i.e., general rule].

Explanation: Return journey shall be treated as separate journey even if the right to passage for onward and return journey is issued at same time.

Sec 12(10) Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle - Location of the first scheduled point of departure of that conveyance for the journey

Sec 12(11) Telecommunication services including—

Data transfer, broadcasting, Cable and direct to home television (DTH) services

To any person—

(a) In case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna - Location where telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services

LC in more than one State/UT : If leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, then, Place of supply = Being in each of respective States or Union territories in proportion to :

- The value for services separately collected or determined in terms of the contract or agreement entered into in this regard or,
- In the absence of such contract or agreement, on such other basis as may be prescribed.

If the leased circuit is installed in more than one State/ UT and a consolidated amount is charged for supply of services, the place of supply is deemed to be in each of the respective States/ UT in proportion to the value of services determined in terms of the contract or agreement entered into in this regard . In the absence of any such contract or agreement, the value is determined in accordance with rule 6 in proportion to the number of points lying in the State/ UT.

The number of points in a circuit is determined in the following manner-

S. No.	Number of Points	Examples
(i)	In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points	Example 1: A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.
(ii)	Any intermediate point or	Example 2: A company T installs a leased

	place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point	circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively. Example 3: A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

(b) In case of mobile connection for telecommunication and internet services provided on post-paid basis - Location of billing address of the recipient of services on the record of the supplier of services

(c) In cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—

(i) Through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher - Address of selling agent or re-seller or distributor as per record of the supplier at the time of supply;

(ii) By any person to the final subscriber - location where such prepayment is received or such vouchers are sold;

(iii) If such pre-paid service is availed or recharge is made through internet banking or other electronic mode of payment - Location of recipient of services on the record of the supplier of services

(d) In other cases

(i) General address of recipient as per the records of the supplier of services

(ii) If such address is not available - location of supplier of services

(e) If address of the recipient as per the records of the supplier of services is not available, Place of Supply = Location of the supplier of services

Sec 12(12) Banking and other financial services, including stock broking services to any person - Location of recipient of services on records of supplier of services, but, if location of recipient of services is not on the records of the supplier, place of supply shall be the location of the supplier of services.

Sec 12(13) Insurance services

(i) Registered person - Location of such person

(ii) Unregistered person - Location of recipient of services on the records of the supplier of services

Sec 12(14) Advertisement services to —

- Central Government,
- A State Government,
- A statutory body or
- A local authority

Meant for the States or Union territories identified in the contract or agreement

- Place of supply is taken as being in each such States or Union territories
- Value of such supplies specific to each State or Union territory shall be in proportion to :

Amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or,

In the absence of such contract or agreement, on such other basis as may be prescribed. **{Refer Notes}**

Place of Supply of Services if 'location of supplier or 'location of recipient of services is outside India [Section 13 of the IGST Act]:

Sec 13(1): The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India

Sec 13(2): The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

Sec 13(3)(a): Services in respect of goods which are required to be made physically available by recipient of services —

- To the supplier of services, or
- To a person acting on behalf of the supplier of services

In order to provide the services

(i) General - Location where the services are actually performed

(ii) If such services are provided from a remote location by electronic means - Location where goods are situated at the time of supply of services

(iii) Services supplied in respect of goods which are —

- Temporarily imported into India for repairs or **any other treatment or process** and
- Are exported after repairs without being put to any other use in India (other than use required for such repairs), Section 13(3)(a) does not apply; hence, general provision viz. section 13(2) would apply

Sec 13(3)(b) Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services Location where the services are actually performed

Sec 13(4) Services supplied directly in relation to

An immovable property, including —

- Services supplied in this regard by experts and estate agents,
- Supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called,
- Grant of rights to use immovable property,
- Services for carrying out or co-ordination of construction work, including that of architects or interior decorators - Place where immovable property is —
    - Located or
    - Intended to be located

Sec 13(5) Services supplied by way of —

Admission to, or organisation of cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and Of services ancillary to such admission or organisation - Place where the event is actually held

Sec 13(6) & 13(7) - Any services referred to in —

- Section 13(3) [performance based services on goods/individuals], or
- Section 13(4) [services relating to immovable property], or
- Section 13(5) [event-based services]

(i) Such service is supplied at more than one location, including a location in taxable territory - Location in the taxable territory

(ii) Such service is supplied in more than one State or Union territory

- Place of supply is taken as being in each of respective States or Union territories; and
- Value of such supplies specific to each State or Union territory shall be in proportion to:

(a) Value for services separately collected or determined in terms of the contract or agreement entered into in this regard or,

(b) In absence of such contract or agreement, on such other basis as may be prescribed.

As per section 13(7) of the IGST Act, if such services are supplied in more than one State/ UT, the place of supply of such services is taken as being in each such State/ UT and the value of such supplies is determined in terms of the contract or agreement entered into in this regard. In the absence of any such contract or agreement, the value is determined in accordance with rule 7 in the following manner:-

S. No.	Cases	Manner of computing the proportionate value of service
(i)	Services supplied on the same goods	Equally dividing the value of service in each of the States/ UT where the service is performed [Refer Example 1]
(ii)	Services supplied on different goods	Considering the ratio of the invoice value of goods in each States/ UT, on which service is performed, as the ratio of the value of the service performed in each State/UT [Refer Example 2]
(iii)	Services supplied to individuals	Applying generally accepted accounting principles. [Refer Example 3]

Example 1: A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

Example 2: A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the UT of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Example 3: A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

Sec 13(8)(a) Services supplied by —

- A banking company, or
- A financial institution, or

A non-banking financial company, to account holders; Location of supplier of services

Account: means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

Sec 13(8)(b) Intermediary services

Location of supplier of services

Sec 13(8)(c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month - Location of supplier of services

Sec 13(9) Services of transportation of goods, other than by way of mail or courier - Place of destination of such goods

Sec 13(10) Passenger transportation services - Place where passenger embarks on conveyance for a continuous journey

Sec 13(11) Services provided —

- On board a conveyance during course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board First scheduled point of departure of that conveyance for the journey

Sec 13(12) Online information and database access or retrieval services - Location of the recipient of services.

Recipient deemed to be located in TT if any 2 conditions fulfilled: Person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:—

a) The location of address presented by the recipient of services through internet is in the taxable territory;

b)

c) The credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

d)

d) The billing address of the recipient of services is in the taxable territory;

e)

e) The internet protocol address of the device used by the recipient of services is in the taxable territory;

f)

f) The bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

g)

g) The country code of the subscriber identity module card used by the recipient of services is of taxable territory;

h)

g) The location of the fixed land line through which the service is received by the recipient is in the taxable territory.

Sec 13(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances - In case of notified description of services or circumstances, place of supply = Place of effective use and enjoyment of a service.

TEST YOURSELF:

1. Zero rated supply includes

(a) Export of goods and services.

(b) Supply of goods and services to a SEZ developer or SEZ Unit

(c) Supply of goods and services by a SEZ developer or SEZ Unit

(d) Both (a) and (b)

Ans. (d) Both (a) and (b)

2. Which of the following supply involving movement of goods is an intra-State supply?

(a) Location of supplier in Kerala and place of supply in Tamil Nadu

(b) Location of supplier in Karnataka and place of supply in Karnataka

(c) Location of supplier in Kerala and place of supply on Andhra Pradesh

(d) None of the above

Ans. (b) Location of supplier in Karnataka and place of supply in Karnataka.

3. Place of supply in case of installation of elevator is

(a) Where the movement of elevator commences from the supplier's place

(b) Where the delivery of elevator is taken

(c) Where the installation of elevator is made

(d) Where address of the recipient is mentioned in the invoice

Ans. (c) Where the installation of elevator is made.

4. In case of any ambiguity where place of supply of goods cannot be determined as provided in IGST Act, 2106 who will determine the place of supply?

(a) Central Government on recommendation of the Council

(b) State and Central Government on recommendation of the Council

(c) State Government

(d) Central Government

(e) In a manner as may be prescribed

Ans. (e) In a manner as may be prescribed

5. What is location of supply in case of importation of goods?

(a) Customs port where the goods are cleared

(b) Location of the importer

(c) Place where the goods are delivered after clearance from customs port

(d) Owner of the goods

Ans. (b) Location of importer

6. Real estate agent in Delhi charges brokerage fee to Company A located in Chandigarh for assistance in getting a commercial property in Kolkata. Which is the place of supply in this case?

(a) Delhi

(b) Chandigarh

(c) Kolkata

Ans. (c) Kolkata

7. What is the place of supply of service where a restaurant provides catering service at the premise of the customer?

(a) Address of the restaurant from where the food is supplied

(b) Customer premise where catering service is provided

Ans. (b) Customer premise where catering service is provided.

8. Mr. X a resident from Pune conducts training for employees of P Ltd. being a registered person under GST based out in Chennai at a resort in Darjeeling. The place of supply in this case is

(a) Chennai

(b) Pune

(c) Darjeeling

Ans. (a) Chennai

9. Place of supply of service for DTH by ABC Pvt. Ltd. located in Mumbai to customer in Patna is

(a) Mumbai

(b) Patna

Ans. (b) Patna

10. Mr. X of Hyderabad not having bank account takes a demand draft in Kolkata from ABC Bank for his visa purpose. The place of supply is

(a) Hyderabad

(b) Kolkata

Ans. (b) Kolkata

11. The provider of AMC service outside India has entered into an agreement for an aircraft company PQR located in India AMC. The service provider provides repair service to the aircraft when it was in India. The place of service in this case is

(a) Outside India

(b) India

Ans. (b) India since the aircraft is in India when the service is provided

12. If XYZ Ltd a company based out of Bangalore, awards online maintenance contract of its servers located in Mumbai office to Y INC, a company based out of USA, and as per the terms of the online maintenance X INC shall be required to perform regular maintenance from USA using Internet, then the place of supply is

(a) Bangalore

(b) Mumbai

(c) USA

Ans. (b) Mumbai

13. Mr. Y residing in Ahmedabad appoints an architect in Los Angeles to provide Indian traditional home design for his proposed construction at Los Angeles, the place of supply of service is

(a) Los Angeles

(b) Ahmedabad

(c) Delhi

Ans. (a) Los Angeles

14. If NM shipping Co. located in Chennai charges ocean freight charges for transport of goods to California for a customer located in Bangalore, the place of supply of service will be

(a) Chennai

(b) California

(c) Bangalore

Ans. (b) California

15. Which of the following is an inter-State supply?

(a) Supplier of goods located in Delhi and place of supply of goods SEZ located in Delhi

(b) Supplier of goods located in Delhi and place of supply of goods in Jaipur

(c) Supplier of goods located in Delhi and place of supply of goods SEZ located in Chandigarh

(d) All the above

Ans. (d) all the above

16. Which of the following is an intrastate supply?

(a) Supplier of goods located in Delhi and place of supply of goods SEZ located in Delhi

(b) Supplier of goods located in Delhi and place of supply of goods in Jaipur

(c) Supplier of goods located in Delhi and place of supply of goods in Delhi

(d) All the above

Ans. (c) Supplier of goods located in Delhi and place of supply of goods in Delhi

17. Which of the following transaction is inter-state supply of goods involving movement of goods?

(a) Location of supplier is in Bangalore and location of recipient is in Mumbai

(b) Location of supplier is in Bangalore and place of supply is Mumbai

(c) Location of supplier and place of supply is Bangalore

(d) None of the above

Ans. (b) Location of supplier is in Bangalore and place of supply is Mumbai

18. Supply of goods in the course of import of territory of India is

(a) Intrastate supply

(b) Inter-State supply

(c) Export

(d) Inter-state trade or commerce

Ans. (d) Inter-State trade or commerce

Ex: 1 Mr. Karan from New Delhi purchases a laptop from an electronic store in UP. The laptop is delivered by the shop owner to Karan's residence in New Delhi.

A. POS would be considered as **New Delhi** as the laptop has been delivered in New Delhi.

Ex: 2 Mr. Karan from New Delhi purchases a laptop from an electronic store in UP. Karan takes the delivery of the laptop in UP itself and brings it to New Delhi in his own car.

A. POS would be considered as **UP** as the laptop was in UP at the time of delivery of the laptop.

Ex: 3 Mr. Virat purchases a lift to be installed in their New Delhi office from a vendor in Haryana.

A. POS would be considered as **New Delhi** as the lift has been installed in New Delhi.

Ex: 4 Mr. Atul boards a flight from Mumbai to Bengaluru and purchases a bottle of water in flight during the journey.

A. As the bottle was purchased on board the plane, POS would be **Bengaluru.**

Ex: 5 A trader in consumer durables has a sales outlet in Gurgaon (Haryana) and a godown in Delhi. A resident of Delhi goes to Gurgaon outlet, buys an AC and instructs that the delivery be made at his residence in Delhi. Gurgaon office arranges for delivery of air conditioner from its Delhi godown.

A. This transaction involves 2 IGST Supplies. They are –

- By Gurgaon outlet to Delhi resident
- By Delhi godown to Gurgaon outlet

Goods were never delivered to the Gurgaon store but were directly delivered from Delhi store to Delhi Buyer. However, as the Delhi godown has delivered the goods to the customer on the directions of the Gurgaon store (3rd person) it will be deemed that **Gurgaon** store has received and delivered the supplies to the customer.

Ex: 6 If Mr. Amit of Chennai has property in Delhi and avails architect services from Mr. B of Bengaluru, then POS would be Delhi as the supplier, recipient and the property are located in India. However, if such property was located in US, then POS would be **Chennai** as that is the location of the service recipient.

Ex: 7 Mr. Perishetty of Kerala visits a hotel in Jaisalmer and stays at the hotel for 5 days. He avails the gym and restaurant services and makes the individual payment for these services.

A. POS would be Jaisalmer, as the services have been received in **Jaisalmer**.

Ex: 8 Mr. Ravi of Bengaluru purchases a ticket for watching a movie in a Telangana cinema hall.

A. POS would be Telangana, as the services have been received in **Telangana**.

Ex: 9 A caterer is providing catering services on-board a train during Mumbai-Goa-Mangalore which is not included in the fare charges.

A. POS shall be the first scheduled point of departure of the conveyance for that journey, i.e., **Mumbai.**

Ex: 10 Ankur of Telangana who has a savings account with Axis Bank of Telangana gets a DD issued from Axis Bank at Pune.

A. POS would be **Telangana** as Ankur's address is in the records of Axis Bank.
However, If he has taken a DD from HDFC Bank In Pune, without having a bank account there, then POS would be **HDFC, Mumbai** (Pune).

Ex: 11 Ms. Shipra residing in Batinda travels by Air India flight from Chennai to Delhi and gets travel insurance done in New Delhi.

A. POS would be **Batinda**, being the location of the recipient on records of the Insurance Company.

Ex: 12 Singhal Ltd. registered in Maharashtra sold its pre-installed machines located at Haryana to Receiver Ltd. registered in Gujarat.

A. In this case, goods are of nature where they are pre-installed and cannot be moved, POS will be **Haryana**. Hence, IGST will be levied.

Ex: 13 Ramco Ltd. registered in Maharashtra opens a new office in Jodhpur. It purchases 10 Computers to be installed at its Jodhpur office from Supplier Ltd. in Maharashtra.

A. In this case, the location of the supplier is Maharashtra, but the POS will be **Jodhpur, Rajasthan**. Hence, IGST will be levied.

QUESTIONS:

1. What is the place of supply where goods are removed?
2. What will be the place of supply if the goods are delivered by the supplier to a person on the direction of a third person?
3. What is the place of supply where the goods or services are supplied on board a conveyance, such as the vessel, an aircraft, a train or a motor vehicle?
4. The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states.

   What will be the place of supply of construction services?
5. What would be the place of supply of services provided by an event management company for organising a sporting event for sports Federation which is held in multiple states?
6. What is the place of supply of goods, services by way of transportation of goods, including mail or courier?
7. What will be the place of supply of passenger transportation service, if a person travels from Mumbai to Delhi and back to Mumbai?
8. What is the place of supply for mobile connection? Can it be the location of supplier?
9. A person from Mumbai goes to Kulu-Manali and take some services from ICICI bank in Manali.

   What is the place of supply?
10. An unregistered person from Guru gram travels by Air India flight from Mumbai to Delhi and get his travel insurance done in Mumbai. What is the place of supply of insurance service?
11. Priyank of Pune, Maharashtra enters into an agreement to sell goods to Bisht of Bareilly, Uttar Pradesh. While the goods were being packed in Pune godown of Priyank, Bisht got an order from Sahil of Shimoga, Karnataka for the said goods. Bisht agreed to supply the said goods to Sahil and asked Priyank to deliver the goods to Sahil at Shimoga.

    You are required to determine the place of supply(ies) in the above situation.
12. Musicera Pvt. Ltd., owned by NitishDaani - a famous classical singer - wishes to organise a 'NitishDaani Music Concert in Gurugram (Haryana). Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising the said music concert at an agreed consideration of Rs.10,00,000. Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of Rs.4,00,000. Musicera Pvt. Ltd. fixes the entry fee to the music concert at Rs.5,000. 400 tickets for 'NitishDaani Music Concert are sold.

You are required to determine the CGST and SGST or IGST liability, as the case may be, in respect of the supply(ies) involved in the given scenario.

Will your answer be different if the price per ticket is fixed at Rs.450?

Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable.

13. Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organising the grand party for the launch of its new product at Bangalore. Damani Industries is registered in Mumbai. Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.

    Will your answer be different if the product launch party is organised at Dubai?

14. RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

    The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

    With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

15. ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.

    The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

    For the month of December, 20XX, the company has charged US $ 1,00,000 (exclusive of GST) to its foreign customer. With reference to the provisions of GST law, examine whether the said supply will amount to export of service?

16. Mr. Murthy, an unregistered person and a resident of Pune, Maharashtra hires the services of M/s Sun Ltd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru, Karnataka.

(i) Determine the place of supply of services provided by M/s Sun Ltd.

(ii) What would your answer be in case the product launch takes place in Bangkok?

(iii) What would your answer be in case Mr. Murthy is a registered person and product launches take place in Bengaluru and Bangkok?

17. Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties.

Determine the place of supply in the transactions below as per provisions of GST law in the following independent situations:

Case	**Location of Mr. Mahendra Goyal**	**Location of Mr. Harish Jain**	**Properties situated at**
I	Delhi	Maharashtra	New York (USA)
II	Delhi	New York	Paris (France)

Explain the relevant provisions of law to support your conclusions.

18. Asha Enterprises, supplier of sewing machines, is located in Kota (Rajasthan) and registered for purpose of GST in the said State. It receives an order from Deep Traders, located in Jalandhar (Punjab) and registered for the purpose of GST in the said State. The order is for the supply of 100 sewing machines with an instruction to ship the sewing machines to Jyoti Sons, located in Patiala (Punjab) and registered in the said State for purpose of GST. Jyoti Sons is a customer of Deep Traders. Sewing machines are being shipped in a lorry by Asha Enterprises.

Briefly explain the following:

(a) the place of supply under IGST Act, 2017;
(b) the nature of supply:- whether inter-State or intra-State and
(c) whether CGST/SGST or IGST as would be applicable in this case.

19 Determine the place of supply for the following independent cases under the IGST Act, 2017:

(i) Grand Gala Events, an event management company at Kolkata, organises two award functions for Kalyan Jewellers of Chennai (Registered in Chennai, Tamilnadu) at New Delhi and at Singapore.

(ii) Perfect Planners (Bengaluru, Karnataka) is hired by Dr. Kelvin (unregistered person based in Kochi, Kerala) to plan and organise his son's wedding at Mumbai, Maharashtra.

Will your answer be different if the wedding is to take place at Malaysia?

20. Raman Row, a registered supplier under GST in Mumbai, Maharashtra is directed by Nero Enterprises, Kolkata, West Bengal to deliver goods valued at Rs.12,00,000 to Fabricana of Aurangabad in Maharashtra. Raman Row makes out an invoice at 9% tax rate under CGST and SGST respectively (scheduled rate) and delivers it locally in Maharashtra.

Discuss and comment on the above levy of tax and determine the tax liability of goods in the above circumstances.

Lesson 13 : Part III - VALUE OF SUPPLY

13.3.1 CONSIDERATION [Section 2(31)]

1. General Meaning

Consideration is defined in an inclusive sense.

As per section 2(d) of the Indian Contract Act, 1872, consideration is defined as: "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise".

2. Inclusive definition [Sec. 2(31)]

"Consideration" in relation to the supply of goods or services or both includes—

(a) Any payment made or to be made, whether in money or otherwise,

(b) The monetary value of any act or forbearance,

In respect of, in response to, or for the inducement of, the supply of goods or services or both, —

- Whether by the recipient or by any other person
- But shall not include any subsidy given by the Central Government or a State Government;

Deposit — Not consideration, unless appropriated by supplier: However, a deposit given in respect of the supply of goods or services or both —

- Shall not be considered as payment made for such supply
- Unless the supplier applies such deposit as consideration for the said supply.

Analysis: Thus, consideration may flow from a third party as well. But, subsidy and refundable deposits are not consideration.

13.3.2 VALUE OF TAXABLE SUPPLY [Section 15]

Section 15 of the CGST Act supplemented with the Determination of Value of Supply of CGST Rules prescribes the provisions for determining the value of supply of goods and services made in different circumstances and to different persons.

Section 15 of the CGST Act provides common provisions for determining the value of goods and services. It provides the mechanism for determining the value of a supply which is

made between unrelated persons and when price and only the price is the sole consideration of the supply.

In most of the cases of regular normal trade, the invoice value is the taxable value. However, when value cannot be determined under section 15 and for certain specific transactions, the value is determined using Chapter IV: Determination of Value of Supply of CGST Rules.

Provisions of value of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Market value shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related [Section 2(73)]

Prescribed means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].

Recipient of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

Supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].

Voucher means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)]

15(1) General, value = Transaction value

The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both, where

- Supplier and recipient of the supply are not related and
- The price is the sole consideration for the supply.

15(2) Inclusions in value

The value of supply shall include:

- All taxes except CGST, SGST, UTGST & GST Compensation Cess : Any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier;

  It has been clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

- Supplier's obligation met by recipient, if not already included : Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

- Incidental expenses: Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply

- Sums charged for activities done before delivery: Any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- Interest, late fee, etc.: Interest or late fee or penalty for delayed payment of any consideration for any supply;
- Subsidies: Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Subsidy includible in value of recipient - supplier: Amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

15(3) Exclusion of discount

The value of the supply shall not include any discount —

- Discount recorded in invoice : Discount given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- Discount granted as per agreement existing prior to ToS & credit reversed by recipient of supply: Discount given after 'the supply has been effected', if—
- Such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

15(4) Value not determinable — Go to rules

Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

15(5) Notified supplies — Value as per rules

Notwithstanding anything contained in sub-section (1) or subsection (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Illustration:

Computation of value of taxable supply

Particulars	Amount (Rs.)
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods (includible in the value as per section 15(2)(a))	5,000
CGST & SGST chargeable on the goods (not includible in the value as per section 15(2)(a))	-
Packing charges (includible in the value as per 15(2)(c))	1,000
Subsidy received from a non-govt body (since subsidy is received from a non-govt body, the same is included in the value in terms of section 15(2)(e))	2,000
Total	58,000
Less: Discount @ 2% on Rs.50,000 [Since discount is known at the time of supply, it is deductible from the value in terms of section 15(3)(a)]	1,000
Total	**57,000**

13.3.3 DETERMINATION OF VALUE OF SUPPLY OF CGST RULES

1. Value, if consideration is not wholly in money – Rule 27

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall:

(a) General Value = Open market value of such supply;

(b) If open market value is not available Value = Consideration in money + Any such further amount in money as is equivalent to consideration not in money if such amount is known at time of supply;

(c) If value of supply is not determinable under (a) or (b) Value = Value of supply of goods or services or both of like kind and quality;

(d) If value is not determinable under (a) to (c)

Value = Consideration in money + Such further amount in money that is equivalent to consideration not in money as determined, sequentially, by rule 30 or 31.

Illustration:

1. Where a new phone is supplied for Rs.20,000 along with the exchange of an old phone and if the price of the new phone without exchange is Rs.24,000, the open market value of the new phone is Rs.24,000.

   Where a laptop is supplied for Rs.40,000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is Rs.4,000 but the open market value of the laptop is not known, the value of the supply of laptop is Rs.44,000.

2. Samriddhi Advertisers conceptualized and designed the advertising campaign for a new product launched by New Moon Pvt Ltd. for a consideration of Rs.500,000. Samriddhi Advertisers owed Rs.20,000 to one of its vendors in relation to the advertising service provided by it to the New Moon Pvt Ltd. Such liability of Samriddhi Advertisers was discharged by New Moon Pvt Ltd. They delayed the payment of consideration, thus, paid Rs.15,000 as interest.

Determine the taxable value of supply made by Samriddhi Advertisers.

Particulars	Rs.
Service charges	5,00,000
Payment made by New Moon Pvt Ltd to vendor of Samriddhi Advertisers [Liability of the supplier being discharged by the recipient, is includible in the value in terms of section 15(2)(b)]	20,000
Interest for delay in payment of consideration [includible in the value in terms of section 15(2)(d)]	15,000
Value of taxable supply	**5,35,000**

Meaning of open market value & like kind/quality supplies:

(a) "Open market value" of a supply of goods or services or both means —

- the full value in money to obtain such supply at the same time when the supply being valued is made,
- Excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction,
- Where the supplier and the recipient of the supply are not related and price is the sole consideration.

(b) "Supply of goods or services or both of like kind and quality" means —

- Any other supply of goods or services or both
- Made under similar circumstances
- That —

▪ In respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, Is the same as, or closely or substantially resembles, that supply of goods or services or both.

1. **Value of supply between distinct or related persons, other than through an agent {Rule 28}**

The value of the supply of goods or services or both —

- Between distinct persons as specified in sec. 25(4)/(5) (already discussed under 'person') or
- Where the supplier and recipient are related,
- Other than where the supply is made through an agent, shall be,

(a) *General* Value = Open market value of such supply;

(b) *If open market value is not available* Value = Value of supply of goods or services of like kind and quality;

(c) *If value of supply is not determinable under (a) or (b)* Value = Value as determined, sequentially, by rule 30 or 31.

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Invoice value acceptable, if recipient eligible for full credit: Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

2. Value of supply of goods made or received through an agent {Rule 29}

The value of supply of g*oods* between the principal and his agent shall be—.

CaseeEEe	Value
(a) General	Value = (i) Open market value of goods being supplied, or (ii) *At option of supplier,* 90% of price charged for — ♦Supply of goods of like kind and quality ♦By recipient ♦To his customer not being a related person, Where the goods are intended for further supply by the said recipient. *Illustration:* If a principal supplies Pista to his agent and agent is supplying Pista of like kind and quality in subsequent supplies at Rs.5,000 per quintal on day of supply. Another independent supplier supplies Pista of like kind and quality to said agent at the price of Rs.4,550 per quintal. Here, value of supply made by principal = Rs.4,550 per quintal or where he exercises the option, value = 90% of Rs.5,000 =
(b) If value is not dete-rminable in (a)	Value = Determined by application of rule 30 or rule 31 in that order.

3. **Value based on cost {Rule 30} -** Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be 110% of the Cost of production or manufacture or cost of acquisition of such goods or Cost of provision of such services.

4. **Residual method (Best judgment - Rule 31) -** Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be

determined using reasonable means consistent with the principles and general provisions of section 15 and these rules.

Services — Rule 30 may be disregarded: In case of supply of services, the supplier may opt for this rule, disregarding rule 30.

5. **Deemed value in certain supplies {Rule 32} -** Notwithstanding anything contained in the Act or in these rules, the value in respect of supplies specified below shall be determined in the manner provided hereinafter

Supply of services in relation to purchase or sale of foreign currency, including money changing -

Option 1 - Actual Value:

For a currency, when exchanged from, or to, Indian Rupees (Rs.)	Value = (Difference in buying/selling rate and RBI reference rate for that currency at that time) x Total units of currency
If RBI reference rate for a currency is not available	Value = 1% of gross amount of Indian Rupees provided or received by person changing money
If neither of the currencies exchanged is Indian Rupee	Value = 1% of lesser of two amounts, person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

Option 2—Deemed Value : A person supplying services may exercise option to ascertain value in terms of this option for a financial year and such option shall not be withdrawn during the remaining part of that financial year. At the option of supplier of services, the value in relation to supply of foreign currency, including money changing, shall be deemed to be:

Gross amount of currency exchanged per transaction	Value
Up to Rs.1,00,000	1% of currency exchanged or Rs.250, whichever is higher
Exceeds Rs.1,00,000 but upto Rs.10,00,000	Rs.1,000 + 0.5% of currency exchanged for exceeding Rs.

Exceeds Rs.10,00,000	Rs.5,500 + 0.1% of currency exchanged exceeding Rs.10,00,000; subject to maximum of Rs.60,000

Services of booking of air tickets by an air travel agent –

5% of basic fare in case of domestic bookings, + 10% of the basic fare in the case of international bookings of passage for travel by air.

"Basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

Services in relation to life insurance business:

Case	Value
Entire premium paid by the policy holder is only towards the risk cover in life insurance	Full premium
If amount invested in savings is intimated to policy holder at time of supply	Gross premium charged from a policy holder less Amount allocated for investment, or savings on behalf of the policy holder
Single premium annuity policies (other than above)	10% of single premium charged from policy holder
in all other cases	25% of premium charged from policy holder in first year and 12.5% of premium charged from policy holder in subsequent years

I. ***Dealing in buying and selling of second hand goods (as such or after minor processing without changing nature of goods) & no ITC availed on such purchases –***

Value of supply =

- The difference between the selling price and purchase price and
- Where the value of such supply is negative it shall be ignored i.e., Actual Margin or NIL, whichever is higher.

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

II. ***Token, or voucher, or coupon, or stamp (other than postage stamp) redeemable against a supply of goods or services or both –***

Value = Money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

III. ***Services by notified class of service provider –***

Value of taxable services provided by such class of service providers as may be notified by the Central Government on the recommendations of the Council between distinct persons as referred to in section 25, other than those where input tax credit is not available u/s 17(5), shall be NIL.

6. **Exclusion of value of supply of services in case of pure agent {Rule 33}** - Notwithstanding anything contained in these rules, expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if all the following conditions are satisfied, namely:

i. The supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party for the services procured as the contract for supply made by third party is between third party and the recipient of supply;
ii. The recipient of supply uses the services so procured by the supplier service provider in his capacity as pure agent of the recipient of supply;
iii. Recipient of supply is liable to make payment to third party;
iv. The recipient of supply authorises the supplier to make payment on his behalf;
v. The recipient of supply knows that the services for which payment has been made by the supplier shall be provided by the third party;
vi. The payment made by the supplier on behalf of the recipient of supply has been separately indicated in the invoice issued by the supplier to the recipient of service;
vii. The supplier recover from the recipient of supply only such amount as has been paid by him to the third party; and
viii. The services procured by the supplier from the third party as a pure agent of the recipient of supply are in addition to the supply he provides on his own account.

Pure agent: For the purposes of this rule, "pure agent" means a person who —

a) Enter into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
b) Neither intends to hold nor holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply;
c) Does not use for his own interest such goods or services so procured; and
d) Receives only the actual amount incurred to procure such goods or services.

Illustration: Corporate services firm X is engaged to handle the legal work pertaining to the incorporation of Company Y. Other than its service fees, X also recover from Y, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on Y. X is merely acting as a pure agent in the payment of those fees. Therefore, X's recovery of such expenses is a disbursement and not part of the value of supply made by X to Y.

7. **Currency exchange rate {Rule 34} -** The rate of exchange for determination of value of taxable goods or services or both shall be —



- The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- *The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.*

Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax. {Rule 35}

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-

Tax amount = Total amount * Rate of tax / 100 + rate of tax

Value of taxable supply (Section 15)

20.The value of supply of goods and services shall be the

(a) Transaction value

(b) MRP

(c) Market Value

(d) None of above

Ans. (a) Transaction value

21. The value of supply should include

(a) Any non-GST taxes, duties, cesses, fees charged by supplier separately

(b) Interest, late fee or penalty for delayed payment of any consideration for any supply

(c) Subsidies directly linked to the price except subsidies provided by the Central and State Government

(d) All of the above

Ans. (d) All of the above

22. When can the transaction value be rejected for computation of value of supply?

(a) When the buyer and seller are related and price is not the sole consideration

(b) When the buyer and seller are related or price is not the sole consideration

(c) It can never be rejected

(d) When the goods are sold at very low margins

Ans. (b) When the buyer and seller are related or price is not the sole consideration

23. What deductions are allowed from the transaction value?

(a) Discounts offered to customers, subject to conditions

(b) Packing Charges, subject to conditions

(c) Amount paid by customer on behalf of the supplier, subject to conditions

(d) Freight charges incurred by the supplier for CIF terms of supply, subject to conditions

Ans. (a) Discounts offered to customers, subject to conditions

QUESTIONS:

1. R&S food private limited, get an order for supply of processed food from a customer. The customer wants the consignment tested for gluten or specified chemical residues. R&S food Private Limited does the testing and charges a testing fee for the same from the customer. R&S argues that such testing fees should not form part of the consideration for the sale as it is a separate activity. Is his argument correct in the light of section 15?

2. A philanthropic Association makes a substantial donation each year to reputed private management institution to subsidise the education of low-income group students who have gained admission there. The fee for these individuals is reduced thereby, coming to Rs.3 lakhs a year compared to Rs.5 lakhs a year for other students. What would be the taxable value of the service of coaching and instructions provided by the institution?

3. M banners, and advertising firm, gives an interest free credit period of 30 days for payment by the customer. Customer paid for the supply 32 days after the supply of service. M banners waived the interest payable for delay of 2 days.

The department wants to add interest for two days as per contract. Should national interest be added to the taxable value?

4. Mind bakery products Limited sells biscuits and cakes through its dealers, to whom it charges the list price minus standard discount and pays GST accordingly. When goods remain unsold with the dealers, it offers additional discounts on the stock as an incentive to push the sales.

Can this additional discount be reduced from the price at which the goods are sold and concomitant tax adjustments made?

5. Ramu and Co. provides financial and management consultants to a group of companies for an annual retainer ship fee of Rs.15 lakhs. It is given a room in the head office of the group exclusive use. Ramu and Co. pays GST on the amount of Rs.15 lakhs.

Is the value for the service provided by Ramu and Co, correct under GST laws? If not, please elaborate.

6. X coupons Ltd, sells coupons that are redeemable against specified luxury food products at retail outlets. Each coupon has a face value of Rs.900 but is redeemable for supplies worth Rs.1000.

What is the value of supply of such coupon under GST laws?

7. A pharmaceutical company supplies a drug intermediate to its own unit in another state for conversion into formulations. The supplies are taxable as for schedule I of the CGST act. The product is exclusive to this company, and there is no market sale in India of this drug intermediate.

How will the value of the supply of the drug intermediate be determined under GST laws?

8. Prada Forex Private Limited, registered in Delhi, is a money changer. It has undertaken the following purchase and sale of foreign currency:

   (i) 1,000 US $ are purchased from Nandi Enterprises at the rate of Rs. 68 per US $. RBI reference rate for US $ on that day is Rs. 68.60.

   (ii) 2,000 US $ are sold to Menavati at the rate of Rs. 67.50 per US$. RBI reference rate for US $ for that day is not available.

   Determine the value of supply in each of the above cases in terms of:

   (A) Rule 32(2)(a) of the CGST Rules, 2017

   (B) Rule 32(2)(b) of the CGST Rules, 2017.

9. BC Ltd., registered in Noida (Uttar Pradesh) is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:

   - The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is Rs.42,00,000. However, the actual price at which the machinery is supplied to an individual customer varies within a range of ± 10% depending upon the terms of contract of supply with the particular customer.
   - Apart from the price of the machinery, ABC Ltd. charges from the customer the following incidental expenses:
     - associated handling and loading charges of Rs.10,000
     - installation and commissioning charges of Rs.1,00,000

     The machinery can be dismantled and erected at another site, if required. The above charges are compulsorily levied in every case of supply of machinery.

   - Transportation of machinery to the customer's premises is arranged by ABC Ltd. through a third-party service provider [Goods Transport Agency (GTA)]. The

customer enters into a separate service contract with the GTA and pays the freight directly to it.

- The company provides one year free warranty for the machinery. Further, the company also provides an extended two -year warranty on payment of additional charge of Rs.3,00,000, to all its customers.
- A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises. In the event of failure to make the payment within the stipulated time, the company-
  - recovers the discount given; and
  - charges interest @ 1% per month or part of the month on the total amount due from the customer (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.
- For every machinery supplied, ABC Ltd. receives a grant of Rs.2,00,000 from its holding company DEF Ltd.

ABC Ltd. has supplied a machinery to D Pvt. Ltd. on August 1, 20XX at a price of Rs.40,00,000 (excluding all taxes). D Pvt. Ltd has its corporate office in New Delhi. However, the machinery has been installed at its manufacturing unit located in Gurugram (Haryana). D Pvt. Ltd. has paid the freight directly to the GTA and the charges for two-year extended warranty. Discount @ 2% was given to D Pvt. Ltd. as it agreed to make the payment within 15 days. However, D Pvt. Ltd. paid the consideration on 31st October, 20XX.

Assume the rates of taxes to be as under:

Bottle cap making machine		
CGST- 6%	**SGST- 6%**	**IGST - 12%**
Service of transportation of goods		
CGST - 2.5%	**SGST - 2.5%**	**IGST - 5%**
Other services involved in the above supply		
CGST - 9%	**SGST - 9%**	**IGST - 18%**

Calculate the GST payable [CGST & SGST or IGST, as the case may be] on the machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed.

10. Rolly Polly Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of footwear. It imports a footwear making machine from USA.Rolly Polly Manufacturers Ltd. enters into a contract with Rudra Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), to meet all the legal formalities in getting the said machine cleared from the customs station.

Apart from this, Rolly Polly Manufacturers Ltd. authorises Rudra Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd. which shall be reimbursed by Rolly Polly Manufacturers Ltd. to Rudra Logistics on the actual basis in addition to agency charges.

Rudra Logistics raised an invoice in July, 20XX as follows:

S. No.	Particulars	Amount (Rs.)
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	50,000
(iii)	Charges for transport of machine from Kandla port, Gujarat to its Rudra Logistics godown in Ahmedabad, Gujarat	25,000
(iv)	Charges for transport of machine from Rudra Logistics Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	28,000
(v)	Prepared and submitted of Bill of Entry and paid customs duty	5,00,000
(vi)	Dock dues paid	50,000
(vii)	Port charges paid	50,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

Compute the value of supply made by Rudra Logistics with the help of given information. Would your answer be different if Rudra Logistics has charged Rs. 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd.?

11. Kaya Trade Links Pvt. Ltd. is a registered manufacturer of premium ceiling fans. It sells its fans exclusively through distributors appointed across the country. The maximum retail price (MRP) printed on the package of a fan is Rs.10,000. The company sells the ceiling fans to distributors at Rs.7,000 per fan (exclusive of applicable taxes). The applicable rate of GST on ceiling fans is 18%.

The stock is dispatched to the distributors on quarterly basis - stock for a quarter being dispatched in the second week of the month preceding the relevant quarter. However, additional stock is dispatched at any point of the year if the company receives a requisition to that effect from any of its distributors. The company charges Rs.1,000 per fan from distributors towards packing expenses.

The company has a policy to offer a discount of 10% (per fan) on fans supplied to the distributors for a quarter, if the distributors sell 500 fans in the preceding quarter. The discount is offered on the price at which the fans are sold to the distributors (excluding all charges and taxes).

The company appoints Prakash Sales as a distributor on 1stApril and dispatches 750 fans on 8th April as stock for the quarter April-June. Prakash Sales places a purchase order of 1,000 fans with the company for the quarter July-September. The order is dispatched by the company on 10th June and the same is received by the distributor on 18th June. The distributor makes the payment for the fans on 26th June and avails applicable input tax credit. The distributor reports sales of 700 fans for the quarter April-June and 850 fans for the quarter July- September.

Examine the scenario with reference to section 15 of the CGST Act, 2017 and compute the taxable value of fans supplied by Kaya Trade Links Pvt. Ltd. to Prakash Sales during the quarter July-September.

Note: Make suitable assumptions, wherever necessary.

12. Laxmi Ltd. of Bhopal (Madhya Pradesh) is a supplier of machinery. Laxmi Ltd. has supplied machinery to PQR Enterprises in Indore (Madhya Pradesh) on 1st October, 20XX. The invoice for supply has been issued on 1st October, 20XX. Thus, the time of supply of machinery is 1st October, 20XX. Laxmi Ltd. and PQR Enterprise are not related.

Following information is provided:

Basic price of machinery excluding all taxes but including design and engineering charges of Rs.10,000 and loading charges of Rs.20,000 - Rs.20,00,000.

Laxmi Ltd. provides 2 years free warranty for the machinery. Laxmi Ltd. also provides an extended one year warranty on payment of additional charges of

Rs.1,00,000. The extended warranty is given by the manufacturer at the time of supply of goods to the buyer and that the same is not available separately. PQR Enterprises opted for one year warranty.

Laxmi Ltd. has collected consultancy charges in relation to pre-installation planning of Rs.10,000 and freight and insurance charges from place of removal to buyer's premises of Rs.20,000.

Laxmi Ltd. received subsidy of Rs.50,000 from Central Government for supplying the machinery to backward region since receiver was located in a backward region. Laxmi Ltd. also received Rs.50,000 from the joint venture partner of PQR Enterprises for making timely supply of machinery to the recipient.

A cash discount of 1% on the basic price of the machinery is offered at the time of supply, if PQR Enterprises agrees to make the payment within 30 days of the receipt of the machinery at his premises. Discount @ 1% was given to PQR Enterprises as it agreed to make the payment within 30 days.

The machinery attracts CGST and SGST @ 18% (9% + 9%) and IGST @18%.

Compute the CGST and SGST or IGST payable, as the case may be, on the machinery.

13. M/s Jonty India Ltd. a manufacturer of heavy machines registered at Jaipur (Rajasthan) supplied one machine to M/s. Dhanuka Ltd. of Udaipur (Rajasthan) on 05-02-20XX under an invoice of the same date. Using the information given below, compute the value of the machine and the GST payable (CGST & SGST or IGST as the case may be) in cash for the month of February, 20XX by M/s Jonty India Ltd. with appropriate working notes.

Assume Rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18% respectively.

Sl. No.	Particulars	Amount in Rs.
(i)	The Basic price of the machine (exclusive of taxes and	28,50,000
(ii)	Trade discount is allowed at 3% on the basic price and is shown in the invoice.	85,500
(iii)	Secondary packing (in iron sheets) charges for safe transportation of the machine on the request of buyer.	30,000

(iv)	Design and engineering charges of the machine	90,000
(v)	Tax levied by Municipal Authority on the sale of the machine.	25,000
(vi)	Subsidy received by the supplier from the State Government to encourage manufacture of the machine.	80,000
(vii)	Pre-delivery inspection charges paid to an independent agency in terms of the agreement for supply. The amount was paid by M/s. Dhanuka Ltd.	22,000
(viii)	Interest amount paid by M/s. Dhanuka Ltd. for delay in payment for the machine.	12,000
	Inward Supplies	
(i)	IGST paid on food items for consumption by employees working in the factory.	8,000
(ii)	SGST and CGST (Rs.15,000 each) paid on Electrical transformer used in the manufacturing process.	30,000

Note:

(i) M/s Jonty India Ltd. has no input tax credit balance at the beginning of February, 20XX. All the other conditions necessary for availing the eligible input tax credit have been fulfilled.

(ii) There are no other transactions of supplies during the month of February, 20XX.

(iii) M/s Jonty India Ltd. and M/s. Dhanuka Ltd. are not related persons.

14. Dev Enterprises is the supplier of water coolers. Dev Enterprises supplied water coolers to Vimal Traders for consideration of Rs.2,95,000 (inclusive of GST @ 18%). Vimal Traders also gave some materials to Dev Enterprises as consideration for such supply whose value was Rs.10,000 (exclusive of GST).

Dev Enterprises has supplied the same goods to another person at price of Rs.2,97,360 (inclusive of GST@18%).

You are required to:

(1) Determine the value of goods supplied by Dev Enterprises to Vimal Traders as per the provisions of the CGST Act, 2017.

(2) What would your answer be if price of Rs.2,97,360 is not available at the time of supply of goods to Vimal Traders? Explain briefly.

15. Zindagi Life Insurance Company Limited (ZLICL) has collected premium from subscribers and it does not intimate the amount allocated for investment to subscribers at the time of collection of premium. During the month of September 20XX, it has collected the following receipts:

Sl. No.	Particulars	Amount
1.	Premium for only risk cover	25,00,000
2.	Premium from new sub	40,00,000
3.	Renewal Premium	80,00,000
4.	Single premium on annuity	1,00,00,000

All amounts are exclusive of tax. You are required to compute the value of supply by ZLICL in accordance with GST laws.

16. Vayu Ltd. provides you the following particulars relating to goods supplied by it to Agni Ltd.:

Particulars	Rs.
List price of the goods (exclusive of Taxes and discounts).	76,000
Special packing at the request of customer to be charged to the customer.	5,000
Duty levied by local authority on the sale of such goods.	4,000
CGST and SGST charged in invoice.	14,400
Subsidy received from a NGO (The price of Rs.76,000 given above is after considering the subsidy)	5,000

Vayu Ltd. offers 3% discount of the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supplies made by Vayu Ltd.

LESSON 14 - INPUT TAX CREDIT

14.1 CERTAIN DEFINITIONS [Section 2]

Input tax (Sec 2(62)) - "Input tax" in relation to a registered person,

Means central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- Integrated goods and services tax charged on import of goods;
- The reverse charge tax payable under the provisions of sub-sections (3) and (4) of section 9;
- The reverse charge tax payable under the provisions of sub- sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- The reverse charge tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- The reverse charge tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,
- But does not include the tax paid under the composition levy:

Input tax credit (Sec 2(63)) - "Input tax credit" means the credit of input tax

Output tax (Sec 2(82)) - "Output tax" in relation to a taxable person, means —

The tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis. Thus, RCM tax is input tax and not output tax.

Capital goods (Sec 2(19)) - "Capital goods" means goods the value of which is capitalised in the books of account of the person claiming the input tax credit and Which are used or intended to be used in the course or furtherance of business

Input (Sec 2(59)) - "Input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

Place of business includes--

- a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- a place where a taxable person maintains his books of account; or
- a place where a taxable person is engaged in business through an agent, by whatever name called [Section 2(85)].

Quarter shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year [Section 2(92)].

Job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly [Section 2(68)]

Manufacture means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly [Section 2(72)]

Market value shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related [Section 2(73)].

Motor vehicle shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 [Section 2(76)].

Non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India [Section 2(77)].

Non-taxable supply means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act [Section 2(78)]

Conveyance includes a vessel, an aircraft and a vehicle [Section 2(34)].

Document includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)]

Input means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business [Section 2(59)].

Input service (Sec 2(60)) - "Input service" means any service used or intended to be used by a supplier in the course or furtherance of business

Input service distributor *(Sec* 2(61)) - "Input Service Distributor" means an office of the supplier of goods or services or both which Receives tax invoices issued under section 31 towards the receipt of input services and Issues a prescribed document for the purposes of distributing —

- ✓ The credit of central tax, State tax, integrated tax or Union territory tax paid on the said services
- ✓ To a supplier of taxable goods or services or both having same Permanent Account Number as that of said office;

Chapter V of the CGST Act [Sections 16 to 21] & Chapter V: Input Tax Credit of the CGST Rules [Rules 36-45] prescribe the provisions relating to ITC. State GST laws also prescribe identical provisions in relation to ITC.

14.2 ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT [Sec.16]

General power to take credit - Every registered person shall

Subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of —

Input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to electronic credit ledger (viz. input tax credit account) of such person.

Conditions - Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless—

Tax paying document: he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

Goods/service received: he has received the goods or services or both.

Delivery at recipient's instruction is valid receipt by recipient: It shall be deemed that the registered person has received the goods OR SERVICES where the goods OR SERVICES are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise.

Tax charged actually paid to Govt. : subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

Return furnished: he has furnished the return under section 39.

Goods in lot — Credit on receipt of last lot - Where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

Reversal of credit, if sum not paid in 180 days — Re-credit later **-** Where a recipient fails to pay —

To the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis,

The amount towards the value of supply along with tax payable thereon within a period of 180 days from date of issue of invoice by supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

However, recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

No ITC, if depreciation claimed on tax - Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

Time-limit - A registered person is not entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both, after —

The due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or

Furnishing of the relevant annual return, whichever is earlier.

Amendments:

With effect from 09.10.2019, a new sub-rule (4) has been introduced in rule 36 to specify the quantum of ITC that can be claimed against the invoices/debit notes uploaded and invoices/debit notes not uploaded, by the supplier. As per sub-rule (4) of rule 36, ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1, cannot exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1.

14.3 APPORTIONMENT OF CREDIT AND BLOCKED CREDITS [Section 17]

Business/ Personal use — Pro rata credit [17(1)] - Where the goods or services or both are used by the registered person —

Partly for the purpose of any business and

Partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

No credit for exempt supplies — Pro rata [17(2) & (3)] - Where the goods or services or both are used by the registered person —

Partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and

Partly for effecting *exempt supplies* under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Inclusion in exempt supplies: The value of exempt supply shall be such as may be prescribed, and shall include —

Supplies on which recipient is liable to pay tax on reverse charge basis, Transactions in securities, Sale of land and Sale of building, subject to construction services under Schedule II.

The CGST (Amendment) Act, 2018 has inserted an explanation in this sub-section to clarify that 'value of exempt supply for the purpose of this sub-section shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule, i.e. sale of land and sale of building. Therefore, while in all other items of Schedule III, ITC will not be required to be reversed; in case of sale of land and sale of building, ITC will need to be reversed.

Banks, FI &NBFC [17(4)] - A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to :

(a) Either comply with the provisions of sub-section (2), or

(b) Avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

The option once exercised shall not be withdrawn during the remaining part of the financial year. However, the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

Attribution - The Central Government may prescribe the manner in which the credit referred to in sub-sections *(1)* and (2) may be attributed.

14.4 ITEMS INELIGIBLE FOR CREDIT [Section 17(5)]

Notwithstanding anything contained in section 16(2) and section 18(2), input tax credit shall not be available in respect of the following, namely:—

Motor vehicles - Motor vehicles and other conveyances except when they are used—

(i) For making the following taxable supplies, namely:—

Further supply of such vehicles or conveyances; or

Transportation of passengers; or

Imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) For transportation of goods;

- ***ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed.***
- ***ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is not allowed.***
- ***ITC is allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.***
- As per section 2(28) of the Motor Vehicles Act, 1988, "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.

Food, beauty, health etc. - The following supply of goods or services or both—

Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery. *However, it is eligible for credit, if an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;*

Membership of a club, health and fitness centre;

Rent-a-cab, life insurance and health insurance. *However, it is eligible for credit, if—*

The Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

Such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

Travel benefits extended to employees on vacation such as leave or home travel concession.

Works contract services - Works contract services when supplied for construction of an immovable property. However, credit is allowed, if —

- It is supplied for construction of plant and machinery, or,
- It is an input service for further supply of works contract service;

Construction : "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.

Plant and machinery : It means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

Land, building or any other civil structures;

Telecommunication towers; and

Pipelines laid outside the factory premises.

Construction inputs - Goods or services or both received by a taxable person for construction of an immovable property on his own account including when such goods or services or both are used in the course or furtherance of business. However, credit is allowed, if it is supplied for construction of plant or machinery.

Composite tax item - Goods or services or both on which tax has been paid under section 10

NR person - Goods or services or both received by a non-resident taxable person except on goods imported by him.

Personal use - Goods or services or both used for personal consumption

Lost, stolen or gifted or samples - Goods Lost, Stolen, Destroyed, Written off or Disposed of by way of gift or free samples; and

Evasion, seizure & confiscation - Any tax paid in accordance with the provisions of sections 74 (evasion matters), 129 (seizure/detention) and 130 (confiscation)

14.5 AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES [Section 18]

New Registration — credit of stock [18(1)] - A person who —

Has applied for registration under this Act within 30 days from the date on which he becomes liable to registration and

Has been granted such registration shall be entitled to take credit of input tax in respect of

Inputs held in stock and

Inputs contained in semi-finished or finished goods held in stock

On the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Voluntary Registration [18(1)] A person who takes registration u/s 25(3) [voluntary registration] shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration

Opting out of composite tax [18(1)] - Where any registered person ceases to pay tax under section 10 [composite Tax], he shall be entitled to take credit of input tax in respect of —

Inputs held in stock,

Inputs contained in semi-finished or finished goods held in stock and

On capital goods (however, credit on capital goods shall be reduced by such percentage points as may be prescribed), on the day immediately preceding the date from which he becomes liable to pay tax under section 9.

***Exempted Supply becoming taxable [18(1)]* -** Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of —

Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and

On capital goods exclusively used for such exempt supply *(however, credit on capital goods shall be reduced by such percentage points as may be prescribed),*

On the day immediately preceding the date from which such supply becomes taxable.

Time-limit of 1 year [18(2)] - A registered person shall not be entitled to take input tax credit under Section 18(1) in respect of any supply of goods or services or both to him after 1 year from the date of issue of tax invoice relating to such supply.

Transfer of credit [18(3)] - Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall he allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Opting Composite tax, or, supplies becoming exempt [18(4)] - Where —

Any registered person who has availed of input tax credit opts to pay tax under section 10 [composite tax] or,

Where goods/services or both supplied by him become wholly exempt, he shall pay an amount, —

By way of debit in the electronic credit ledger or electronic cash ledger,

Equivalent to the credit of input tax in respect of : (i) inputs held in stock, and (ii) inputs contained in semi-finished or finished goods held in stock and (iii) on capital goods (reduced by such percentage points as may be prescribed), on the day immediately preceding the date of exercising of such option or the date of such exemption ; and

After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

Note: *Electronic Credit Ledger is Input Tax Credit Alc; and electronic cash ledger is Personal Ledger Alc (PLA).*

Rules - The amount of credit under sub-section *[1)* and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

Supply of capital goods or P&M, on which ITC taken -

Supply of capital goods or plant and machinery, on which input tax credit has been taken Amount equal to:

(i) Input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or

(ii) Tax on the transaction value of such capital goods or plant and machinery determined u/s 15, whichever is higher

If refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap - The taxable person may pay tax on the transaction value of such goods determined under section 15.

14.6 JOB-WORK — INPUT TAX CREDIT & PROCEDURE [Section 19]

Job work procedure [Section 143 read with section 19]

A registered person (viz. "principal") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise.

Return or Onward supply within 1 year/3 years : The principal shall,—

(a) Bring back —

- inputs, after completion of job work or otherwise, within 1 year,
- capital goods, other than moulds and dies, jigs and fixtures, or tools, within 3 years,
- respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) Supply such —

- inputs, after completion of job work or otherwise, within 1 year,
- capital goods, other than moulds and dies, jigs and fixtures, or tools, within 3 years, respectively, of their being sent out, from the place of business of a job worker —
- on payment of tax within India, or
- with or without payment of tax for export, as case may be:

However, the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of (b) unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

Where the job worker is registered under section 25; or

Where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

Deemed supply to job-worker, if goods not returned/supplied in 1 or 3 yrs.:

Where —

- The inputs sent for job work, or
- Capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work

are not received back or are not supplied within 1 year or 3 years aforesaid, then, it shall be deemed that such inputs/capital goods had been supplied by principal to job worker on day when inputs/capital goods were sent out.

In case of direct dispatch to job-worker, 1 year or 3 year starts from receipt by job-worker; where the inputs are sent directly to a job worker, the period of 1 year or 3 years shall be counted from the date of receipt of inputs by the job worker.

Analysis: Thus, in respect of moulds and dies, jigs and fixtures, or tools, there is no requirement to bring back or make onward supply within 1 or 3 years. In view of specific provisions of section 19, this benefit would apply even if moulds and dies, jigs and fixtures, or tools are held as 'input'.

Direct supply of waste from job-worker's premises: Any waste and scrap generated during the job work may be supplied —

By the job worker directly from his place of business on payment of tax, if such job worker is registered, or

By the principal, if the job worker is not registered.

Input includes intermediate goods: For the purposes of job work, "input" includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Taking input tax credit in respect of inputs and capital goods sent for job work [Section 19]

Principal eligible for credit on input/capital good: Principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs or capital goods sent to a job worker for job-work.

Direct delivery at job-worker's premises: Credit is allowed even if the inputs or capital goods are directly sent to a job worker for job work without being first brought to his place of business.

14.7 MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR — RECOVERY IN CASE OF WRONG DISTRIBUTION [Sec. 20 & 21]

Input Service Distributor [Sec. 2(61) - "Input Service Distributor" [ISD] means an office of the supplier of goods or services or both which —

Receives tax invoices issued under section 31 towards the receipt of input services and

Issues a prescribed document for the purposes of distributing the credit of Central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having same Permanent Account Number as that of said office;

Relevant period - "Relevant period" shall be—

If the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

If some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

Recipient of credit - The expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the ISD

Turnover - The term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

General - The Input Service Distributor shall distribute —

The credit of central tax as central tax or integrated tax and

The credit of integrated tax as integrated tax or central tax,

By way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

Conditions - The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

Valid document: the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

Distribution cannot exceed credit: the amount of the credit distributed shall not exceed the amount of credit available for distribution;

Specific to specific distribution: the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

Credit of more than one unit to be apportioned to them in turnover ratio of last year, if operational in current year : the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period.

Credit of all units to be apportioned to all in turnover ratio of last year, if operational in current year : the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Manner of recovery of credit distributed in excess [Sec. 21] - Where the Input Service Distributor distributes —

The credit in contravention of the provisions contained in section 20

Resulting in excess distribution of credit to one or more recipients of credit,

The excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis,* apply for determination of amount to be recovered.

Use of CGST Credit [Sec. 49(4)] - The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

Use of input tax credit [Sec. 49(5)] - The amount of input tax credit available in the electronic credit ledger of the registered person on account of the following shall be used as follows —

(a) Integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(d) Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(e) CGST not usable against SGST or UTGST & vice-versa the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) The State tax or Union territory tax shall not be utilised towards payment of central tax.

SGST/ UTGST to be used for payment of IGST only when credit of CGST is not available [Section 49 of the CGST Act]

Section 49(5) prescribes the order of utilization of ITC. As per clause (c) and clause (d) of section 49(5), ITC of SGST/UTGST should first be utilized towards payment of SGST/UTGST and the amount remaining, if any, may be utilized towards payment of IGST.

The CGST (Amendment) Act, 2018 has inserted provisos after the said clause (c) and clause (d) to lay down that ITC on account of SGST/UTGST can be utilized towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST.

ITC of IGST to be fully utilised first [New section 49A of the CGST Act]

The CGST (Amendment) Act, 2018 has inserted a new section 49A "Utilisation of input tax credit subject to certain conditions" in the CGST Act.

Section 49A provides that ITC of CGST, SGST/UTGST should be utilised towards

payment of IGST, CGST, SGST/UTGST only after the ITC of IGST has first been utilised fully towards such payment. Section 49A starts with a non obstante clause, "Notwithstanding anything contained in section 49…." Thus, the provisions of section 49A would prevail over the provisions of section 49.

Order of utilization of ITC [New section 49B of the CGST Act]

The CGST (Amendment) Act, 2018 has inserted a new section 49B "Order of utilisation of input tax credit" in the CGST Act.

Section 49B provides that the Government may, on the recommendations of the Council, prescribe the order and manner of utilization of the ITC of IGST, CGST, SGST/UTGST towards payment of any such tax. Section 49B also starts with a non obstante clause, "Notwithstanding anything contained in this Chapter …." Thus, the provisions of section 49B would prevail over the provisions contained in Chapter X: Payment of Tax. However, utilisation of ITC of CGST for payment of SGST/UTGST and *vice versa* will not be prescribed.

Rule 88A specifies that IGST credit to be fully utilized before utilizing CGST/ SGST credit. Further, IGST input to be first utilized towards IGST output and then towards output CGST/ SGST in any order or any manner.

14.8 INPUT TAX CREDIT RELATING TO CESS [S. 11 of GST Compensation Act]

1. Provisions of CGST or IGST Apply - As per section 11, the provisions of CGST and IGST Act relating to input tax credit shall apply for purposes of this cess.

2. Meaning of input tax [Sec. 2(g)] - "Input tax" in relation to a taxable person, means,—

(i) Cess charged on any supply of goods or services or both made to him;

(ii) Cess charged on import of goods and

(iii) Includes the cess payable on reverse charge basis;

3. Credit of cess usable to pay cess only [Sec. 11] - The input tax credit in respect of cess [GST compensation cess] on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

14.9 INPUT TAX CREDIT OF THE CGST RULES

14.9.1 Documents & conditions for claiming input tax credit {Rule 36}

Documents: The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:—

- An invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- A debit note issued by a supplier in accordance with the provisions of section 34;
- A bill of entry;
- An invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31;
- A document issued by an Input Service Distributor in accordance with the provisions of invoice rules;

1) **Documents should contain specified particulars:** Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in Invoice Rules are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.

2) **No credit, if demand raised alleging fraud :** No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been raised on account of any fraud, wilful misstatement or suppression of facts.

4.9.2 Reversal of input tax credit in case of non-payment of consideration {Rule 37}

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply and the amount of input tax credit availed of in **FORM GSTR-2** for the month immediately following the period of one hundred and eighty days from the date of issue of invoice.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

This point will not apply to

1. Deemed supplies without consideration
2. Suppliers obligation met by recipient
3. Supplies covered under reverse charge.

Claim of credit by a banking company or a financial institution {Rule 38} - A banking company or a financial institution, including a non-banking financial company, engaged in supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the procedure specified below —

(a) The said company or institution shall not avail the credit of tax paid on inputs and input services that are used for non-business purposes and the credit attributable to supplies specified in sub-section (5) of section 17, in **FORM GSTR-2;**

(b) The said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);

(c) Fifty per cent, of the remaining input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in **FORM GSTR-2;**

(d) The amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.

Manner of determination of input tax credit in certain cases and reversal thereof {Rule 42}

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-sections (1) or (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempted supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,—

(a)Total input tax involved on inputs and input services in a tax period, be denoted as 'T';

(b)The amount of input tax, out of **T,** attributable to inputs and input services intended to be used exclusively for purposes other than business, be denoted as 'T1';

(c)The amount of input tax, out of **T,** attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T2';

(d)The amount of input tax, out of **T,** in respect of inputs on which credit is not available under sub-section (5) of section 17, be denoted as 'T3';

(e)The amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C1'and calculated as: **C1 = T — (T1+T2+T3)**

(f)The amount of input tax credit attributable to inputs and input services used exclusively in or in relation to taxable supplies including zero rated supplies, be denoted as 'T4';

(g)T1', 'T2', 'T3'and T4' shall be determined and declared by the registered person at the invoice level in **FORM GSTR-2;**

(h)Input tax credit left after attribution of input tax credit under clause (g) shall be called common credit, be denoted as 'C2'and calculated as: C2 = C1- T4

(i)Input tax credit attributable towards exempt supplies, be denoted as 'Dl' and calculated as: D1= (E÷F) x C2

where,—

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero rated supplies, during the tax period, and

'F' is the total turnover of the registered person during the tax period.

However, where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall calculated by taking values of 'E' and 'F' of the last tax period for which details of such turnover are available, previous to the month during which the said value of 'E/F' is to calculated;

Explanation— the aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule and entry 92A of List I.

(j) The amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to five per cent, of C2; and

(k) The remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting taxable supplies including zero rated supplies and shall be denoted as 'C3', where **C3 = C2 — (D1+D2)**

(l) The amount 'C3' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;

(m) The amount equal to 'Dl' and 'D2' shall be reversed:

However, if the amount of input tax relating to inputs or input services which have been used partly for purposes other than business and partly for effecting exempt supplies has been identified and segregated at invoice level by the registered person, the same shall be included in Tl and 'T2' respectively, and the remaining amount of credit on such input or input services shall be included in 'T4'.

(2) The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for filing the return for the month of September following the end of the financial year to which such credit relates, in the manner prescribed in the said sub-rule, and

(a) Where the aggregate of the amounts calculated finally in respect of 'Dl' and 'D2' exceeds the aggregate of the amounts determined under subrule (1) in respect of 'Dl' and 'D2', such excess shall be reversed for a month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from first day of April of the succeeding financial year till the date of payment; or

(b) Where the aggregate of the amounts determined under sub-rule (1) in respect of T1 and 'D2 exceeds the aggregate of the amounts calculated finally in respect of 'Dl and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases {Rule 43}

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies

and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,—

a) The amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in **FORM GSTR-2** and shall not be credited to his electronic credit ledger;

b) The amount of input tax in respect of capital goods used or intended to be used exclusively for effecting taxable supplies including zero-rated supplies shall be indicated in **FORM GSTR-2** and shall be credited to the electronic credit ledger;

c) The amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years:

However, where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

d) The aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'Tc', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under this clause, the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'Tc';

e) The amount of input tax credit attributable to a tax period on common capital goods during their residual life, be denoted as 'T' and calculated as:- **Tm= Tc÷60**

f) The amount of input tax credit, at the beginning of a tax period, on all common capital goods whose residual life remains during the tax period, be denoted as 'Tr' and shall be the aggregate of 'Tm' for all such capital goods.

g) The amount of common credit attributable towards exempted supplies, be denoted as 'Te', and calculated as: **Te= (E÷F) x T**r where, 'ERs.is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero rated supplies, during the tax period, and 'FRs.is the total turnover of the registered person during the tax period: However, where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' calculated by taking values of 'E and 'F of the last tax period for which details of such turnover are available, previous to the month during which the said value of 'E/F.is to calculated; Aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

h) The amount Te along with applicable interest shall, during every tax period of the residual life of the concerned capital goods, be added to the output tax liability/ **reversed** of the person making such claim of credit.

(2) The amount Te shall be computed separately for central tax, State tax, Union territory tax and integrated tax.

Procedure for distribution of input tax credit by Input Service Distributor {Rule 39}

(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the conditions specified below:—

(a) The input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR-6** in accordance with the provisions of Chapter -— *(Return Rules);*

(b) The Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount ineligible as input tax credit under provisions of sub-section (5) of section 17 and the amount eligible as input tax credit;

(c) The input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);

(d) The input tax credit that is required to be distributed in accordance with the provisions of clause(d) and (e) of sub- section (2) of section 20 to one of the recipients 'Rl', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "Cl", to be calculated by applying the following formula:—

$$C1 = (t1 \div T) \times C$$

where,—

"C" is the amount of credit to be distributed,

"t1" is the turnover, as referred to in section 20, of person Rl during the relevant period, and

"T" is the aggregate of the turnover of all recipients during the relevant period;

(e) Input tax credit on account of integrated tax is distributed as input tax credit of integrated tax to every recipient;

(f) Input tax credit on account of central tax and State tax shall,—

I. In respect of a recipient located in the same State in which the Input Service Distributor is located, be distributed as input tax credit of Central tax and State tax respectively;

II. In respect of a recipient located in a State other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax that qualifies for distribution to such recipient in accordance with clause (d);

(g) The Input Service Distributor shall issue an ISD invoice, as prescribed in invoice rules, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

(h) The Input Service Distributor shall issue an ISD credit note, as prescribed in invoice rules, for reduction of credit in case the input tax credit already distributed gets reduced for any reason.

(i) Any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (g) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) above and such credit shall be distributed in the month in which the debit note has been included in the return in **FORM GSTR-6.**

Manner of claiming credit in special Circumstances {Rule 40}

(1) Input tax credit claimed in accordance with the provisions of section 18 on the inputs lying in stock or inputs contained in semifinished or finished goods lying in stock, or the credit claimed on capital goods in accordance with the provisions of said section, shall be subject to the following conditions —

(a) The input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person.

(b) The registered person shall within thirty days from the date of his becoming eligible to avail of input tax credit under sub- section (1) of section 18 shall

make a declaration, electronically, on the Common Portal in **FORM GST ITC-01** to the effect that he is eligible to avail of input tax credit as aforesaid;

(c) The declaration under clause (b) shall clearly specify the details relating to the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or as the case may be, capital goods-

(i) On the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, in the case of a claim under clause (a) of sub-section (1) of Section 18,

(ii) On the day immediately preceding the date of grant of registration, in the case of a claim under clause (b) of sub- section (1) of Section 18,

(iii) On the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of Section 18,

(iv) On the day immediately preceding the date from which supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of Section 18.

(d) The details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered account or cost accountant if the aggregate value of claim on account of central tax, State tax and integrated tax exceeds two lakh rupees.

(e) The input tax credit claimed in accordance with clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in **FORM GSTR-1** or as the case may be, in **FORM GSTR- 4,** on the Common Portal.

Transfer of credit on sale, merger, amalgamation, lease or transfer of a business {Rule 41}

(1) A registered person shall, on sale, merger, de-merger, amalgamation, lease or transfer or change in ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in **FORM GST ITC**-02 electronically on the Common Portal along with a request to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee: **However,** that in the

case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered account or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for transfer of liabilities.

(3) The transferee shall, on the Common Portal, accept the details so furnished by the transferor and, upon such acceptance, the un- utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Manner of reversal of credit under special Circumstances {Rule 44}

1) The amount of input tax credit, relating to inputs lying in stock, inputs contained in semi-finished and finished goods lying in stock, and capital goods lying in stock, for the purposes of sub-section (4) of section 18 or sub-section (5) of 29, shall be determined in the following manner namely,—

a) For inputs lying in stock, and inputs contained in semi-finished and finished goods lying in stock, the input tax credit shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such input.

b) For capital goods lying in stock the input tax credit involved in the remaining residual life in months shall be computed on pro-rata basis, taking the residual life as five years;

Illustration: Capital goods have been in use for 4 years, 6 month and 15 days. The residual remaining life in months = 5 months ignoring a part of the month Input tax credit taken on such capital goods=C. Input tax credit attributable to remaining residual life=C multiplied by 5/60

2) The amount, as prescribed in sub-rule (1) shall be determined separately for input tax credit of IGST and CGST.

3) Where the tax invoices related to the inputs lying in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of goods on the effective date of occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be Sub-section

(5) of section 29. The details furnished in accordance with this rule shall be duly certified by practicing CA or cost accountant.

2) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in **FORM GST ITC-03,** where such amount relates to any event specified in sub-section (4) of section 18 and in **FORM GSTR-10,** where such amount relates to cancellation of registration.

TEST YOURSELF:

1. Whether definition of Inputs includes capital goods

(a) Yes
(b) No
(c) Certain capital goods only
(d) None of the above

Ans. (a) No

2. Is it mandatory to capitalize the capital goods in books of Accounts?

(a) Yes
(b) No
(c) Optional
(d) None of the above

Ans. (a) Yes

3. Whether credit on capital goods can be taken immediately on receipt of the goods?

(a) Yes
(b) No
(c) After usage of such capital goods
(d) After capitalizing in books of Accounts

Ans. (a) Yes

4. Whether it is necessary to capitalize the capital goods in the books of account

(a) Yes

(b) No

(c) Only use of goods is recognized

(d) Accounting is not relevant

Ans. (a) Yes

5. The term "used in the course or furtherance of business" means?

(a) It should be directly co related to output supply

(b) It is planned to use in the course of business

(c) It is used in the course of business

(d) It is used in the course of business for making outward supply

Ans. (c) It is used in the course of business

6. Under section 16(2) of CGST Act how many conditions are to be fulfilled for the entitlement of credit?

(a) All the conditions

(b) Any two conditions

(c) Conditions not specified

(d) None of the above

Ans. (a) All the conditions

7. Whether credit on inputs should be availed based on receipt of documents or receipt of goods

(a) Receipt of goods

(b) Receipt of Documents

(c) Both

(d) Either receipt of documents or Receipt of goods

Ans. (c) Both

8. In case supplier has deposited the taxes but the receiver has not received the documents, is receiver entitled to avail credit?

(a) Yes it will be auto populated in recipient monthly returns

(b) No as one of the conditions of 16(2) is not fulfilled

(c) Yes if the receiver can prove later that documents are received subsequently

(d) None of the above

Ans. (b) No as one of the conditions of 16 (2) is not fulfilled

9. Input tax credit on capital goods and Inputs can be availed in one installment or in multiple installments?

(a) In thirty six installments

(b) In twelve installments

(c) In one installment

(d) In six installments

Ans. (c) In one instalment

10. The tax paying documents in section 16(2) is

(a) Bill of entry, Invoice raised on RCM supplies, etc.

(b) Acknowledged copy of tax paid to department

(c) Supply invoice by the recipient

(d) Any of the above

Ans. (a) Bill of entry, Invoice raised on RCM supplies, etc.

11. The time limit to pay the value of supply with taxes to avail the input tax credit?

(a) Three months

(b) Six Months

(c) One hundred and eighty days

(d) Till the date of filing of Annual Return

Ans. (c) One hundred and eighty days

12. What is the time limit for taking input tax credit by a registered taxable person

(a) No time limit

(b) 1 year from the date of invoice

(c) Due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains

(d) Due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier

Ans. (d) Due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier

13. Can the recipient avail the Input tax credit for the part payment of the amount to the supplier within one hundred and eighty days?

(a) Yes on full tax amount and partly value amount

(b) No he can't until full amount is paid to supplier

(c) Yes but proportionately to the extent of value and tax paid

(d) Not applicable

Ans. (b) No he can't until full amount is paid to supplier

14. Whether credit can be availed without actual receipt of goods where goods are transferred through transfer of document of title before or during the movement of goods?

(a) Yes

(b) No

(c) Yes, in specific instances

(d) Can be availed only after transfer of document of title after movement of goods

Ans. (c) Yes, in specific instances

15. Whether depreciation on tax component of capital goods and Plant and Machinery and whether input tax credit is Permissible?

(a) Yes

(b) No

(c) Input tax credit is eligible if depreciation on tax component is not availed

(d) None of the above

Ans. (c) Input tax credit is eligible if depreciation on tax component is not availed

16. What is the maximum time limit to claim the Input tax credit?

(a) Till the date of filing annual return

(b) Due date of September month which is following the financial year

(c) Earliest of (a) or (b)

(d) Later of (a) or (b)

Ans. (c) Earliest of (a) or (b)

17. Proportionate credit for capital goods is allowed

(a) for business and non-business purpose

(b) for business or non- business purpose

(c) Both of the above

(d) None of the above

Ans. (a) for business and non-business purpose

18. Exempt supplies under Section 17 (apportionment of credit) includes

(a) Only exempted supplies

(b) Reverse charge supplies and sale of land

(c) Exempted supplies, reverse charge supplies, Transaction in securities, sale of land, sale of building

(d) None of the above

Ans. (c) Exempted supplies, reverse charge supplies, Transaction in securities, sale of land, and sale of building

19. Banking Company or Financial Institution have an option of claiming:

(a) Eligible Credit or 50% credit

(b) Only 50% Credit

(c) Only Eligible credit

(d) Eligible credit and 50% credit

Ans. (a) Eligible Credit or 50% credit

20. Can Banking Company or Financial Institution withdraw the option of availing actual credit or 50% credit anytime in the financial year?

(a) Yes

(b) No

(c) Yes with permission of Authorized officer

(d) Not applicable

Ans. (b) No

21. Any input tax paid on purchase of goods or services by an assessee for employees is eligible?

(a) No

(b) Yes

(c) Yes, on the services notified which are obligatory for an employer to provide to its employees under any law for the time being in force

(d) Not applicable

Ans. (c) Yes, on the services notified which are obligatory for an employer to provide to its employees under any law for the time being in force

23. An assessee obtains new registration, voluntary registration, and change of scheme from composition to regular scheme and from exempted goods/services to taxable goods/services. It can avail credit on inputs lying in stock. What is the time limit for taking said credit

(a) 1 year from the date of invoice

(b) 3 year from the date of invoice

(c) 5 year from the date of invoice

(d) None of the above

Ans. (a) 1 year from the date of invoice

24. Credit on Input services or capital goods held in stock can be availed in case of new Registration/Voluntary Registration

(a) Yes

(b) No

(c) Yes on Input services only

(d) Yes on capital goods only

Ans. (b) No

25. In case of Compulsory registration, input tax credit can be availed on

(a) On stocks held on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, provided application for registration is filed within 30 days from the due date

(b) On stocks held on the day immediately preceding the date of grant of registration under the provisions of this Act.

(c) On stocks held on the day immediately preceding the date of application of registration under the provisions of this Act.

(d) None of the above

Ans. (a) on stocks held on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, provided application for registration is filed within 30 days from the due date

26. In case of Voluntary registration input tax credit can be availed

(a) On stocks held on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act

(b) On stocks held on the day immediately preceding the date of grant of registration under the provisions of this Act.

(c) On stocks held on the day immediately preceding the date of application of registration under the provisions of this Act.

(d) None of the above

Ans. (b) on stocks held on the day immediately preceding the date of grant of registration under the provisions of this Act.

27. Eligibility of credit on capital goods in case of change of scheme from Composition scheme to Regular scheme

(a) Eligible during application for Regular scheme

(b) Not eligible

(c) Yes immediately before the date from which he becomes liable to pay tax under the Regular scheme

(d) None of the above

Ans. (c) Yes Immediately before the date from which he becomes liable to pay tax under the Regular scheme

28. Can the unutilized input tax credit be transferred in case of change in constitution of business?

(a) Not possible

(b) No, it will be exhausted

(c) Yes, It will be transferred only if there is provision for transfer of liabilities

(d) It will be transferred only if it is shown in books of Accounts of transferor

Ans. (c) Yes, It will be transferred only if there is provision for transfer of liabilities

29. Is Input tax fully restricted in case of switchover from taxable to exempt supplies?

(a) Yes

(b) No

(c) Proportionately restricted

(d) Not restricted

Ans. (a) Yes

30. Is Input tax to be paid in case of switchover from taxable to exempt supplies

(a) Yes equivalent to the credit in respect of inputs held in stock (including semi-finished and finished) and on capital goods held in stock

(b) No

(c) Yes full credit

(d) No should be debited to electronic credit ledger

Ans. (a) Yes equivalent to the credit in respect of inputs held in stock (including semi-finished and finished) and on capital goods held in stock

31. Is Input tax to be reversed in case of supply of capital goods

(a) Yes fully

(b) No

(c) Yes, to extent of credit taken as reduced by prescribed percentage or tax on transaction value whichever is higher

(d) Yes to the extent of transaction value of such goods

Ans. (c) Yes, to extent of credit taken as reduced by prescribed percentage or tax on transaction value whichever is higher

32. The time limit beyond which if goods are not returned, the inputs sent for job work shall be treated as supply

(a) One year

(b) Five years

(c) Six months

(d) Seven years

Ans. (a) One year

33. The time limit beyond which if goods are not returned, the capital goods sent for job work shall be treated as supply

(a) One year

(b) Five years

(c) Three Years

(d) Seven years

Ans. (c) Three Years

34. Principal entitled for input tax credit on inputs sent for job work

(a) If goods sent are returned within one year

(b) If goods sent are returned within three years

(c) If goods sent are returned within six months

(d) If goods sent are returned within nine months

Ans. (a) If goods sent are returned within one year

35. Principal entitled for input tax credit on capital goods if sent for job work

(a) If goods sent are returned within one year

(b) If goods sent are returned within three years

(c) If goods sent are returned within six months

(d) If goods sent are returned within nine months

Ans. (b) If goods sent are returned within three years

36. Is the principal entitled for credit of goods though he has not received the goods and has been sent to job worker directly by vendor

(a) Yes

(b) No

(c) Yes vendor should be located in same place

(d) None of the above

Ans. (a) Yes

37. In case of ISD whether distributor and recipient should have same PAN

(a) Yes

(b) No

(c) Yes if in same state and different in other state

(d) None of the above

Ans. (a) Yes

38. Can the credit distributed by an ISD exceed the amount available for distribution

(a) Yes

(b) No

(c) Partly correct

(d) None of the above

Ans. (b) No

39. If credit applicable to more than one recipient, then it shall be distributed

(a) Equally

(b) On Pro rata basis to the aggregate turnover of such recipients

(c) Proportionately

(d) As per Adhoc Ratio

Ans. (b) On Pro rata basis to the aggregate turnover of such recipients

40. The credit attributable to a particular recipient shall be distributed to

(a) Only to that recipient

(b) To all the recipients

(c) To few recipients

(d) None of the recipients

Ans. (a) Only to that recipient

QUESTIONS:

1. What is input tax?
2. What are the conditions necessary for obtaining ITC?
3. Can a person take ITC without payment of consideration for the supply along with tax to the supplier?
4. What is the time limit for taking ITC and reasons there for?
5. What is the ITC entitlement of a newly registered person?
6. What is the tax implication of supply of capital goods by registered person who had taken ITC on such capital goods?
7. What happens where the details of inward supplies furnished by the recipient do not match with the outward supply details furnished by the supplier in his valid return?
8. A flying school imports an aircraft for use in its training activity, and takes ITC of the IGST paid on the import. The departmental audit raises an objection that aircraft falls within the definition of "conveyance" in section 2(34) of the Act and that ITC is not allowed on conveyances. Offer your comments.
9. A taxable person is in the business of information technology. He buys a motor-vehicle for use of his executive directors. Can he avail the ITC in respect of GST paid on purchase of such Motor vehicle?
10. A technical testing agency tests and certifies each batch of machine tools before dispatch by ABC Ltd. Some of these tools are dispatched to a unit in SEZ without payment of GST as the supplies are not taxable. The Finance personnel of ABC Ltd want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.
11. A garment factory receives a government order for making uniforms for a commando unit. This supply is exempt from tax under a special notification. The fabric is separately procured for the supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory.

The turnover of the other products of the factory and exempted uniforms in July is Rs.4 crores and Rs.1 crore respectively, the ITC on thread and lining material procured in July is Rs.5000 and Rs.15,000 respectively. Calculate the eligible ITC on thread and lining material.

12. Mr Z, registered person was paying tax under composition scheme up to 30th July. However, w.e.f. 31st July, Mr Z becomes liable to pay tax under regular scheme. Is he eligible for ITC?

13. Rishi engineers had a mould delivered directly to a job worker from the supplier for making certain precision parts for use in the factory of Rishi engineers. As per agreement, the mould was to remain with the job worker as long as work was being sent to him.

After four years a departmental audit team that visited the job worker noticed the mould and traced it to Rishi engineers. GST was demanded from Rishi engineers for taking ITC without receiving the mould and furthermore for not bringing the mould back after three years of delivery to the job worker.

How should they respond to this?

14. Cadbury Limited, has the following units-

a) Factory in Hassan, Karnataka - closed from 2017-18 onwards, no turnover.

b) factory in Tumkur, Karnataka-turnover of Rs.27 crores in 2017-18.

c) Service centre in Chennai, Tamil Nadu-turnover of Rs.2 crores in 2017-18.

d) Service centre in Hyderabad, Telangana-turnover of Rs.1 crore in 2017-18.

Cadbury Ltd's corporate office functions as ISD. It has to distribute ITC of Rs.9 lakhs for December, 2018. Of this, and invoice involving tax of Rs.3 lakhs pertains to technical consultancy of Tumkur unit.

What should be the distribution of credit?

15. What happens where the details of inward supplies furnished by the recipient do not match with the outward supply details furnished by the supplier in his valid return?

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Cadbury Ltd's corporate office functions as ISD. It has to distribute ITC of Rs.9 lakhs for December, 2018. Of this, and invoice involving tax of Rs.3 lakhs pertains to technical consultancy of Tumkur unit.

What should be the distribution of credit?

23. With reference to the provisions of section 17 of the CGST Act, 2017, examine the availability of input tax credit under the CGST Act, 2017 in the following independent cases:-

(i) MBF Ltd., an automobile company, has availed works contract service for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently.

(ii) Shah & Constructions procured cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients.

(iii) ABC Ltd. availed maintenance & repair services from "Jaggi Motors" for a truck used for transporting its finished goods.

24. 'All-in-One Stores is a chain of departmental store having presence in almost all metro cities across India. Both exempted as well as taxable goods are sold in such Stores. The Stores operate in rented properties. All-in-One Stores pay GST under regular scheme.

In Mumbai, the Store operates in a rented complex, a part of which is used by the owner of the Store for personal residential purpose.

All-in-One Store, Mumbai furnishes following details for the month of October, 20XX:

(i) Aggregate value of various items sold in the Store:

Taxable items - Rs.42,00,000

Items exempted vide a notification - Rs.12,00,000 Items not leviable to GST - Rs.3,00,000

(ii) Mumbai Store transfers to another All-in-One Store located in Goa certain taxable items for the purpose of distributing the same as free samples. The value declared in the invoice for such items is Rs.5,00,000. Such items are sold in the Mumbai Store at Rs.8,0,000.

(iii) Aggregate value of various items procured for being sold in the Store:

Taxable items - Rs.55,00,000

Items exempted vide a notification - Rs.15,00,000

Items not leviable to GST - Rs.5,00,000

(iv) Freight paid to goods transport agency (GTA) for inward transportation of taxable items - Rs.1,00,000

(v) Freight paid to GTA for inward transportation of exempted items - Rs.80,000

(vi) Freight paid to GTA for inward transportation of non-taxable items - Rs.20,000

(vii) Monthly rent payable for the complex - Rs.5,50,000 (one third of total space available is used for personal residential purpose).

(viii) Activity of packing the items and putting the label of the Store along with the sale price has been outsourced. Amount paid for packing of all the items - Rs.2,50,000

(ix) Salary paid to the regular staff at the Store - 'Rs.2,00,000

(x) GST paid on inputs used for personal purpose - Rs.5,000

(xi) GST paid on rent a cab services availed for business purpose - Rs.4,000.

(xii) GST paid on items given as free samples - Rs.4,000

Given the above available facts, you are required to compute the following:

A. Input tax credit (ITC) credited to the Electronic Credit Ledger

B. Common Credit

C. ITC attributable towards exempt supplies out of common credit

D. Eligible ITC out of common credit

E. Net GST liability for the month of October, 20XX

Note:

(1) Wherever applicable, GST under reverse charge is payable @ 5% by All-in-One Stores. Rate of GST in all other cases is 18%.

(2) All the sales and purchases made by the Store are within Maharashtra. All the purchases are made from registered suppliers. All the other expenses incurred are also within the State.

(3) Wherever applicable, the amounts given are exclusive of taxes.

(4) All the necessary conditions for availing the ITC have been complied with.

25. Krishna Motors is a car dealer selling cars of an international car company. It also provides maintenance and repair services of the cars sold by it as also of other cars. It seeks your advice on availability of input tax credit in respect of the following expenses incurred by it during the course of its business operations:

(i) Cars purchased from the manufacturer for making further supply of such cars. Two of such cars are destroyed in accidents while being used for test drive by potential customers.

(ii) Works contract services availed for constructing a car shed in its premises

26. Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures three taxable products 'M', 'N' and 'O'. Tax on 'N' is payable under reverse charge. The firm also provides taxable consultancy services.

The firm has provided the following details for the period April 20XX to September 20XX:

Particulars	(Rs.)
Turnover of 'M'	14,00,000
Turnover of'N'	6,00,000
Turnover of 'O'	10,00,000
Export of 'M' with payment of IGST	2,50,000
Export of 'O' under letter of undertaking	10,00,000
Consultancy services provided to independent clients located in foreign countries.In all cases, the consideration has been received in convertible foreign exchange	20,00,000
Sale of building (excluding stamp duty of Rs. 2.50 lakh, being 2% of value)	1,20,00,000
Interest received on investment in fixed deposits with a bank	4,00,000
Sale of shares (Purchase price Rs. 2,40,00,000/-)	2,50,00,000
Legal services received from an advocate in relation to product 'M'	3,50,000
Common inputs and input services used for supply of goods and services mentioned above [Inputs - Rs. 35,00,000; Input services - Rs. 15,00,000]	50,00,000

With the help of the above-mentioned information, compute the net GST liability of Surana & Sons, payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the period April 20XX to September 20XX

Note: Assume that all the domestic transactions of Surana & Sons are intra-State and that rate of GST on goods and services are 12% and 18% respectively. All the conditions necessary for availing the ITC have been complied with. Turnover of Surana & Sons was Rs. 85,00,000 in the previous financial year.

27. PQR Company Ltd., a registered supplier of Bengaluru (Karnataka), is a manufacturer of goods. The company provides the following information pertaining to GST paid on input supplies during the month of April, 20XX:

Sl. No.	Items	GST Paid in (Rs.)
(i)	Life Insurance premium paid by the company on the life of factory employees as per the policy of the	1,50,000
(ii)	Raw materials purchased for which invoice is missing but delivery challan is available.	38,000

(iii)	Raw materials purchased which are used for zero rated outward supply.	50,000
(iv)	Works contractor's service used for repair of factory building which is debited in the profit and loss	30,000
(v)	Company purchased the capital goods for Rs.4,00,000 and claimed depreciation of Rs.44,800 (@ 10%) on the full amount of Rs.4,48,000 under Income Tax Act, 1961.	48,000

Other Information:-

(i) In the month of September, 20XX, of previous financial year, PQR Company Ltd. availed input tax credit ofRs.2,40,000 on purchase of raw material which was directly sent to job worker's premises under a challan on 25-09-20XX of the same financial year. The said raw material has not been received back from the Job worker up to 30-04-20XX of the current financial year.

(ii) All the above input supplies except (ii) above have been used in the manufacture of taxable goods.

Compute the amount of net input tax credit available for the month of April, 20XX with necessary explanations for your conclusion for each item. You may assume that all the other conditions necessary for availing the eligible input tax credits have been fulfilled.

28. On 25th August, 20XX, of previous financial year, M/s Agarwal & Agarwal Ltd., a registered supplier of textile products located in Bengaluru (Karnataka) purchased one machine for Rs.12,39,000 including IGST, from one supplier of Maharashtra who issued invoice on the same date. M/s Agarwal & Agarwal Ltd. put the machinery to use on the same day and availed input tax credit for the eligible amount.

M/s Agarwal & Agarwal Ltd. sold this machine after using the machine in the process of manufacture of taxable goods for Rs.7,50,000 excluding IGST, to Mr. Suresh Kumar of Andhra Pradesh on 20th August 20XX of current financial year.

During purchase as well as sale of the machinery, the IGST rate applicable was 18%.

Is M/s Agarwal & Agarwal Ltd., required to pay GST? If yes, calculate the amount of tax payable under GST Laws at the time of sale of the machine. Also, briefly state the relevant statutory provisions.

29. Vansh Shoppe is a registered supplier of both taxable and exempted goods, registered under GST in the State of Rajasthan. Vansh Shoppe has furnished the following details for the month of April, 20XX;

		Rs.
(1)	Details of sales:	
	Supply of taxable goods	50,00,000
	Supply of goods not leviable to GST	10,00,000
(2)	Details of goods purchased for being sold in the shop:	
	Taxable goods	45,00,000
	Goods not leviable to GST	4,00,000
(3)	Details of expenses:	
	Monthly rent payable for the shop	3,50,000
	Telephone expenses paid (Rs.30,000 for land line phone installed at the shop and Rs.20,000 for mobile phone given to employees for official use)	50,000
	Audit fees paid to a Chartered Accountant (Rs.35,000 for filing of income tax return & the statutory audit of preceding financial year and Rs.25,000 for filing of GST return)	60,000
	Premium paid on health insurance policies taken for specified employees of the shop as per company	10,000
	Freight paid to goods transport agency (GTA) for inward transportation of non-taxable goods	50,000
	Freight paid to goods transport agency (GTA) for inward transportation of taxable goods	1,50,000
	GST paid on goods given as free samples	5,000

All the above amounts are exclusive of all kind of taxes, wherever applicable.

All the purchases and sales made by Vansh Shoppe are within Rajasthan. All the purchases are made from registered suppliers. All the other expenses incurred are also within Rajasthan.

Assume, wherever applicable, for purpose of reverse charge payable by Vansh Shoppe, the CGST, SGST and IGST rates as 2.5%, 2.5% and 5% respectively. CGST, SGST and IGST rates to be 6%, 6% and 12% respectively in all other cases.

There is no opening balance in the electronic cash ledger or electronic credit ledger.

Assume that all the necessary conditions for availing the ITC have been complied with. Ignore interest, if any.

You are required to compute the following:

(1) Input Tax Credit (ITC) credited to Electronic Credit Ledger
(2) Common credit
(3) ITC attributable towards exempt supplies out of common credit
(4) Net GST liability for the month of April, 20XX

30. Sarani Weavers at Pune, Maharashtra is an input service distributor and intends to distribute input tax credit u/s 20 of the CGST Act, 2017, for the month of March 20XX. The following are the details available for such distribution:

Branch	Turnover of the last quarter (Amt. in Rs.)	ITC specifically applicable to the branch (Amt in Rs.)
Ganganagar Branch (Rajasthan)	10,00,000	IGST - Rs.12,000 CGST - Rs.3,000 SGST - Rs.3,000
Madhugiri Branch (Karnataka)	5,00,000	Nil
Kosala Branch (UP)	15,00,000	Nil IGST - Rs.1,50,000

Mumbai Branch (Maharashtra)	20,00,000	CGST- Rs.15,000 SGST- Rs.15,000

Input services used commonly by all branches against which ITC available is:

CGST - Rs.60,000

SGST - Rs.60,000

IGST - Rs.1,20,000

lTC (IGST) of March 20XX (last year), Rs.10,000 which was inadvertently left out, whether same can be considered for distribution in March, 20XX (last year)

Madhugiri, Karnataka branch uses inputs to manufacture exempted products. Turnover excludes duties & taxes payable to Central and State Government.

Determine the input tax distribution.

31. A registered supplier of taxable goods supplied goods valued at Rs.2,24,000 (inclusive of CGST Rs.12,000 and SGST Rs.12,000) to Mohan Ltd. under the forward charge on 15-08-20XX for which tax invoice was also issued on the same date. The inputs were received by Mohan Ltd. on 15-08-20XX. Mohan Ltd. availed credit of Rs.24,000 on 18-08-20XX. But Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier. Is Mohan Ltd. eligible to avail input tax credit on such supply? What are the consequences of such non-payment by Mohan Ltd.?

Discuss input tax credit provisions if Mohan Ltd. makes the payment of Rs.2,24,000 to the supplier on 18-03-20XX (Next Year).

PROCEDURAL COMPLIANCE UNDER GST

LESSON 15 : PART I - REGISTRATION

Under GST, registrations need to be taken State-wise, i.e. there are no centralized registrations under GST. A business entity having its branches in multiple States will have to take separate State wise registration for the branches in different States. Further, within a State, an entity with different branches would have single registration wherein it can declare one place as principal place and other branches as additional place of business. However, a business entity having separate registration for each of its business verticals in a state may obtain separate registration for each of its business verticals.

Fixed establishment: means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(50)]

Registered person: means a person who is registered under section 25, but does not include a person having a Unique Identity Number [Section 2(94)]

Proper officer: in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board [Section 2(91)]

Principal place of business: means the place of business specified as the principal place of business in the certificate of registration [Section 2(89)]

15.1.1 PERSONS LIABLE FOR REGISTRATION [Section 22 TO 24]

Persons liable for registration [Sec 22] -

◆ Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakh.

◆ However, if such person makes taxable supplies of goods or services or both from any of the special category States (North-east, Uttarakhand and Himachal), he shall be liable to be registered if his aggregate turnover in a financial year exceeds Rs. 10 lakh rupees. Limit for J&K is 20 lakhs

◆ Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

◆ Transfer of business — Fresh registration by buyer: Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

◆ In case of amalgamation etc. — Registration from Date of incorporation of new company : In a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

			Threshold limit for persons engaged	
			exclusively in supply of goods	in supply of services/ both goods and services
States other than Special Category States		Puducherry	Rs.20 lakh	Rs.20 Lakh
		Telangana	Rs.20 lakh	Rs.20 Lakh
		Others	Rs.40 lakh	Rs.20 Lakh
Special Category	Special Category	Manipur	Rs.10 lakh	Rs.10 Lakh
		Mizoram	Rs.10 lakh	Rs.10 Lakh

States as per Constitution	States as per section 22	Nagaland	Rs.10 lakh	Rs.10 Lakh
		Tripura	Rs.10 lakh	Rs.10 Lakh
	Others	Jammu and Kashmir	Rs.40 lakh	Rs.20 Lakh
		Assam	Rs.40 lakh	Rs.20 Lakh
		Himachal Pradesh	Rs.40 lakh	Rs.20 Lakh
		Arunachal Pradesh	Rs.20 Lakh	Rs.20 Lakh
		Meghalaya	Rs.20 Lakh	Rs.20 Lakh
		Sikkim	Rs.20 Lakh	Rs.20 Lakh
		Uttarakhand	Rs.20 Lakh	Rs.20 Lakh

"Aggregate turnover" to include job-work: The aggregate turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. However, supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

Persons not liable for registration [Sec 23] - The following persons shall not be liable to registration, namely:—

(a) Non-taxable or exempted : any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

***[b] A*griculturist:** an agriculturist, to the extent of supply of produce out of cultivation of land.

Power to exempt: The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

1. **Persons making only reverse charge supplies**
2. **Job workers making inter-State supply of services to a registered person**

Job workers engaged in making inter-State supply of services to a registered person have been exempted from obtaining registration.

However, nothing contained in this notification shall apply to a job-worker:

(a) who is liable to be registered under sub-section (1) of section 22 or who opts to take registration voluntarily under sub-section (3) of section 25 of the CGST Act; or

(b) who is involved in making supply of services in relation to jewellery, goldsmiths and silversmithswares and other articles (Chapter 71 of the Tariff).

3. Casual Taxable Persons making taxable supplies of handicraft goods

As per section 24, a casual taxable person or a person making inter-State supplies are liable to be registered compulsorily under GST irrespective of the threshold limit.

However, Casual Taxable Persons making taxable supplies of handicraft goods or persons making inter-State supplies of handicraft goods, have been exempted from obtaining registration.

Conditions to be fulfilled for claiming exemption: The above exemption is available provided:

a. the aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of **20 lakh** or **10 lakh** in case of Special Category States, other than the State of Jammu and Kashmir in a FY.

b. the Casual Taxable Persons making taxable supplies of handicraft goods or persons making inter-State supplies of handicraft goods shall be required to **obtain a PAN and generate an e-way bill**

Compulsory registration in certain cases [*Sec 24]* - Notwithstanding anything contained in section 22, the following categories of persons shall be required to be registered under Act:

- Persons making any inter-State taxable supply;
- Casual taxable persons making taxable supply;
- Persons who are required to pay tax under reverse charge;
- Person who are required to pay tax under sub-section (5) of section 9 *[persons appointed by e-commerce operators]*
- Non-resident taxable persons making taxable supply;
- Persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- Input Service Distributor, whether or not separately registered under this Act;
- Persons who supply goods or services or both, *other than supplies specified under sub-section (5) of section 9,* through such electronic commerce operator who is required to collect tax at source under section 52;
- **e-commerce operators who are required to collect tax at source under section 52 of the CGST Act**
- Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and
- Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

15.1.2 PROCEDURE FOR REGISTRATION [Section 25 TO 27]

- **Application within 30 days -** Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within 30 days from date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed.

However, a casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to commencement of business.

- **Supplies from TWI** — Registration at nearest coastal State/UT: Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.
- **Single registration in each state -** A person seeking registration under this Act shall be granted a single registration in a State or Union territory. However, a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.
- **Voluntary registration -** A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.
- **Separate registration = separate person -** A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
- **Premises in separate states — Separate person -** Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

1. Separate registration for a person having multiple place of business in a State

A person seeking registration under the GST law is granted a single registration in a State or Union territory. Separate GST registrations within the same State/UT were permitted only for separate business verticals. Accordingly, proviso to section 25(2) provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to prescribed conditions.

The requirement of having multiple business verticals to obtain separate registrations in a State has been dispensed with. Therefore, now a person having multiple places of business in a State or Union territory may be granted a separate

registration for each such place of business, subject to such conditions as may be prescribed.

Example: *Meethalal & Sons - a supplier in Delhi has three branches – two engaged in supply of garments and one engaged in supply of shoes. While as per the erstwhile provisions, Meethalal & Sons could obtain only two registrations – one for business vertical of garments and another for business vertical of shoes, now it can obtain separate GST registration for each three branches.*

PAN or TAN mandatory - Every person shall have a Permanent Account Number issued under the Income tax Act, 1961 in order to be eligible for grant of registration.

However, a person required to deduct tax u/s 51 may have, in lieu of a PAN, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

However, a non-resident taxable person may be granted registration without PAN on the basis of such other documents as may be prescribed.

Mandatory registration on failure to seek registration - Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

Unique identifier - Notwithstanding anything contained in sub-section {!),—

(a) Any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) Any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

Verification & Deemed grant, if no deficiency - The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed. A registration or a Unique Identity Number is deemed to have been granted after the expiry of the period prescribed, if no deficiency has been communicated to the applicant within that period.

Certificate - A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

Amendment:
While applying for registration on GST portal, a person is required to furnish the details of his bank account. This requirement has now been relaxed to a limited extent, by inserting a new rule 10A to the CGST Rules. In pursuance to the same, the registered person is allowed to furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision, soon after obtaining certificate of registration and a GSTIN, but not later than 45 days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier.
This relaxation is not available for those who have been granted registration as TDS deductor/ TCS collector under rule 12 or who have obtained *suo-motu* registration under rule 16.
In other words, a registered person has an option to give his bank account details after obtaining registration, within 45 days from the date of grant of registration or the due date of furnishing return, whichever is earlier.
However, if a person violates the provisions of rule 10A, his GST registration is liable to be cancelled [Rule 21].
[Notification No. 31/2019 CT dated 28.06.2019]

Registration under SGST etc. valid — Deemed registration [Sec. 26] - The grant of registration or Unique Identity Number under SGST/ UTGST Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the prescribed time for verification under Section 25.

Any rejection of application for registration or the Unique Identity Number under the SGST/UTGST Act shall be deemed to be a rejection of application for registration under this Act.

Casual taxable person and non-resident taxable person [Sec 27] -

Registration valid upto period specified or 90 days:

The certificate of registration issued to a casual taxable person or a nonresident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration. However, proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of 90 days by a further period not exceeding 90 days.

Advance deposit of estimated tax prior to registration:

A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. However, if any extension of time is sought, such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought. The amount deposited shall be credited to the electronic cash ledger of such person and shall be utilized in the manner provided under section 49.

5.3 REGISTRATION — AMENDMENT, CANCELLATION, REVOCATION, ETC. [Sections 28 TO 30]

Amendment of registration [Sec 28]

(1) Intimation of changes: Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.

(2) **Approving or rejecting amendments:** The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

However, approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed. Further, the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(3) **Rejection under SGST applies here also:** Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

Cancellation of registration [Sec 29]

(1) Circumstances leading to cancellation : The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where—

(a) The business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) There is any change in the constitution of the business; or

(c) The taxable person [other than the person voluntarily registered], is no longer liable to be registered under section 22 or section 24.

*****Period and manner of suspension of registration***

Further, **with effect from 01.02.2019,** new rule 21A of the CGST Rules has been inserted vide ***Notification No. 03/2019 CT dated 29.01.2019*** which lays down the period and manner of suspension of registration as follows:

1. **Where registered person has applied for cancellation of registration:** Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from:

   (a) *the date of submission of the application*

   or

   (b) **the date from which the cancellation is sought,**

   whichever is later,

   pending the completion of proceedings for cancellation of registration.

2. **Where cancellation of the registration has been initiated by the Department on their own motion:** Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person **with effect from a date to be determined by him**, pending the completion of the proceedings for cancellation of registration.

3. A registered person, whose registration has been suspended as above:

- shall not make any taxable supply during the period of suspension and
- shall not be required to furnish any return under section 39.

The suspension of registration shall be deemed to be revoked upon completion of the cancellation proceedings by the proper officer. Such revocation shall be effective from the date on which the suspension had come into effect.

Rule 21A provides that once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, his registration shall remain suspended during pendency of the proceedings relating to cancellation of registration filed. Such person **shall not make any taxable supply** during the period of suspension and shall not be required to file any return [Rule 21A(3)].

An explanation has been inserted to this sub-rule (3) to rule 21A clarifying that the expression **"shall not make any taxable supply"** shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension

(2) Registration may be cancelled from retrospective date in some cases: The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where—

(a) A registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) A person paying composite tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) Any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) Any person who has taken voluntary registration has not commenced business within six months from the date of registration; or

(e) Registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

However, the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

(3) Liability not affected: The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) Cancellation under SGST applies here also: The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) On cancellation, pay = credit reversal or output tax (higher) : Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable-on such goods, whichever is higher, calculated in such manner as may be prescribed.

However, in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to:

Input tax credit taken on said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or

Tax on the transaction value of such capital goods or plant and machinery under section 15,

Whichever is higher

Amount so payable shall be calculated in such manner as prescribed.

Revocation Of cancellation of registration [Sec 30]

(1) Application for restoration of registration: Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within 30 days from the date of service of the cancellation order.

(2) Acceptance/Rejection of application: The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application. However, the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) Treatment under SGST to apply here: The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

where the registration has been cancelled *with effect from the date of order of cancellation of registration*, (i) all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed and (ii) all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

However, where *the registration has been cancelled with retrospective effect*, the application for revocation of cancellation of registration can be filed, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

QUESTIONS:

1. Determine the effective date of registration in following cases:

(a) The aggregate turnover of Shreya industries of Delhi has exceeded Rs.20 lacs on 1st September. It submits the application for registration on 20th September. Registration certificate is granted to it on 25th September.

(b) Rishi Tele services is an Internet service provider in Hyderabad. Its aggregate turnover exceeds Rs.20 lacs on 25th October. It's submit the application for registration on 27th November. Registration certificate is granted to it on 05th December.

2. State the time period within which registration needs to be obtained in each of the following independent cases-

a) Casual taxable person

b) Person making interstate taxable supply

3. In order to be eligible for grant of registration, a person must have a permanent account number issued under the income tax act, 1961. State one exception to it.

4. State which of the following suppliers are liable to be registered-

a) Agent supplying goods on behalf of some other taxable person and it's aggregate turnover does not exceed Rs.20 lacks during the financial year.

b) an agriculturist who is only engaged in supply of produce out of cultivation of land.

5. What are the advantages of taking registration in GST?

6. Can a person without GST registration collect GST and claim ITC?

7. If a person is operating in different states, with the same PAN number, can he operate with a single registration?

8. Can a person having multiple business verticals in a state obtain separate registrations for each business vertical?

9. Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

10. Can the department, through the proper officer, suo-moto proceed to register of a person?

11. Whether the registration granted to any person is permanent?

12. Is it necessary for the UN bodies to get registration under GST?

13. What is the responsibility of the taxable person making supplies to UN bodies?

14. What is the validity period of the registration certificate issued to a casual taxable person and non- resident taxable person?

15. What happens when the registration is obtained by means of wilful mis-statement, fraud or suppression of facts?

16. Is there an option to take centralised registration for services under GST law?

17. What could be the liabilities (in so far as registration is concerned) on transfer of business?

18. At the time of registration, will the assesse have to declare all his places of business?

19. What will be the time limit for the decision on the online registration application?

20. What will be the time of response by the applicant if any query is raised in the online application?

21. Does cancellation of registration impose any tax obligations on the person whose registration so cancelled?

22. Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of goods at multiple locations, i.e. in Himachal Pradesh, Uttarakhand and Tripura in the month of June.

It has furnished the following details relating to the supply made at such multiple locations for the month of June:-

Particulars	Himachal Pradesh	Uttarakhand	Tripura
	(Rs.)*	(Rs.)*	(Rs.)*

Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Interest received from banks on the fixed deposits	-	-	60,000
Intra-State supply of nontaxable goods	-	21,00,000	40,000

* excluding GST

With the help of the above mentioned information, answer the following questions giving reasons:-

(1) Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case.

(2) Explain with reasons whether your answer in (1) will change in the following independent cases:

(a) If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh;

(b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh;

(c) If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh and has also effected inter-State supplies of taxable goods amounting to Rs.4,00,000.

23. LMN Pvt. Ltd., Coimbatore exclusively manufactures and sells product 'X which is exempt from GST vide notifications is sued under relevant GST legislations. The company sells 'X' only within Tamil Nadu and is not registered under GST. The turnover of the company in the previous year was Rs. 45 lakh. The company expects the sales to grow by 30% in the current year. The company purchased additional machinery for manufacturing 'X' on 01.07.20XX. The purchase price of the capital goods was Rs.30 lakh exclusive of GST @ 18%.

However, effective from 01.11.20XX, exemption available on 'X' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30.09.20XX was Rs.45 lakh.

(a) Examine the above scenario and advise LMN Pvt Ltd. whether it needs to get registered under GST.

(b) If the answer to the above question is in affirmative, advise LMN Pvt. Ltd. whether it can avail input tax credit on the additional machinery purchased exclusively for manufacturing "X"?

24. SNP Pvt. Ltd., Coimbatore exclusively manufactures and sells product 'Z' which is exempt from GST vide notifications issued under relevant GST legislations. The company sells 'Z' only within Tamil Nadu. The turnover of the company in the previous year was Rs.55 lakh. The company expects the sales to grow by 20% in the current year. Owing to the growing demand for the product, the company decided to increase its production capacity and purchased additional machinery for manufacturing 'Z' on 01.07.20XX. The purchase price of the capital goods was Rs.20 lakh exclusive of GST @ 18%.

However, effective from 01.11.20XX, exemption available on 'Z' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30.09.20XX was Rs.50 lakh.

(a) The Board of Directors of SNP Pvt. Ltd. wants to know whether they have to register under GST?

(b) In case in the above question, SNP Pvt. Ltd. is already registered with respect to certain taxable supplies being made by it along with manufacture of exempt product 'Z', other facts remaining the same, can it take input tax credit on additional machinery purchased exclusively for manufacturing 'Z'? If yes, then how much credit can be availed?

Advice SNP Pvt. Ltd. on the above issues with reference to the provisions of GST law.

25. Rishabh Enterprises - a sole proprietorship firm - started an air- conditioned restaurant in Virar, Maharashtra in the month of February wherein the customers are served cooked food as well as cold drinks/non-alcoholic beverages. In March, the firm opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Determine whether Rishabh Enterprises is liable to be registered under GST law with the help of the following information:

Particulars	February (Rs.)*	March (Rs.)*
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	5,50,000	6,50,000
Sale of alcoholic liquor for human consumption in Uttarakhand		5,00,000

Interest received from banks on the fixed	1,00,000	1,00,000
Supply of packed food items from restaurant in Maharashtra	1,50,000	2,00,000

* excluding GST

You are required to provide reasons for treatment of various items given above.

26. AB Pvt. Ltd., Pune provides house-keeping services. The company supplies its services exclusively through an e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd., Pune. The turnover of AB Pvt. Ltd. in the current financial year is Rs.18 lakh.

Advise AB Pvt. Ltd. as to whether they are required to obtain GST registration. Will your advice be any different if AB Pvt. Ltd. sells readymade garments exclusively through the e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd.?

27. Discuss the procedure for amendment of registration under CGST Act and rules thereto?

28. Pari & Sons is an unregistered dealer. On 10th August, 20XX aggregate turnover of Pari & Sons exceeded Rs.20,00,000. The firm applied for registration on 27th August, 20XX and was granted the registration certificate on 1st September, 20XX.

Under CGST Rules, 2017, you are required to advise Pari & Sons as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of revised tax invoices.

29. With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the financial year, determine the aggregate turnover for the purpose of registration under the CGST Act, 2017.

Sl. No	Particulars	Amount (Rs.)
(i)	Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan Government.	1,00,000
(ii)	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by	3,00,000
(iii)	Export supply to England (U.K.)	5,00,000
(iv)	Supply to its own additional place of business in	5,00,000

(v)	Outward supply of services on which GST is to be paid by recipient under reverse charge.	1,00,000

All the above amounts are excluding GST.

You are required to provide reasons for treatment of various items given above.

30 Rajesh Dynamics, having its head office in Chennai, Tamil Nadu carries on the following activities with respective turnovers in a financial year:

	Rs.
Supply of petrol at Chennai, Tamil Nadu	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	9,00,000
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration	1,50,000
Value of taxable supplies at Manipur branch	11,50,000

It argues that it does not have taxable turnover crossing threshold limit of Rs.40,00,000 either at Chennai, Tamil Nadu or Bengaluru, Karnataka and including turnover at Manipur branch. It believes that the determination of aggregate turnover is not required for the purpose of obtaining registration, but is required for determining composition levy.

Decide based on the above facts:

(i) The aggregate turnover of Rajesh Dynamics.

(ii) All conditions that fulfil the requirements for registration under CGST Act, 2017 in the given circumstances.

LESSON 15 : PART II - TAX INVOICE, DEBIT NOTE AND CREDIT NOTE

An invoice is a commercial instrument issued by a supplier of goods/services to a recipient. It identifies both the parties involved, and lists, describes the items sold/services supplied, quantifies the items sold, shows the date of shipment and mode of transport, prices and discounts, if any, and the delivery and payment terms (in case of supply of goods).

Invoicing is very crucial aspect for ensuring tax compliance under any indirect taxation system. In order to ensure transparency, issuance of invoice for every taxable transaction is a pre-requisite. In case of supply of goods or provision of services, an invoice is raised by the supplier of such goods or services to the recipient of the same. Tax invoice acts as a document evidencing the payment of the value of the goods or services or both as also the tax portion in the same. In certain cases, an invoice serves as a demand for payment and becomes a document of title when paid in full.

Credit note: means a document issued by a registered person under sub-section (1) of section 34 [Section 2(37)].

Debit note: means a document issued by a registered person under sub-section (3) of section 34 [Section 2(38)].

Document: includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)] Invoice or tax invoice: means the tax invoice referred to in section 31 [Section 2(66)].

15.2.1 TAX INVOICE [Section 31]

Goods - A registered person supplying taxable goods shall, before or at the time of

(a) Removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) Delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.

However, the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

Services - A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

However, the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—

(a) Any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(b) Tax invoice may not be issued.

Various issues -

(a) Revision : A registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

(b) No bill if value is upto Rs. 200: a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(c) Normal bill for exempted/composite tax supplies: a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed.

However, the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than Rs. 200 subject to such conditions and in such manner as may be prescribed;

(d) Receipt voucher for advance: a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(d) **Refund voucher, if advance is returned:** where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;

(e) **Buyer to raise invoice for purchases from unregistered supplier:** a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 [reverse charge] shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both; Further, such a registered person shall issue a payment voucher at the time of making payment to the supplier.

Continuous supply of goods - In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

Continuous supply of services - In case of continuous supply of services,—

(a) Where the due date of payment is ascertainable from the contract the invoice shall be issued on or before the due date of payment;

(b) Where the due date of payment is not ascertainable from the contract the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) Where the payment is linked to the completion of an event the invoice shall be issued on or before the date of completion of that event.

However, *on receipt of advance, receipt voucher has to be issued. If supply of services ceases before completion of supply* - The invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

***Sale or approval* -** Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at time of supply or six months from date of removal, whichever is earlier.

As per **section 2(96) "removal"** in relation to goods, means—

(a) Dispatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or

(b) Collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

Tax invoice - For the purposes of this section, expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Illustration:

Rao & Shyam is a trader dealing in stationery items. It is registered under GST and has undertaken the following sales during the day:

S.NO.	Recipient of Supply	Amount (Rs.)
1	Meghana Traders – Registered retail dealer	190
2	Akhila Enterprises – an unregistered trader	358
3	Yeshwanth – A painter (Unregistered)	500
4	Jai Orphanage – an unregistered entity	188
5	Akash – a student (unregistered)	158

None of the recipients require a tax invoice (Meghana Traders, being a composition dealer.)

Determine in respect of which of the above supplies, Rao & Shyam may issue a consolidated tax invoice instead of tax invoice at the end of the day?

Solution:

In the given illustration, Rao & Shyam can issue a consolidated tax invoice only with respect to supplies made to Jai orphanage (worth Rs.188) and Akash (worth Rs.158) as the value of goods supplied to these recipients is less than Rs.200 as also, these recipients are unregistered and don't require a tax invoice.

As regards, the supplies made to Meghana traders, although the value of goods supplied to it is less than Rs.200, Meghana Traders is registered under GST. So, consolidated tax invoice cannot be issued.

Consolidated tax invoice can also not be issued for supplies of goods made to Akhila Enterprises and Yeshwanth, although both of them are not registered. The reason for the same is that the value of goods is not less than Rs.200.

15.2.2 UNREGISTERED PERSON CANNOT COLLECT TAX — REGISTERED PERSON CAN COLLECTED ONLY AS PER THIS ACT [Section 32]

(1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

(2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

15.2.3 AMOUNT OF TAX TO BE INDICATED IN TAX INVOICE AND OTHER DOCUMENTS [Section 33]

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

CONCEPT OF DEBIT NOTE AND CREDIT NOTE {Section 34}	
Point	**Provisions**
Credit note for excess value or deficient supply	Where a tax invoice has been issued for supply of any goods or services or both and taxable value or tax charged in that tax invoice is found to exceed taxable value or tax payable in respect of such supply, or Where the goods supplied are returned by the recipient, or Where goods or services or both supplied are found to be deficient, The registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.
Credit note is declared in return	Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note In the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or The date of furnishing of the relevant annual return, Whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed. However, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.
Debit note or Supplementary invoice, if value under charged	Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed. Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in manner as may be prescribed.

RULES **1. Tax invoice**	A tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars:— • Name, address and GSTIN of the supplier; [A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year]; • Date of its issue; • Name, address and GSTIN or UIN, if registered, of the recipient; • Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more; • HSN code of goods or Accounting Code of services; • Description of goods or services; • Quantity in case of goods and unit or Unique Quantity Code thereof; • Total value of supply of goods or services or both; • Taxable value of supply of goods or services or both taking into account discount or abatement, if any; • Rate of tax (Central tax, State tax, integrated tax, Union territory tax, cess) • Amount of tax charged in respect of taxable goods or services (CGST, SGST, IGST, UGST or cess); • Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce; • Address of delivery where the same is different from the place of supply; • Whether the tax is payable on reverse charge basis; and • Signature or digital signature of the supplier or his authorized representative **HSN Code/Accounting Code:** Commissioner may, on the recommendations of the Council, by notification, specify— (i) The number of digits of HSN code for goods or the Accounting Code for services, that a class of registered persons shall be required to mention, for such period as may be specified in the said notification, and

	(ii) The class of registered persons that would not be required to mention the HSN code for goods or the Accounting Code for services, for such period as may be specified in the said notification. **In case of exports of goods or services,** invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST" or "SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF IGST", as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details:— (i) Name and address of the recipient; (ii) Address of delivery; (iii) Name of the country of destination; and (iv) Number and date of application for removal of goods for export **No bill if value is upto Rs. 200 :** A registered person may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely:— (a) The recipient is not a registered person; and (b) The recipient does not require such invoice, and shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies. With effect from 01.09.2019, fourth proviso to rule 46 has been amended to disallow this option to a supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens.

2. Time limit for issuing tax invoice	**The invoice in case of taxable supply of services, shall be issued within a period of 30 days from the date of supply of service:** Where supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be 45 days from the date of supply of service: **Supply between establishments of same person:** Where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25 as referred to in Entry 2 of Schedule I, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.
3. Manner of issuing invoice	(1) The invoice shall be prepared in triplicate, in case of supply of goods, in the following manner:- (a) The original copy being marked as ORIGINAL FOR RECIPIENT; (b) The duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and (c) The triplicate copy being marked as TRIPLICATE FOR SUPPLIER. (2) The invoice shall be prepared in duplicate, in case of supply of services, in the following manner:— (a) The original copy being marked as ORIGINAL FOR RECIPIENT; and (b) The duplicate copy being marked as DUPLICATE FOR SUPPLIER. (3) The serial number of invoices issued during a tax period shall be furnished electronically through the Common Portal in **FORM GSTR-1.**

4. Bill of supply	**Normal bill for exempted/composite tax supplies:** A bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details:— (a) Name, address and GSTIN of the supplier; (b) A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/"respectively, and any combination thereof, unique for a financial year; (c) Date of its issue; (d) Name, address and GSTIN or UIN, if registered, of the recipient; (e) HSN Code of goods or Accounting Code for services; (f) Description of goods or services or both; (g) Value of supply of goods or services or both taking into account discount or abatement, if any; and (h) Signature or digital signature of the supplier or his authorized representative: The other provisions of rule 1 shall, mutatis mutandis, apply to the bill of supply issued under this rule.
5. Receipt voucher	A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars:— (a) Name, address and GSTIN of the supplier; (b) A consecutive serial number containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/"respectively, and any combination thereof, unique for a financial year (c) Date of its issue; (d) Name, address and GSTIN or UIN, if registered, of the recipient; (e) Description of goods or services; (f) Amount of advance taken; (g) Rate of tax (Central tax, State tax, Integrated tax, Union territory tax or cess); (h) Amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess); (i) Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; (j) Whether the tax is payable on reverse charge basis; and (k) Signature or digital signature of the supplier or his authorized representative.

6. Supplementary tax invoice and Credit or debit notes	(1) **Revised tax invoice or debit/credit note:** A revised tax invoice referred to in section 31 and credit or debit note referred to in section 34 shall contain the following particulars:— (a) The word "Revised Invoice", wherever applicable, indicated prominently; (b) Name, address and GSTIN of the supplier; (c) a consecutive serial number containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year; (e) Date of issue of the document; (f) Name, address and GSTIN or UIN, if registered, of the recipient; (g) Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered; (h) Serial number and date of the corresponding tax invoice or, as the case may be, bill of supply; (i) Value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and (j) Signature or digital signature of the supplier or his authorized representative. (2) **Issuance of revised invoice for earlier period:** Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration However, the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period: In case of inter-State supplies, where value of a supply does not exceed Rs. 2,50,000, a consolidated revised invoice may be issued separately in respect of all unregistered recipients located in a State. (3) **No credit declaration in matters of evasion, confiscation, etc. :** Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 (matters of evasion, confiscation, seizure) shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE".

7. Tax Invoice in special cases	(1) **ISD:** An ISD invoice or, as the case may be, an ISD credit note issued by an Input Service Distributor shall contain the following details:— (a) Name, address and GSTIN of the Input Service Distributor; (b) A consecutive serial number containing alphabets or numerals or special characters hyphen or dash and slash symbolised as , "/", respectively, and any combination thereof, unique for a financial year; (c) Date of its issue; (d) Name, address and GSTIN of the recipient to whom the credit is distributed; (e) Amount of the credit distributed; and (f) Signature or digital signature of the Input Service Distributor or his authorized representative **Where ISD is Banks, etc.:** Where the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as prescribed above. (2) **Where supplier is Bank, FI, NBFC, insurer:** Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed. (3) **Goods Transport agency :** Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also containing other information as prescribed.

	(4) **Passenger Transport Service:** Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as prescribed.

8. Transp-ortation of goods without issue of invoice	(1) **Delivery Challans:** For the purposes of— (a) Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known, (b) Transportation of goods for job work, (c) Transportation of goods for reasons other than by way of supply, (d) Such other supplies as may be notified by the Board, the consigner may issue a delivery challan, serially numbered, in lieu of invoice at the time of removal of goods for transportation, containing following details: (i) Date and number of the delivery challan, (ii) Name, address and GSTIN of the consigner, if registered, (iii) Name, address and GSTIN or UIN of the consignee, if registered, (iv) HSN code and description of goods, (v) Quantity (provisional, where the exact quantity is not known), (vi) Taxable value, (vii) Tax rate and tax amount - Central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee, (viii) Place of supply, in case of inter-State movement, and (ix) Signature. (2) **Copies:** The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner:- (a) The original copy being marked as ORIGINAL FOR CONSIGNEE; (b) Duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and (c) The triplicate copy being marked as TRIPLICATE FOR CONSIGNER. (3) **Declaration:** Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in **FORM [WAY BILL].** (4) **Issuance of tax invoice:** Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods. (5) **CKD/SKD Condition:** Where the goods are being transported in a semi knocked down or completely knocked down condition, (a) The supplier-shall issue the complete invoice before dispatch of the first consignment;

	(b) The supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice; (c) Each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and (d) The original copy of the invoice shall be sent along with the last consignment.

QUESTIONS:

1. Saharsh Industries Ltd, Hyderabad, entered into a contract with Shilpi Entrepreneurs, Hyderabad, for supply of spare parts of a machine on 7th September. The spare parts were to be delivered on 30th September. Saharsh Industries Ltd, removed the finished spare parts from its factory on 29th September. Determine, the date by which invoice must be issued by Saharsh Industries Ltd., under GST law.

2. M&M Cartakers, a registered person, provides the service of repair and maintenance of electrical appliances. On April 1st, it has entered into an annual maintenance contract with Q for its air-conditioner and washing machine. As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered. During the year, it provided the service on April 1st, July 1st, October 1st and January 1st in accordance with the terms of contract. When should M&M Caretakers issue the invoice for the services rendered?

3. The aggregate turnover of Sangria services Ltd, exceeded Rs.20L on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September. You are required to advise Sangria Services Ltd as so what is the effective date of registration in its case. It has also sought your advice regarding period of issuance of revised tax invoice.

4. Kaira Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise them regarding the same.

5. Is a registered person liable to pay tax under reverse charge under sec 9(3)/9(4) of the CGST Act required to issue an invoice. Discuss the relevant provisions under CGST Act and rules thereunder.

6. Discuss the provisions relating to issuance of credit and debit notes under CGST Act and rules thereunder.

7. What is the time period within which invoice has to be issued for supply of services?

8. What is the time period within which invoice should be issued in a case involving continuous supply of goods?

9. What is the time period within which invoice should be issued in a case involving continuous supply of services?

10. What is the time period within which invoice should be issued where the goods being sent on sale/approval basis?

LESSON 15 : PART III - ACCOUNTS AND RECORDS UNDER GST

Accounts and other records [Sec. 35]	**(1) Records to be kept:** Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of— (a) Production or manufacture of goods; (b) Inward and outward supply of goods or services or both; (c) Stock of goods; (d) Input tax credit availed; (e) Output tax payable and paid; and (f) Such other particulars as may be prescribed: **Separately at each registered place:** Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business: **E-records:** The registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed. **(2) Warehouse, etc. to keep records of consignor, etc.** : Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed. **(3) Additional documents by notified persons:** The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein. **(4) Modification in manner of keeping accounts:** Where the Commissioner considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed. **(5) Audit by CA or CMA, if turnover exceeds prescribed limit**: Every registered person whose turnover during a financial year

	exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant, and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section [2] of section 44 and such other documents in such form and manner as may be prescribed. Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds 2 crores. **Books of accounts of the Central/State Government or local authority would not be subject to audit by a Chartered Accountant/Cost Accountant if the same are subject to audit by CAG of India or any statutory auditor appointed for auditing the accounts of local authorities.** Such registered person is required to furnish electronically through the common portal along with Annual Return a copy of Audited annual accounts and A Reconciliation Statement, duly certified. **(6) Failure to account for goods/services — Deemed to be supplied further — Demand of tax :** Subject to the provisions of section 17(5)[h) [lost, stolen, etc. goods], where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Period of retention of account [Sec. 36]	Every registered person required to keep and maintain books of account or other records in accordance with the section 35 shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records. However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject-matter of such appeal or revision or proceedings or investigation for a period of : 1 year after final disposal of such appeal or revision or proceedings or investigation, or For the period specified above, whichever is later

LESSON 15 : PART IV - PAYMENT OF TAX

The introduction of E-ledgers is a unique feature under the GST regime. Electronic Ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register. Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Cash & Input Tax Credit ledger) and an electronic tax liability register will be automatically opened and displayed on his dash board at all times.

15.4.1 PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS [Sec. 49]

(1) Cash payments in electronic cash ledger - Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

OTC limit is 10,000 per challan, per tax period by cash, cheque or demand draft.

Date of credit in Govt. account is relevant: the date of credit to the account of the Government in the authorized bank shall be deemed to be the date of deposit in the electronic cash ledger

Payment by Challan:

CPIN stands for Common portal Identification Number. It is created for every Challan successfully generated by the taxpayer. It is a 14-digit unique number to identify the challan. CPIN remains valid for a period of 15 days.

CIN or Challan Identification Number is generated by the banks, once payment in lieu of a generated Challan is successful. It is a 18-digit number that is 14-digit CPIN plus 4-digit Bank Code.

CIN is generated by the authorized banks/Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.

BRN or Bank Reference Number is the transaction number given by the bank for a payment against a Challan

E-FPB stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for pan India transaction.

The E-FPB will have to open accounts under each major head for all governments. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB. For NEFT/RTGS Transactions, RBI will act as E-FPB.

(2) ITC in electronic credit ledger - The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) Use of cash ledger - The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) Use of credit - The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5)Manner of use of credit - The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

- **Integrated tax** shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax or State tax, or as the case may be, Union territory tax
- **Central tax** shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
- **State tax** shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
- **Union territory tax** shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

The central tax shall not be utilised towards payment of State tax or Union territory tax; and

The State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) Balance may be refunded - The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) Electronic liability register - All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Order of applying payment - Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in following order, namely:—

Self-assessed tax, and other dues related to returns of previous tax periods;

Self-assessed tax, and other dues related to the return of the current tax period;

Any other amount payable under this Act or rules made there under including the demand determined u/s 73 or section 74.

(9)Incidence deemed to be passed to recipient - Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

15.2.2 INTEREST ON DELAYED PAYMENT OF TAX [Sec. 50]

Sec.	Point	Provisions
(1)	**Interest upto 18%**	Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay tax or any part thereof to the Government within period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18% as may be notified by Government on recommendations of the Council.
(2)	**Calculation**	The interest shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.
(3)	**Interest upto 24% for deliberate excess claims**	A taxable person who makes under Section 42 or 43 — An undue or excess claim of input tax credit or Undue or excess reduction in output tax liability Shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding 24%, as may be notified by the Government on the recommendations of the Council.

The rate of interest shall be notified by the Government on the basis of recommendation of the Council. However, such rate to be notified shall not exceed-

- 18% in case of belated payment of tax i.e. on failure to pay tax (or part of tax) to the Government's account. *Notification No. 13/2017 CT dated 28.06.2017* has notified the rate of interest as 18% per annum.
- 24% on undue or excess claim of ITC or on such undue or excess reduction in output tax liability. *Notification No. 13/2017 CT dated 28.06.2017* has notified the rate of interest as 24% per annum.

Electronic Cash Ledger:

It will reflect all deposits made in cash, and TDS/TCS made on account of the tax payer.

This ledger can be used for making **ANY PAYMENT** towards tax, interest, penalty, fees or any other amount on account of GST.

Electronic Credit Ledger:

It will reflect Input Tax Credit as self-assessed in monthly returns.

The credit in this ledger can be used to make payment of **TAX ONLY** i.e. output tax and not other amounts such as interest, penalty, fees etc.

Electronic Liability Register:

Electronic Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.

PAYMENT OF TAX RULES, 2017

FORM	PURPOSE
GST PMT-01	Electronic Tax Liability Register
GST PMT-02	Electronic Credit Ledger maintained
GST PMT-03	If the refund so filed is rejected, either fully or partly, the amount debited under sub- rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM
GST PMT-04	A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through Common Portal in
GST PMT-05	Electronic cash ledger maintained in FORM
GST PMT-06	Generate a challan of payment in FORM
GST PMT-07	Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no challan Identification Number (CIN) is generated or generated but not communicated to the Common Portal, the said person may represent electronically in FORM

QUESTIONS

1. What is e-commerce?

(a)Supply of goods and/or on an on an electronic platform for commerce other than the e-commerce operator himself

(b)Supply of goods and/or services on an on an electronic platform for commerce including the e-commerce operator

(c)Supply of goods and/or services on an electronic platform for commerce

(d)Supply of goods or services or both including digital products over digital or electronic network.

Ans. (d) Supply of goods or services or both including digital products over digital or electronic network.

6. What is net value of taxable supplies?

(a)Aggregate value of all the supplies of goods and/or services made during any month by all registered taxable persons through the e-commerce operator

(b)Aggregate value of all the supplies of goods and/or services made during any month by all registered taxable persons through the e-commerce operator reduced by value of taxable supplies returned to the suppliers during the said month

(c)Aggregate value of all the supplies of goods and/or services, excluding the services notified u/s 9(5) made during any month by all registered persons through the e-commerce operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(d)Aggregate value of all the supplies of goods and/or services, excluding the services notified u/s 9(5) made during any month by a registered taxable persons.

Ans. (c) Aggregate value of all the supplies of goods and/or services, excluding the services notified u/s 9(5) made during any month by all registered persons through the e-commerce operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month

7. When an e-commerce operator is required to register under GST?

(a) When he is required to collect tax at source u/s 52

(b) When his aggregate turnover exceeds the threshold limit

(c) When he is required to discharge tax on the taxable supply or services made by the supplier through him u/s 9(5)

(d) It is mandatory to register irrespective of the threshold limit.

Ans. (d) It is mandatory to register irrespective of the threshold limit

8. Is every supplier on e-commerce platform covered under Section 52 required to charge GST from Re. 1?

(a) Yes since he is the registered taxable person.

(b) No

Ans. (a) Yes since he is the registered taxable person

13. Is there any matching to be done with the returns filed?

(a)Yes, return of e-commerce operator should be matched with every return of supplier

(b)No, no such requirement mandated

(c)Yes, return of e-commerce operator should be matched with every return of supplier but no consequences if the returns do not match

(d)Yes, return of e-commerce operator should be matched with every return of supplier and if the returns do not match then the amount of discrepancy will be added to the outward tax liability of the e-commerce operator

Ans. (d) Yes, return of e-commerce operator should be matched with every return of supplier and if the returns do not match then the amount of discrepancy will be added to the outward tax liability of the e-commerce operator

15. What is the due date for payment of TDS?

(a) Last day of the month to which payment relates

(b) Within 10 days of the subsequent month

(c) Within 20 days of the subsequent month

(d) Within 15 days of the subsequent month

Ans. (b) Within 10 days of the subsequent month

17. Which of these registers/ledgers are maintained online?

(a) Tax liability register

(b) Credit ledger

(c) Cash ledger

(d) All of them

Ans. (d) All of them

18. Payment made through challan will be credited to which registers/ledgers?

(a) Electronic Tax liability register

(b) Electronic Credit ledger

(c) Electronic Cash ledger

(d) All of them

Ans. (c) Electronic Cash ledger

19. What is deemed to be the date of deposit in the electronic cash ledger?

(a) Date on which amount gets debited in the account of the taxable person

(b) Date on which payment is initiated and approved by the taxable person

(c) Date of credit to the account of the appropriate Government

(d) Earliest of the above three dates

Ans. (c) Date of credit to the account of the appropriate Governmen

Questions:

1. Manihar Enterprises, registered in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017. It has provided the information relating to the supplies made, their contract values and the payment due against each of them in the month of October, 20XX as under:

S. No	Particulars	Total Contract value (inclusive of GST) (Rs.)	Payment due in October 20XX (Rs.)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000

(ii)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000
(v)	Interior decoration of Andhra Bhawan located in Delhi. Service contract is entered into with the Government of Andhra Pradesh (registered only in Andhra Pradesh)	12,39,000	12,39,000
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [Out of total contract value of Rs.9,72,000, contract value for supply of books (exempt from GST) is Rs.7,00,000 and for	9,72,000	50,000 for books & 20,000 for printed post cards
(vii)	Maintenance of street lights in Municipal area of East Delhi* [The maintenance contract entered into with the Municipal Corporation of Delhi also involves replacement of defunct lights and other spares. However, the value of supply of goods is not more than 25% of the value of composite supply.]	3,50,000	3,50,000

You are required to determine amount of tax, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

Will your answer be different, if Manihar Enterprises is registered under composition scheme?

2. Miss Nitya has following balances in her Electronic Cash Ledger as on 28/02/20XX as per GST portal.

Major Heads	Minor Heads	Amount (Rs.)

	Tax	**40,000**
CGST	**Interest**	**1,000**
	Penalty	**800**
	Tax	**80,000**
SGST	**Interest**	**400**
	Penalty	**1,200**
	Fee	**2,000**
IGST	**Tax**	**45,000**
	Interest	**200**
	Penalty	**Nil**

Her tax liability for the month of February, 20XX for CGST and SG 1ST

was Rs.75,000 each. She failed to pay the tax and contacted you as legal advisor on 12/04/20XX to advise her as to how much amount of tax or interest she is required to pay, if any, by utilizing the available balance to the maximum extent possible as per GST Laws. She wants to pay the tax on 20-04-20XX.

Other Information:-

i. Date of collection of GST was 18thFebruary, 20XX.
ii. No other transaction after this up to 20th April 20XX.
iii. Ignore penalty and late fee for this transaction.
iv. No other balance is available.

You are required to advise her with reference to legal provisions with brief notes on the legal provisions applicable.

3. Yash Shoppe, a registered supplier of Jaipur, is engaged in supply of various goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51 of the CGST Act, 2017.

You are required to briefly explain the provisions relating to tax deduction at source under section 51 of the CGST Act, 2017 and also determine the amount of tax, if any, to be deducted from each of the receivables given below (independent cases) assuming that the payments as per the contract values are made on 31.10.20XX.

The rates of CGST, SGST and IGST may be assumed to be 6%, 6% and 12% respectively.

(1) Supply of computer stationery to Public Sector Undertaking (PSU) located in Mumbai. Total contract value is Rs.2,72,000 (inclusive of GST)

(2) Supply of air conditioner to GST department located in Delhi. Total contract value is Rs.2,55,000 (exclusive of GST)

(3) Supply of generator renting service to Municipal Corporation of Jaipur. Total contract value is Rs.3,50,000 (inclusive of GST)

4. A makes intra-State supply of goods valued at Rs.50,000 to B within State of Karnatake. B makes inter-State supply to X Ltd. (located in Telangana) after adding 10% as its margin. Thereafter, X Ltd. sells it to Y in Telangana (Intra-State sale) after adding 10% as his margin.

Assume that the rate of GST chargeable is 18% (CGST 9% plus SGST 9%) and IGST chargeable is 18%. Calculate tax payable at each stage of the transactions detailed above. Wherever input tax credit is available and can be utilized, calculate the net tax payable in cash. At each stage of the transaction, indicate which Government will receive the tax paid and to what extent.

LESSON 15: PART V - REFUND OF TAX [SECTION 54 OF THE CGST ACT]

Situations leading to refund claims

The relevant date provision embodied in section 54 of the CGST Act, 2017, provision contained in Section 77 of the CGST Act, 2017 and the requirement of submission of relevant documents as listed in the CGST Rules, 2017 is an indicator of the various situations that may necessitate a refund claim. A claim for refund may arise in the following situations:

(i) Goods or services or both are exported or, goods or services or both supplied to an SEZ developer/unit, on payment of IGST and refund of such IGST paid on goods or services or both supplied is claimed [Section 16(3)(b) of IGST Act].

(ii) A registered person may claim refund of any unutilised input tax credit (ITC) at the end of any tax period in the following cases:

(a) Zero rated supplies: Supply of goods/services/both to an SEZ developer/unit or export of goods or services or both, and

(A) Accumulated ITC on account of inverted duty structure: Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

However, refund of unutilized ITC shall **NOT** be allowed if:

- the goods exported out of India are subjected to export duty;
- the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

(2) Tax paid on the supply of goods regarded as deemed exports may be claimed by recipient.

(3) Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed [Section 49(6)].

(4) Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied, may be claimed [Section 31(3)].

(5) Refund of tax wrongly collected and paid to the Government [i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa [Section 77 of the CGST Act and section 19 of the IGST Act].

(6) The IGST paid by tourist leaving India on any supply of goods taken out of India by him [Section 15 of IGST Act].

(7) Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court.

(8) On finalization of provisional assessment, if any tax becomes refundable to assessee (on account of assessed tax on final assessment being less than the tax deposited by the assessee) [Section 60].

(9) Refund of taxes on purchase made by UN bodies or embassies etc. [Section 54(2)].

Time limit within which refund claim can be filed

Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of 2 years from the 'Relevant Date' in such form and manner as may be prescribed [Section 54(1)].

A registered person may claim refund of any unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure at the end of any tax period [Section 54(3)].

Meaning of 'Relevant Date' [Explanation 2 to section 54]

'Relevant Date' has been defined in Explanation 2 to section 54. Accordingly it means:-

S.No.	Cases	Relevant Date
1	In case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods and –	
	(i) Goods are exported by sea or air	Date on which the ship or the aircraft in which such goods are loaded, leaves India
	(ii) Goods are exported by land	Date on which such goods pass the Frontier
	(iii) Goods are exported by post	Date of dispatch of goods by the Post Office concerned to a place outside India
2	In case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods	Date on which the return relating to such deemed exports is furnished
	In case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, and	
	(i) the supply of services had been completed prior to the receipt of such payment	Date of receipt of payment in convertible foreign exchange

3	(ii) Payment for the services had been received in advance prior to the date of issue of the invoice	Date of issue of Invoice
4	Where the tax becomes refundable as a consequence of judgement, decree, order or direction of the Appellate Tribunal or any court	Date of communication of such judgment, decree, order or direction
5	In case of refund of unutilised ITC in case of account of inverted duty structure	Due date of filing of return for that period
6	In the case where tax is paid provisionally under this Act or the rules made thereunder	Date of adjustment of tax after the final Date of adjustment of tax after the final
7	In the case of a person, other than the supplier	Date of receipt of goods or services or both by such person
8	Any other case	Date of payment of tax

Application for refund of tax, interest, penalty, fees or any other amount [Rule 89]

(1) Any person, except the persons covered by notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application in Form GST RFD-01 electronically through GST common portal [Rule 89(1)].

(2) However, a registered person claiming refund of any balance in the electronic cash ledger in accordance with the provisions of section 49(6), instead of claiming the same in Form GST RFD-01, may claim such refund in the return furnished for the relevant tax period under section 39 in Form GSTR-3/Form GSTR-4/Form GSTR-7, as the case may be. Such return furnished shall be deemed to be a refund claim filed under section 54 [Proviso to section 54(1) read with first proviso to rule 89(1)].

(3) Supplies by Casual taxable person/Non-resident taxable person: The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)].

However, where the amount of refund claimed exceeds Rs.2 lakh, a Certificate in Annexure 2 of Form GST RFD-01 by a Chartered Accountant or a Cost Accountant to the effect that there is not unjust enrichment in the case of the applicant [i.e. incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.

Further, neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant is not required to be furnished in the following cases:

a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
b) refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;

c) Refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued. The expression "invoice" referred here means invoice conforming to the provisions contained in section 31.
d) Refund of tax in pursuance of section 77, i.e. tax paid tax on a transaction treating it as an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.

e) The tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Amount to be claimed as refund in case of zero rated supply of goods or services and on account of inverted duty structure

Rule 89(4) stipulates that in the case of **zero-rated supply of goods or services or both** without payment of tax under bond/LUT in accordance with the provisions of

section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

Refund Amount = Turnover of ZRS of goods + ZRS of services *Net ITC/ Adjusted total turnover

Net ITC = ITC on Inputs and Input services during the relevant period

Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of **inverted duty structure**, refund of ITC shall be granted as per the following formula

Maximum refund amount = {Net ITC * Turnover of Inverted rated supply of goods or services or both/ Adjusted total turnover} – Tax on Inverted rated supply.

where,-

A. **"Refund amount"** means the maximum refund that is admissible;

B. **"Net ITC"** means input tax credit availed on inputs during the relevant period;

C. **"Adjusted Total turnover"** means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

Where the application relates to refund of ITC, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed [Rule 89(3)].

Order of refund [Section 54(5), (7) read with rule 92]

- Section 54(5) stipulates that if, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund *[discussed in detail in subsequent paras].*

- Refund order shall be issued by the proper officer within **60 days from the date of receipt of application** complete in all respects [Section 54(7)].

The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgment received for refund claim [Section 54(7) read with rule 90(1) and 90(2)].

Amount of refund liable to be withheld: Where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11), he shall pass an order informing the applicant the reasons for withholding of such refund [Rule 92(2)].

- **Where the proper officer is satisfied that the amount refundable is payable to the applicant under section 54(8)*,** he shall make an order in Form GST RFD-06 and issue a payment advice for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund [Rule 92(4)].
- **Where the proper officer is satisfied that the amount refundable is not payable to the applicant under section 54(8),** he shall make an order in Form GST RFD-06 and issue an advice for the amount of refund to be credited to the **Consumer Welfare Fund** [Rule 92(5)]

**Section 54(8) lists the circumstances in which the refundable amount is to be paid to the applicant instead of being credited to the Consumer Welfare Fund*

(iii) Grant of provisional refund [Section 54(6) read with rule 91]

- The proper officer may, in the case of any claim for **refund on account of zero-rated supply of goods or services or both** made by registered persons,

- other than such category of registered persons as may be notified by the Government on the recommendations of the Council,

- **refund on a provisional basis, 90% of the total amount so claimed**, excluding the amount of ITC provisionally accepted

- in such manner and subject to such conditions, limitations and safeguards as may be prescribed** and

- thereafter make an order under section 56(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

Principal of Unjust Enrichment [Section 54(8) & (9)]

- Theory of unjust enrichment postulates that only the person who has **NOT**

- passed the incidence of tax will be eligible to claim the refund. Under GST law, related provisions
- are contained under section 54(8).

- Under unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every refund claim if sanctioned is first transferred to the Consumer Welfare Fund.

- If the refund claim of refund (barring specified exceptions) passes the test of unjust enrichment, it is paid to the applicant. The GST law makes this test inapplicable in case of refund of accumulated ITC, refund on account of exports, refund of payment of wrong tax (IGST instead of CGST + SGST and vice versa), refund of tax paid on a supply, which is not provided or when refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person *[Listed below in detail]*.

In all other cases, the test of unjust enrichment needs to be satisfied for the claim to be paid to the applicant.

- For crossing the bar of unjust enrichment, if the refund claim is less than **Rs.**2 lakh, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim.
- For refund claims exceeding **Rs.**2 lakh, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

Issue of SCN and rejection of refund claim [Rule 92(3)]

- Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant.
- Applicant will be required to furnish a reply within 15 days of the receipt of such notice.

- The proper officer shall, after considering the reply furnished by applicant and after giving him an opportunity of being heard, make an order in Form GST RFD-06, sanctioning the amount of refund in whole or part, or rejecting the said refund claim.

- The said order shall be made available to the applicant electronically and the provisions of rule 92(1) relating to order sanctioning refund shall, mutatis mutandis, apply to the extent refund is allowed
- No application for refund shall be rejected without giving the applicant an opportunity of being heard [Rule 92(3)].

Withholding of refund claim [Section 54(10), (11) & (12)]

GST law provides that where an order giving rise to a refund is the subject matter of an appeal or further proceedings

or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

However, it has been adequately safeguarded by provision for payment of interest @ 6% if, as a result of appeal, or further proceedings, the applicant becomes eligible for refund. These provisions have been discussed in detail as under:

- Where any refund is due in case of zero rated supplies or accumulated ITC on account of inverted duty structure, to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the **specified date****, the proper officer may:

A. withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

B. Deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

****Specified date** shall mean the last date for filing an appeal under this Act [Section 54(10)].

- Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine [Section 54(11)].

Where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11), he passes an order informing the applicant the reasons for withholding of such refund [Rule 92(2)].

- However, where a refund is withheld under section 54(11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to **interest @ 6% p.a.***,

if as a result of the appeal or further proceedings he becomes entitled to refund [Section 54(12)].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

Minimum refund claim [Section 54(14)]

No refund shall be paid to an applicant, if the amount is less than **Rs.**1,000. Limit of 1000 is per tax head. Further, no limit will apply for refund from electronic cash ledger.

Credit of the amount of rejected refund claim [Rule 93]

- Where any deficiencies have been communicated under rule 90(3), the amount earlier debited under rule 89(3) shall be re-credited to the electronic credit ledger [Rule 93(1)].

- Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in prescribed form [Rule 93(2)].

- For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal [Explanation to rule 93].

REFUND TO UN BODIES, EMBASSIES, ETC. [SECTION 55 READ WITH SECTION 54(2) OF CGST ACT]

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.

However, the UN bodies and other entities notified under section 55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases.

Who is entitled to refund under section 55?

Government may, on the recommendations of the Council, by notification, specify:

(d) any specialised agency of the United Nations Organisation; or

(e) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947; or

(iii) Consulate or Embassy of foreign countries; and

(iv) any other person or class of persons as may be specified in this behalf,

who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.

- **Form and documents for filing the refund claim [Rule 95(1)]**

Persons eligible to claim refund under section 55 shall submit the application for refund:

- in a **different prescribed form – RFD 10**, electronically on the common portal,
- along with a **Statement of the Inward Supplies of goods or services or both** in **Form GSTR-11**, prepared on the basis of the Statement of the Outward Supplies furnished by the corresponding suppliers in Form GSTR-1.

- **Acknowledgment for refund claim [Rule 95(2)]**

An acknowledgement for receipt of the application for refund shall be issued in a prescribed form.

▫ Conditions to be satisfied for sanction of refund [Rule 95(3) & (4)]

Refund of tax paid by the applicant shall be available if all the following conditions are satisfied-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice.

(b) name and GSTIN or UIN of the applicant is mentioned in the tax invoice.

(c) such other restrictions or conditions as may be specified in the notification are satisfied.

The provisions of rule 92, as discussed earlier in this chapter shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.

INTEREST ON DELAYED REFUNDS [SECTION 56 OF CGST ACT]

A. Interest on amount refundable consequent to order passed by Proper Officer under section 54(5)

- Where any tax ordered to be refunded under section 54(5) to any applicant is **not refunded within 60 days** from the date of receipt of application under section 54(1), interest shall be payable to the applicant.

- Interest is **payable on such refund @ 6% p.a.***.

- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application under the section 54(1) till the date of refund of such tax [Section 56 of CGST Act].
  as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

B. Interest on amount refundable consequent to order passed in an appeal or further proceedings

- Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is **not refunded within 60 days from the date of receipt of application** filed consequent to such order, interest shall be payable on such refund.

- Interest is **payable on such refund @ 9% p.a.*.**

- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. [Proviso to Section 56 of CGST Act].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

For the purpose of this section, the order of refund made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under section 54(5), shall also be deemed to be an order passed under the said section 54(5) [Explanation to section 56].

15.2.3.4 CONSUMER WELFARE FUND [SECTIONS 57 & 58 OF CGST ACT]

Consumer Welfare Fund was created to promote and protect the welfare of consumer, create consumer awareness and strengthen consumer movement in the country, particularly in rural areas. Amount of refund which is not payable to the applicant is credited to the Consumer Welfare Fund.

As already discussed in this chapter, amount of refund is paid to the applicant in case where there is no unjust enrichment; i.e. the incidence of tax has not been passed by the supplier to the recipient as also in the circumstances where the principle of unjust enrichment is not applicable [specified in section 54(8)]. Otherwise, the said amount is credited to the Consumer Welfare Fund.

Amount to be credited to Consumer Welfare Fund

Section 57 of the CGST Act stipulates that the Government shall constitute a Fund, to be called the **Consumer Welfare Fund** and there shall be credited to the Fund:

- Amount of refund determined by an order passed under section 54(5),
- any income from investment of the amount credited to the Fund; and
- such other monies received by it,

In such manner as may be prescribed. Such manner has been prescribed under rule 97 of the CGST Rules, 2017.

Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97 of the CGST Rules, 2017]

- All credits to the Consumer Welfare Fund shall be made under rule 92(5)
- Any amount, having been credited to the Consumer Welfare Fund, ordered or directed as payable to any claimant by orders of the proper officer, Appellate Authority or Appellate Tribunal or Court, shall be paid from the Fund [Rule 97(2)].

Utilisation of Consumer Welfare Fund [Section 58 of the CGST Act, 2017 read with rule 97 of the CGST Rules, 2017]

- **Purpose for which Fund may be utilized**
  - All sums credited to the Consumer Welfare Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed [Section 58(1) of the CGST Act].

- The Government shall, by an order, constitute a Standing Committee who shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers [Rule 97(4)].

- The Central Consumer Protection Council and the Bureau of Indian Standards shall recommend to the GST Council, the broad guidelines for considering the projects or proposals for the purpose of incurring expenditure from the Consumer Welfare Fund [Rule 97(8)].

- **Person who may apply for grant from Consumer Welfare Fund**

  - Any agency or organisation engaged in consumer welfare activities for a period of 3 years registered under the provisions of the Companies Act, 2013 or under any other law for the time being in force, including village or mandal or samiti level co-operatives of consumers especially women, Scheduled Castes and Scheduled Tribes, or any industry as defined in the Industrial Disputes Act, 1947 recommended by the Bureau of Indian Standards to be engaged for a period of five years in viable and useful research activity which has made, or is likely to make, significant contribution in formulation of standard mark of the products of mass consumption, the Central Government or the State Government may make an application for a grant from the Consumer Welfare Fund :

However, a consumer may make application for reimbursement of legal expenses incurred by him as a complainant in a consumer dispute, after its final adjudication

- **Maintenance of Books of Accounts**

The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the CAG (Comptroller and Auditor-General of India).

REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA [SECTION 15 OF IGST ACT]

- The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

- The term **"tourist"** means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purpose

Questions

1. Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017.

The company has made the following supplies during a tax period:

S. No	Particulars	(Rs.)
(i)	Export of product 'A' to UK for $ 10,000. Assessable value under customs in Indian rupees. [Export duty is levied on product 'A' at the time of exports]	7,00,000
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%] *not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii) of the CGST Act, 2017	10,00,000
(iii)	Supply of goods to Export Oriented Unit [excluding tax @ 18%]	5,00,000

	[ITC has been claimed by the recipient]	
(iv)	Export of exempt supplies of goods	6,00,000

The ITC available for the above tax period is as follows:

S. No	Particulars	(Rs.)
(i)	On inputs (including Rs.50,000 on export of exempt supplies)	3,50,000
(ii)	On capital goods	1,20,000
(iii)	On input services (including Rs.18,000 on outdoor catering)	2,00,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period.

2. Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

Products	Turnover* (Rs.)	Output GST Rates	ITC availed (Rs.)	Input GST Rates
A	500,000	5%	54,000	18%
B	350,000	5%	54,000	18%
C	100,000	18%	10,000	18%

*excluding GST

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

3. With reference to section 54(3) of the CGST Act, 2017, mention the cases where refund of unutilised input tax credit is allowed.

4. State the cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017.

5. Wye Ltd. provides the following details of September 20XX for computation of refund claim under rule 89(4) of the CGST Rules, 2017. Compute the eligible claim under the said rule assuming that other conditions are fulfilled.

Particulars	Amount(')
Opening balance of ITC	5,00,000
ITC availed during the period, which includes the claim for refund made of '5,00,000 eligible under rule 89(4A)/89(4B) of the CGST Rules, 2007	25,00,000
Zero rated supply of goods made during the period without payment of tax under bond/ LUT, which include the supply of Rs.1,00,00,000 for which refund claim is made under rule 89(4A)/89(4B) of the CGST Rules, 2017	6,00,00,000
Supply of goods other than zero rated supply	3,00,00,000

6. Y Ltd. exported service valued at US $ 1,00,000. Supply of service was completed on 15th November 2019. Payment for this service was received on 30th December 2019. Refund claim was filed by Y Ltd. in respect of tax paid on inputs and inputs services for Rs.6,00,000 on 31st January, 2020. The refund claim was sanctioned on

30th April, 2020. What is the amount of refund Y Ltd. will get in accordance with law? What is the relevant date and rate of interest as per GST law?

15.6.1 Tax deduction at source [Sec. 51]

(1) **TDS upto 1%, if Contract amount exceeds Rs.2,50,000** - Notwithstanding anything to the contrary contained in this Act, the Government may mandate

a) A department or establishment of the Central Government or State Government; or

b) Local authority; or

c) Governmental agencies; or

d) Such persons or category of persons as may be notified by the Government on the recommendations of the Council, (Hereafter in this section referred to as "the deductor"),

To deduct tax at the rate of one per cent, from the payment made or credited to the supplier (i.e., "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds Rs. 2,50,000.

No TDS, if supplier/place of supply lies in different jurisdiction:

No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or Union territory of registration of the recipient.

Value is taken excluding GST: For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

(3) **Paying by 10th of next month** - The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(4)

(3)**TDS certificate** - The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.

(4)**TDS certificate within 5 days of paying tax** - If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within 5 days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of Rs. 100 per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of Rs. 5,000.

(5)**Credit of TDS** - The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under section 39, in such manner as may be prescribed.

(6)**Interest for delay in paying TDS** - If any deductor fails to pay to the Government the amount deducted as tax, he shall pay interest in accordance with the provisions of section 50, in addition to the amount of tax deducted [max. 18%].

(7)**Demand** - The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

(8)**Refund on wrong deduction** - The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54.

However, no refund to the deductor shall be granted, if the amount deducted has been credited to electronic cash ledger of the deductee.

15.6.2 COLLECTION OF TAX AT SOURCE [Sec. 52]

(1) TCS by e-comm. Operator - Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (viz. the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding 1%, as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

"Net value of taxable supplies" shall mean aggregate value of taxable supplies of goods or services or both, other than services notified under Section 9(5) [where e-commerce operator is liable to pay tax], made during any month by all registered persons through the operator reduced by the aggregate value of taxable returned to the suppliers during the said month.

(2) Other modes of recovery open - The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) TCS to be paid by 10th of next month - The amount collected under sub-section [1] shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) TCS statement by 10th of next month - Every operator who collects the amount specified in sub-section {1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(5) Annual statement by 31st Dec. - Every operator who collects the amount specified in sub-section [1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

(6) Rectifying mistake - If any operator after furnishing a statement under sub-section [4] discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

However, no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) TCS credit - The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in statement of operator furnished under sub-section [4], in such manner as may be prescribed.

(8) Matching - The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by concerned supplier (i.e., the supplier of goods or services or both making supplies through the operator) registered under this Act in such manner and within such time as may be prescribed.

(9) Communicating deficiency - Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) Deficient Amount payable - The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) Payment with interest upto 18% - The concerned supplier, in whose output tax liability any amount has been added under sub-section [10], shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Notice seeking details - Any authority not below rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

a) Supplies of goods or services or both effected through such operator during any period; or

b) Stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(13) Details to be given within 15 days - Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Penalty for delay in giving info. - Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to Rs. 25,000.

Questions:

1. A person who _____ digital or electronic facility or platform for electronic commerce shall be considered as an e-commerce operator.

(a) Owns

(b) Operates

(c) Manages

(d) Any of the above

Ans. (d) Any of the above

2. Is there any threshold limit for applying the provisions of Section 52 for collecting tax at source?

(a) TCS applies if net value of taxable supplies exceeds Rs. 10,00,000/-

(b) TCS applies if net value of taxable supplies exceeds Rs. 15,00,000/-

(c) TCS applies if net value of taxable supplies exceeds Rs. 20,00,000/-

(d) No such limit prescribed, tax should always be collected at source if the conditions envisaged u/s 52 are met.

Ans. (d) No such limit prescribed, tax should always be collected at source if the conditions envisaged u/s 52 are met

3. When will Section 52 apply? Or when should the e-commerce operator be liable to collect tax at source?

(a)E-commerce operator shall collect tax at source in respect of all supplies made through it.

(b)E-commerce operator should collect tax at source only if the supplier of the goods and is registered

(c)E-commerce operator shall collect tax at source on the net taxable value of supplies made through it by other supplier where the consideration with respect to such supply is to be collected by the E-commerce operator.

(d)E-commerce operator shall collect tax at source only if the net value of taxable supplies exceeds the prescribed threshold limit.

Ans. (c) E-commerce operator shall collect tax at source on the net taxable value of supplies made through it by other supplier where the consideration with respect to such supply is to be collected by the E-commerce operator

4. When should the e-commerce operator collect tax at source?

(a) When he collects the consideration on behalf of the supplier in respect of such supply

(b) On the date when the other supplier makes supplies through operator

(c) Day on which the supplier remits the consideration to the supplier

(d) Option (a) or (b) whichever is earlier

(e) Option (a) or (b) whichever is later

Ans. (a) When he collects the consideration on behalf of the supplier in respect of such supply

5. In case the e-commerce operator agrees to bear a part of the discount offered by the supplier on the products, is the e-commerce operator required to collect tax at source on such discount borne by him?

(a) Yes, as this can be considered as consideration received from the customer

(b) No, this cannot be considered as consideration received from the customer

Ans. (a) Yes, as this can be considered as consideration received from the customer

6. When should the e-commerce operator remit the amount of TCS to government and file the necessary returns with the government?

(a)Within 10 days after the end of the month in which such amount was collected

(b)Within 10 days after the end of the month in which such amount was collected, but no time limit for filing the return

(c)Within 10 days after the end of the month in which such amount was collected, but no time limit for paying the money

(d)No time limit for both

Ans. (a) Within 10 days after the end of the month in which such amount was collected

7. Can a supplier take credit of the TCS?

(a) Yes

(b) No

(c) Yes, on the basis of the valid return filed

(d) Yes, on the basis of a valid return filed by the e-commerce operator and there is no discrepancy in the returns

Ans. (d) Yes, on the basis of a valid return filed by the e-commerce operator and there is no discrepancy in the returns

8. On what value TDS needs to be deducted?

(a) Contract value

(b) Contract value excluding tax

(c) Invoice value including tax

(d) Invoice value excluding tax

Ans. (d) Invoice value excluding tax

9. What is the due date for issue of TDS Certificate?

(a) The date of payment of TDS
(b) Within 10 days from the date of payment of TDS
(c) Within 20 days from the date of payment of TDS
(d) Within 05 days from the date of payment of TDS

Ans. (d) Within 05 days from the date of payment of TDS

15.7.1 FURNISHING DETAILS OF OUTWARD SUPPLIES [Section 37]

Sec 37(1) Details of outward supplies & intimation to recipient - Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the 10th day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed.

"Details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

Barred period: However, the registered person shall not be allowed to furnish the details of outward supplies during the period from the 11th to 15th day of the month succeeding the tax period.

Extension:

- The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:
- Any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Any registered person, who has furnished the details under this section for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period. However, no rectification of error or omission in respect of the details furnished under this section shall be allowed after:

- Furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or
- Furnishing of the relevant annual return, whichever is earlier.

Explanation - For the purposes of this chapter, the expression "details of outward supplies "shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

15.7.2 RETURNS AND ALLIED PROVISIONS [Section 39 TO 48]

Furnishing of returns (Sec 39) –

Sec 39(1) Monthly return of inward/outward supplies by 20th of next month : Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

Sec 39(2) Quarterly return in case of composite tax by 18th: A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

Monthly return of TDS by 10th: Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

Sec 39(3) Monthly return by ISD by 13th: Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

Sec 39(4) & (5) Return by NR taxable person: Every registered non – resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within 20 days after the end of a calendar month or within 7 days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

Sec 39(6) Extension of time-limit: The commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein.

Any extension of time limit notified by the commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

Sec 39(7) Tax to be paid upto the date of filing of return: Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the government the tax due as per such return not later than the last date on which he is required to furnish such return.

Sec 39(8) Return to be filed even if no taxable supplies: Every registered person who I required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

Sec 39(9) Revision on suo motu discovery of mistake:

- Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act;
- However, no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

Sec 39(10) No return for subsequent period, if return of earlier period is still unfiled: A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by them.

15.7.3 SPECIAL RETURNS

As discussed above, a regular taxpayer has to file GSTR-1, GSTR-2 and GSTR -3. However, there are certain specified category of taxpayers for whom a simplified return iS specified owing to the nature of their activities namely, composition taxpayer, NRTP, ISD, person deducting tax at source, person collecting tax at source, supplier of OIDAR services.

These Special Returns are discussed below.

FILING OF RETURNS BY NON-RESIDENT TAXABLE PERSONS [SECTION 39(5) READ WITH RULE 63 OF CGST RULES]

(a) Monthly return

A registered NRTP is not required to file separately the Statement of Outward Supplies, Statement of Inward Supplies and Return for a normal tax payer. In place of the same, a simplified monthly tax return has been prescribed in **Form GSTR-5** for a NRTP for every calendar month or part thereof. NRTP shall incorporate the details of outward supplies and inward supplies in GSTR-5.

(b) Last date of filing return

The details in GSTR-5 should be furnished within **20 days after the end of the calendar month** or **within 7 days after the last day of validity period of the registration**, whichever is earlier.

(c) Payment of interest, penalty, fees or any other amount payable

NRTP shall pay the tax, interest, penalty, fees or any other amount payable under the CGST Act or the provisions of the Returns Chapter under CGST Rules, 2017 till the last date of filing return.

DETAILS OF INWARD SUPPLIES OF PERSONS HAVING UIN [RULE 82 OF CGST RULES, 2017]

1. **UIN issued for claiming refund of taxes paid on his inward supplies of a person**
   Such person shall furnish the details of those inward supplies of taxable goods and/or services on which refund of taxes has been claimed in Form GSTR-11, **along with application for such refund claim**
2. **UIN issued for purposes other than refund of taxes paid**
   Such person shall furnish the details of inward supplies of taxable goods and/or services as may be required by the proper officer in Form GSTR-11.

Non-Resident Taxable Persons (NRTPs) are those suppliers who do not have a business establishment in India and have come for a short period to make supplies in India. They would normally import their products into India and make local supplies.

✪ FILING OF RETURNS BY PERSON REQUIRED TO DEDUCT TAX AT SOURCE [SECTION 39(3) READ WITH SECTION 51 AND RULE 60(6) AND RULE 66 OF CGST RULES, 2017]

Whenever taxable goods or services or both are supplied to a Central/ State Government's Department/ establishment or, local authority, or Governmental agencies, recipient is required to deduct tax at source under section 51.

Such deductor [person deducting TDS] is required to be compulsorily registered and deduct tax @1% of the payment made to the supplier (the deductee) of taxable goods or

services or both, where the total value of such supply, under a contract, exceeds Rs.2,50,000 (excluding the amount of CGST, SGST, IGST, UTGST and cess indicated in the invoice).

Tax Deducted at Source (TDS) refers to the tax which is deducted when the above specified recipient of goods or services makes some payments under a contract etc.

A. Monthly return

Deductor shall furnish a monthly return in **Form GSTR-7** electronically through the common portal.

- **Last date of filing return**
  - The details in GSTR-7 should be furnished **on/before 10th of the month succeeding the calendar month** in which tax has been deducted at source.
- **TDS details made available in GSTR-2A/4A**
  - The details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the suppliers in Part C of Form GSTR-2A/ Form GSTR- 4A (in case of registered person opting for composition levy) on the common portal after the due date of filing of Form GSTR-7. The said supplier may include the same in its Form GSTR-2/GSTR-4.

- **Tax Deduction at Source (TDS) Certificate**
  - A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment, TDS is deducted), within 5 days of crediting the amount to the Government. It contains the details pertaining to value on which tax has been deducted, rate of deduction, amount of tax deducted at source and amount paid to the Government.

✪ FILING OF STATEMENT OF SUPPLIES EFFECTED THROUGH AN E-COMMERCE OPERATOR (TCS STATEMENT) [SECTION 52(4) READ WITH RULE 60(7) AND RULE 67 OF CGST RULES, 2017]

When a supplier supplies some goods or services to the consumer through the portal of an electronic commerce operator (ECO), the consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of its commission.

The Government has placed the responsibility on ECO to collect the 'tax' at @ 1% from the supplier under section 52.

This shall be done by the ECO by paying the supplier, the consideration of the product/services, less the tax, calculated at the rate of 1%.

The amount so collected by ECO [while making the payment to the supplier] is referred as **Tax Collected at Source (TCS)**. TCS will be calculated on the net value of the goods/services supplied through the portal of ECO.

- **Monthly return**
- ECO shall furnish a monthly return in **Form GSTR-8** electronically through the common portal. **Form GSTR-8** contains the details of supplies of goods or services or both effected through ECO, including the supplies of goods or services or both returned through it and the amount of tax collected at source.

- **Last date of filing return**
  The details in GSTR-8 should be furnished **on/before 10th of the month succeeding the calendar month** in which tax has been collected at source.
- Further, the amount of tax collected by ECO (TCS amount) is required to be deposited by the 10th of the month succeeding the calendar month in which tax has been collected at source.

- **TCS details made available in GSTR-2A**
  The details of TCS furnished by the ECO in Form GSTR-8 shall be made available electronically to each of the suppliers in Part C of Form GSTR-2A

on the common portal after the due date of filing of Form GSTR-8. Such suppliers may include the same in their Form GSTR-2.

✪ FILING OF RETURN BY AN INPUT SERVICE DISTRIBUTOR [SECTION 39(4) READ WITH RULE 60(5) AND RULE 65 OF CGST RULES, 2017]

Input Service Distributor (ISD) means an office of the supplier of goods or services or both which receives tax invoices issued towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same PAN as that of ISD.

Many times, the Head Office procures certain services which are for common utilization of all units across the country. The bills for such expenses are raised on the Head Office. However, the Head Office itself does not provide any output supply so as to utilize the credit which gets accumulated on account of such input services. Since the common expenditure is meant for the business of all units, it is but natural that the credit of input services in respect of such common invoices should be apportioned between all the consuming units. ISD mechanism enables such proportionate distribution of credit of input services amongst all the consuming units.

Thus, ISD can distribute the credit of "input services" (and not of inputs or capital goods) on common invoices pertaining to input services to various units belonging to the entities having same PAN (recipient of credit) in the prescribed manner, by issuing the ISD invoices.

An ISD is required to distribute both eligible as well as ineligible credit as per rule 39 of the CGST Rules, 2017.

A. Monthly Return

ISD is not required to file separate statements of outward and inward supplies with its return. It needs to file only a monthly return in **Form GSTR-6** electronically through the common portal.

Form GSTR-6 contains the details of input tax credit received for distribution, total ITC/

eligible/ ineligible ITC to be distributed for the tax period, distribution of ITC, details of debit/ credit notes, etc.

B. Last date of filing return

The details in GSTR-6 should be furnished **on/before 13th of the month succeeding the calendar month**. GSTR-6 can only be filed after 10th of the month and before 13th of the month succeeding the tax period.

C. Auto-population of input tax credit received for distribution

The details of input tax credit received for distribution by an ISD will be auto populated in **Form GSTR-6A**. Such details are auto-populated in Form GSTR-6A when the registered suppliers file their GSTR-1.

ISD can view the auto-populated details of ITC received for distribution in GSTR-6A and, where required, after adding, correcting or deleting the details, furnish GSTR-6.

D. ISD will not have reverse charge supplies

An ISD cannot accept any invoices on which tax is to be discharged under reverse charge mechanism. If ISD wants to take reverse charge supplies, in that case it has to separately register as a Normal taxpayer. This is because the ISD mechanism is only to facilitate distribution of credit of taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to Government account. ISD will have late fee and any other liability only.

E. Details of GSTR-6 to be available in GSTR-2A of the recipients

The details of invoices furnished by an ISD in his return will be made available to the respective registered recipients of credit in their GSTR 2A (Form GSTR 4A in case of composition supplier). The recipients may include these in their GSTR-2 (Form GSTR 4 in case of composition supplier) and take credit.

First return (Sec *40)* - Every registered person who has made outward supplies in the period between the dates on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

15.7.4 Annual return (Sec *44)* -

Sec 44(1) ***Annual return by 31st Dec.:*** Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year
electronically in such form and manner as may be prescribed on or before 31st day of December following the end of such financial year.

Sec 44(2) ***Audit report to be furnished along with reconciliation statement :*** Every registered person who is required to get his accounts audited in accordance with the provisions of section 35(5) 35 shall furnish, electronically, the annual return under sub-

section *(1)* along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

Amendment:

- Filing of annual return (GSTR- 9) under section 44(1) of CGST Act read with rule 80(1) of CGST Rules, in respect of financial years 2017-18 and 2018-19, has been made voluntary for the registered persons whose turnover is less than Rs. 2 crore and who have not furnished the said annual return before the due date. The annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date.
- Person supplying online information technology and database access retrieval [OIDAR] services not required to furnish annual return and reconciliation statement

Final return (Sec *45)* - Every registered person who is required to furnish a return under sub-section *(1)* of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

Notice to Return Defaulters (Sec *46)* - Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed

Levy of late fee (Sec *47)*

***Sec 47(1)* Late fee of Rs. 100 per day upto Rs. 5,000 for belated filing of periodical return:** Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

***Sec 47(2) Annual return* —Late fee of Rs. 100 per day upto 0.25% of turnover:** Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent, of his turnover in the State or Union territory.

15.7.5 GST practitioners (Sec *48)*

Sec 48(1) Qualifications: The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.

Sec 48(2) Filing of returns through GSTP: A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 in such manner as may be prescribed.

Sec 48(3) Responsibility lies only on registered person: Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return, and details are furnished.

15.7.6 INFORMATION RETURN [SECTIONS 150 & 123]

1. Who shall furnish the information return? [Section 150(1)]

Information return is based on the idea of verifying the compliance levels of registered persons through information procured from independent third-party sources.

Many authorities who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an Information Return of the same in respect of such periods, within such time, in such form and manner and to such authority/agency as may be prescribed

2. Defective Information Return [Section 150(2)]

Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return.

He shall give such person an opportunity of rectifying the defect within a period of 30 days from the date of such intimation [or within such further period which, on an application made in this behalf, the said authority may allow].

However, if the defect is not rectified within the said period of 30 days [or, the further period so allowed], then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

3. Issuance of notice for failure to furnish the information return within stipulated time [Section 150(3)]

Where a person who is required to furnish information, return has not furnished the same within the specified time*, the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding 90 days from the date of service of the notice and such person shall furnish the information return.

**time specified in sub-section (1) or sub-section (2) of section 150*

4. Penalty for failure to furnish information return [Section 123]

If the person to whom the notice has been issued under section 150(3) fails to furnish the information return within the period specified in said notice, the proper officer may direct that such person shall be liable to pay a penalty.

QUESTIONS:

1. What are the key features of return mechanism in GST?

2. What kind of inward supplies are required to be furnished in GSTR-2?

3. Mr. X, a composition tax payer, did not render any taxable supply during the quarter July-September. Is he required to file any goods and service tax return?

4. If a return has been filed, how can it be revised if some changes are required to be made?

5. Which type of taxpayers need to file Annual Return?

6. Is an Annual Return and a Final Return one and the same?

7. Do Input Service Distributors (ISDs) need to file separate statement of outward and inward supplies with their return?

8. How does a taxpayer get the credit of the tax deducted at source on his behalf? Does he need to produce TDS certificate from the deductee to get the credit?

9. Is it compulsory for a taxpayer to file return by himself?

10. Mr. Anand Kumar, a regular taxpayer, filed his return of outward supply (GSTR-1) for the month of August, 20XX before the due date. Later on, in February, 20XX he discovered error in the GSTR-1 return of August 20XX already filed and wants to revise it.

    You are required to advise him as to the future course of action to be taken by him according to statutory provisions.

LESSON 15 : PART VIII - AUDIT

15.8.1 DEFINITION

"Audit" has been defined in section 2(13) of the CGST Act, 2017 and it means

- the examination of records, returns and other documents
- maintained or furnished by the registered person under the GST Acts or the rules made there under or under any other law for the time being in force
- to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and
- to assess his compliance with the provisions of the GST Acts or the rules made thereunder.

15.8.2 AUDIT BY DEPARTMENT & AUDIT BY CA/CMA [Section 65 & 66]

Audit by tax authorities (Sec 65) -

(1) Audit by department, of any registered person: Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) Audit at assessee's place or in department's office: The officers referred to in sub-section **(1)** may conduct audit at the place of business of the registered person or in their office.

(3) Minimum notice of 15 working days: Registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) Audit to be completed within 3 months + 6 months: The audit shall be completed within a period of 3 months from date of commencement of audit. However, if Commissioner is satisfied that audit in respect of such registered person cannot be completed within 3 months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding 6 months.

"Commencement of audit" *shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.*

(5) Seeking information/books: During the course of audit, the authorised officer may require the registered person,—

(i) To afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) To furnish such information as he may require and render assistance for timely completion of the audit.

(6) Findings of audit to be shared with reasons, within 30 days of conclusion of audit: On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Demand in case of short-payment, etc.: Where the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Special audit by CA/CMA (Sec *66*) -

(1) Valuation or Credit correctness doubted — Special Audit by CA/CMA : If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

***(2)* Audit report within 90 days + 90 days:** The chartered accountant or cost accountant so nominated shall, within the period of 90 days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified. However, the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of 90 days.

***(3)* Special audit to be conducted, even if accounts already audited:** Provisions of this section shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

(4) **Opportunity of being heard, before using material against assessee:** Registered person shall be given an opportunity of being heard in respect of any material gathered

on basis of special audit which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

(5) ***Expenses borne by the department:*** The expenses of the examination and audit of records under sub-section *(1)*, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

(6) Demand notice if short-payment etc. is detected : Where the special audit conducted under sub-section *[1)* results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

QUESTIONS:

1. In what cases, assessment order passed by proper officer may be withdrawn?
2. Who can conduct audit of taxpayers?
3. Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017.
4. How many types of audit are prescribed under GST Act. Briefly explain each one of them.

LESSON 15 : PART IX - E-WAYBILLS UNDER GST

15.9.1 E- Way bill {Section 68 read with Rules}:

The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

The details of such prescribed documents required to be carried shall be validated in such manner as may be prescribed.

Where any conveyance referred above is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

15.9.2 Information to be furnished prior to commencement of movement of goods and generation of e-way bill [Rule 138]

Every registered person who causes movement of goods of consignment value exceeding Rs.50,000:

(i) in relation to a supply; or
(ii) for reasons other than supply; or
(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods in Part-A of a prescribed form, electronically, on the common portal.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the **recipient may generate the e-way bill** electronically on the common portal after furnishing information in Part-B of such prescribed form.

Where the e-way bill is not so generated and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of the prescribed form on the common portal and the **e-way bill shall be generated by the transporter** on the said portal on the basis of the information furnished by the registered person in Part A of the prescribed form.

However, the registered person or, as the case may be, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than Rs.50,000.

Further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the

e-way bill in prescribed form on the common portal in the manner specified in this rule.

Moreover, where the goods are transported for a distance of less than 10 km within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of the prescribed form.

Explanation 1- For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2-The information in Part A of the prescribed form shall be furnished by the consignor or the recipient of the supply as consignee where the goods are transported by railways or by air or by vessel.

Unique E-Way Bill Number: Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in prescribed form.

However, where the goods are transported for a distance of less than 10 km within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.

Multiple consignments transported in one conveyance: After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill maybe generated by him on the said common portal prior to the movement of goods.

Where the consignor or the consignee has not generated E-Way Bill in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than Rs.50,000, the transporter shall generate E- way Bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a Consolidated E-Way Bill on the common portal prior to the movement of goods.

The information furnished in Part A of the prescribed form shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1.

However, when the information has been furnished by an unregistered supplier in prescribed form, he shall be informed electronically, if the mobile number or the email is available.

Cancellation of E-way bill: Where an e -way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the e-way bill.

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

Validity of E-way bill: An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance the goods have to be transported, as mentioned in column (2) of the said Table.

S. No.	Distance	Validity
1	Upto 100 km	One day
2	For every 100 km or part thereof thereafter	One additional day

However, the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein.

Further where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in Part B of prescribed form.

Explanation— For the purposes of this rule, the **"relevant date"** shall mean the date on which the e-way bill has been generated and the period of validity shall be

counted from the time at which the e-way bill has been generated and each day shall be counted as 24 hours.

Acceptance/rejection of E -way bill: The details of e -way bill generated under sub-rule (1) shall be made available to the recipient, if registered, on the common portal, who shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

Where the recipient referred to in sub-rule (11) does not communicate his acceptance or rejection within 72 hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

The e- way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State shall be valid in every State and Union territory.

E-way bill not required to be generated: Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in Annexure*;

(b) where the goods are being transported by a non-motorised conveyance;

(c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs; and

(d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the GST Rules of the concerned State.

Explanation - The facility of generation and cancellation of e-way bill may also be made available through SMS.

**Annexure contains a list of items where E-way bill is not required to be generated.*

15.9.3 Documents and devices to be carried by a person-in-charge of a conveyance [Rule 138A]

The person in charge of a conveyance shall carry—

(a) **the invoice or bill of supply or delivery challan**, as the case may be; and

(b) a **copy of the e-way bill or the e-way bill number**, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

A registered person may obtain an **Invoice Reference Number** from the common portal by uploading, on the said portal, a tax invoice issued by him in a prescribed form and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of 30 days from the date of uploading.

Where the registered person uploads the invoice under sub-rule (2), the information in Part A of the form prescribed for E-way Bill shall be auto-populated by the common portal on the basis of the information furnished in prescribed form.

The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

Notwithstanding anything contained clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill-

- tax invoice or bill of supply or bill of entry; or

- a delivery challan, where the goods are transported for reasons other than by way of supply.

15.9.4 Verification of documents and conveyances [Rule 138B]

(1) The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intraState movement of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the eway bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf.

However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

15.9.4 Inspection and verification of goods [Rule 138C]

A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of a prescribed form within 24 hours of inspection and the final report in Part B of such form shall be recorded within three days of such inspection.

Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently.

15.9.5 Facility for uploading information regarding detention of vehicle [Rule 138D]

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in prescribed form on the common portal.

LESSON 17 : CUSTOMS LAW - BASIC CONCEPTS

The term ‘Customs' derives its essence from the term ‘Custom ’, which means a habitual practice or course of action that characteristically is repeated in like circumstances. Duties on import and export of goods have been levied from time immemorial by all the countries. In the times, when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer certain offerings as gifts to the King for allowing him to sell his goods in that kingdom. Over a period of time, the system of governance took a paradigm shift from monarchy in favour of democracy. In democracy, the taxes are levied, imposed and collected under express powers derived from statutes. These statutes have the legal backing, which is necessary for their enforcement.

Scope and Coverage of Customs Law

Import and export duty is a Union subject and power to levy is derived from Constitution. Entry 83 to List I - (Union List) of Seventh Schedule to Constitution reads ‘Duties of customs including export duties'.

Entry 83 of Union List has given the power to Central Government to levy duties of Customs including export duties.

The Customs Act, 1962 extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. The entire gamut of the Act is grouped into seventeen chapters.

Functions of Customs Department

Indian Customs handle various tasks, important among them are as follows:

- Collection of Customs duties on imports and exports as per basic customs laws.
- Enforcement of various provisions of Customs Act governing imports and exports of cargo, baggage, postal articles and arrival and departure of vessel, aircrafts etc.
- Discharge of various agency functions and enforcing various prohibitions and restrictions on imports and exports under Customs Act and other allied enactments.
- Prevention of smuggling including interdiction of narcotics drug trafficking.
- International passenger processing.

As per section 2(35) “Regulations" means the regulations made by the Central Board of Excise and Customs under any provisions of this Act.

As per section 2(36) “Rules'’ means the rules made by the Central Government under any provision of this Act.

The character and Rules of Regulations under section 156 and 157 respectively are the same.

Point	Rules	Regulations
1. Authority to make	Central Government	CBEC (Board)
2. Section	Section 156	Section 157
3. They are to be framed consistent with	Provision of the Act	Provision of the Act as well as the Rules

Section 158: All rules and regulations made under this Act shall be published in the Official Gazette.

Definitions:

1. **Assessment: [Sec 2(2)]:** The term is defined to include provisional assessment, self-assessment, reassessment and any assessment in which the duty assessed is nil.

2. **Vehicle [Sce 2(42)]:** means conveyance of any kind used on land and includes a railway vehicle

3. **Customs Airport" [Sec. 2(10)]:** means any airport appointed under clause (a) of section 7 to be a customs airport and includes a place appointed under clause (aa) of the section to be an *air freight* station

4. **Customs Area [Sec 2(11)]:** Customs area means - the area of a customs stations and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

5. **Customs Port [Sec 2(12)]:** Customs Port means - any port appointed under Sec 7(a) to be a customs port and includes a place appointed under section 7(aa) to be an inland container depot

6. **Customs station [Sec 2(13)]:** Customs station means any customs port, customs airport, **international courier terminal, foreign post office** or land customs station, (w.e.f 01-04-2017)

7. **Foreign post office** means any post office appointed under section 7(1)(e) to be a foreign post office (w.e.f 01 -04-2017)

8. **International courier terminal** means any place appointed under section 7(1)(f) to be an international courier terminal (w.e.f 01 -04-2017)

9. **Entry [Sec 2(16)]:** Entry in relation to goods means an entry made in - Bill of Entry, Shipping bill or bill of export in case of goods imported or to be exported by post.

10. **Export: [Sec 2(18)]:** The term with its grammatical variations and cognate expressions is defined to mean taking out of India to a place outside India.

11. **Exporter [Sec 2(20)]:** in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, **beneficial owner** or any person holding himself out to be the exporter; (w.e.f 01-04-2017)

12. **Import: [Sec 2(23)]:** The term with its grammatical variations and cognate expressions is defined to mean bringing into India from a place outside India.

13. **Importer: [Sec 2(26)]:** Importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, **beneficial owner** or any person holding himself out to be the importer, (w.e.f 01- 04-2017)

14. **Foreign going vessel or aircraft: (Sec 2(21)]:** The term is defined to mean any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes -
    - any naval vessel ol any foreign Government taking part in any naval exercise;

- any vessel engaged in fishing or any other operations outside the territoriai waters of India;
- any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

15. **Market price: [Sec 2(30)]:** in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India

16. **Person-in-charge: [Sec 2(31)]:** "Person-in-charge" means -
- in relation to a vessel, the master of the vessel
- in relation to an aircraft, the commander or the pilot-in-charge of the aircraft
- in relation to a railway train, the conductor, guard or other person having the chief direction of the train
- in relation to any other conveyance, the driver or other person-in-charge of the conveyance

17. **Prohibited goods: [Sec 2(33)]:** "prohibited goods" means
- any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force
- but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

18. **Smuggling: [Sec 2(39)]:** in relation to any goods means any act or omission which will render such goods liable to confiscation under Section 111 (improper importation) or Section 113 (improper exportation).

The liability towards customs duty is broadly based upon the following 3 factors:

1.the goods, the point and the circumstances under which the customs duty becomes leviable

2.the procedure, the mechanism, and the organization for determining the amount of customs duty and collection thereof

3.the exemption to the levy either on grounds of morality or equity or as a result of the discretionary powers vested in the Government as a tool for planning tax structure and control of economic growth of the country.

As per Section 12, Customs duty shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Taxable event in case of Imports

Garden Silk Mills Ltd. v. Union of India 1999 (113) E.L.T. 358 (S.C.) Import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country; the taxable event is reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.
Kiran Spinning Mills v. CC1999 (113) E.L.T. 753 (S.C) It has been held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters.
Mangalore Ref and Petrochemicals Ltd Vs Commissioner of Customs 2015-TIOL-199-SC

Duty is payable on the quantity received in India, not the quantity exported from another country

Taxable event in case of warehoused goods - In case of warehoused goods, the goods continue to be in customs bond. Hence, 'import' takes place only when goods are cleared from the warehouse.

Taxable event in case of exports - In UOI v. Rajendra Dyeing and Printing Mills 2005, it has been held that export is complete when goods cross territorial waters of India. If ship sinks within territorial waters, export is not complete and hence duty drawback is not payable.

Goods under Customs Act

Section 2(22) - 'Goods' includes -

a) vessels, aircrafts and vehicles
b) stores
c) baggage
d) currency and negotiable instruments and
e) any other kind of movable property.

Imported Goods [Section 2 (25)]: means any goods brought in India from a place outside India, but does not include goods which have been cleared for home consumption. Thus, once goods arc cleared by customs authorities from customs area, they are no longer 'imported goods'.

Dutiable goods: [Sec 2(14)]: means any goods which are chargeable to duty and on which duty has not been paid.

Thus, goods continue to be 'dutiable' till they are not cleared from the port. However, once goods are assessed at 'Nil' rate of duty, they no longer remain 'dutiable goods'.

If duty rate in Customs Tariff is FREE - If duty rate specified in Customs Tariff is 'FREE', no duty is payable on such goods and hence they are not 'dutiable goods'

CC v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)
The assessee imported raw diamonds into India without import licence. Hence, the Department treated them as Smuggled Goods and levied duty and penalty. However, such raw diamonds are exempt from payment of import duty as per notification. The question is whether the assessee can claim such exemption in respect of such smuggled goods. Customs Act, 1962 defines two classes of goods namely imported goods and smuggled goods. There is no need for different definitions if smuggled goods and imported goods treated as same. Goods smuggled into the country not covered under expression 'imported goods' for availing benefit of exemption notification. Hence, Smuggled Goods are not eligible for exemption.

India for Customs Act

Sec 2(27) - "India" includes the territorial waters of India.

Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well. Territorial waters of India extend to 12 nautical miles into sea from the

appropriate base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

Customs Act has been extended to the Exclusive Economic Zone (EEZ) and continental shelf of India.

Vide notification no. SO 189(E) dated 7-2-2002 issued by Ministry of External Affairs, Customs Act and Customs Tariff Act has been extended to **whole of** Exclusive Economic Zone (EEZ) and continental shelf of India for the purpose of

(i) Processing for extraction or production of mineral oils and
(ii) Supply of any goods in connection with activities mentioned in clause (i)

Explanation: For the purposes of this notification, "mineral oils" include petroleum and natural gas.

The implication of the said notification is that mineral oils extracted or produced in the EEZ and Continental Shelf of India if brought to the mainland shall not be treated as import and therefore, no customs duty shall be leviable on such mineral oils.

Likewise, the goods supplied from the mainland to a place in EEZ or Continental Shelf of India in connection with any activity related to mineral oil extraction or production shall not be treated as export under the Customs Act, 1962 and consequently, no export benefits can be availed of on such supplies.

Another implication of the said notification is that bringing of any goods from any other country to any place in EEZ or Continental Shelf of India in connection with any activity related to extraction or production of mineral oils shall be treated as import under the Customs Act, 1962 and would be charged to duty accordingly.

Transit and transshipment of goods

Transit goods are those, which remain on board a conveyance for further journey to another destination. They are also known as the 'same bottom cargo'.

"Transship" means to transfer from one conveyance IO another. Thus, transshipment goods arc those goods, which are discharged from a conveyance and loaded on to another vessel, or aircraft, or vehicle for further journey.

Section 53 - Transit of certain goods without payment of duty (w.e.f. 14-05-2016)

Where any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, *the proper officer may allow the goods* and the conveyance to transit without payment of duty. subject to such conditions, as may be prescribed. However, the goods should not be prohibited goods.

Section 54 - Transshipment of goods without payment of duty

1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented by Person in charge to the proper officer in the prescribed form.
2) Where any goods imported into a customs station are mentioned in the import manifest or the import report as for transshipment to any place outside India, such goods may be allowed to be so transshipped without payment of duty. However, the goods should not be prohibited goods.
3) Where any goods imported into a customs station are mentioned in the import manifest or the import report, as for transshipment -

a) to any major port, or any other customs port or customs airport (notified by Board)
b) to any other customs station and the proper officer is satisfied that the goods are bona fide intended for transshipment to such customs station,

the proper officer may allow the goods to be transshipped, without payment of duty

Section 55: Where any goods are allowed to be transited under section 53 or transshipped under section 54 to any customs station, then, on their arrival at such customs station –

a) They shall be liable to duty,
b) They shall be entered in the like manner as the goods are entered on the first importation, and
c) The provisions of this Act and any rules and regulations shall apply in relation to such goods.

Duty

Duty liability in special cases:

Re-importation of goods produced or manufactured in India [Section 20]

If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

This implies that goods manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are imported.

However, the following notifications have provided certain concessions in this regard:

(i) where an exporter has availed export incentives in the nature of duty drawback, rebate under Central Excise Rules, etc., the import duty shall be restricted to the amount of incentive availed of at the time of export.

(ii) where the imported goods have been originally exported to the overseas supplier for repairs, the duty is levied on fair cost of repairs done abroad (whether such costs are actually incurred or not) + Insurance + Freight (two way). This is subject to the following conditions:

- the time limit for re-importation is 3 years. This is extendable to 5 years.
- the exported goods and the re-imported goods must be the same. The ownership of the goods should also not have changed. Further, it is not applicable if repairs amount to manufacture.

(iii) Exported goods may come back for repairs and re-export. In such a situation, the re-imported goods can avail exemption from paying of import duty subject to the following conditions:

- the re-importation is for repairs only, the time limit is 3 years. In case of export to Nepal, such time-limit is 10 years.
- the goods must be re-exported after repairs, the time limit for export is 6 months (extendable to 1 year).

NOTE:

- if any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/ Deputy Commissioner of Customs.
- The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.

Goods derelict, wreck etc [Section 21]

Section 21 provides that - all goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

The concept of goods brought into India' is not confined to goods, which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India. This implies that apart from goods which are normally imported in the course of international trade, flotsam, and jetsam, which are washed ashore and derelict and wreck brought into India out of compulsion are also treated on par with trade goods.

The meanings of the various terms are as follows:

Derelict - This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.

Jetsam - This refers to goods jettisoned from the vessel with a view to lighten the ship in order to save her from sinking.

Flotsam - Jettisoned goods which are floating in the sea are called flotsam.

Wreck - This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck. In other words, to be wreck the goods must come to land.

Remission of duty on Pilfered goods [Section 13] - If any imported goods are pilfered after unloading but *before order for clearance for home consumption or deposit in a warehouse,* the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

(a) Conditions to be satisfied for exemption from duty

a. The imported goods should have been pilfered.

b. The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse.

c. The pilfered goods should not have been restored back to the importer.

(b) Circumstances in which pilferage can be claimed

In order to claim pilferage the following circumstances should exist:

a. there should be evidence of tampering with the packages;

b. there should be blank space for the missing articles in the package; and

c. the missing articles should be unit articles [and not part articles]

(c) Pilferage noticed at the time of removal of goods by the importer

The pilferage of goods would normally be noticed at the time of physical verification of goods by the customs authorities. However, in some circumstances, it may so happen that the pilferage may be observed only at the time of removal of goods by the importer. In such case, the order for clearance, or as the case may be, for bonding would already have been passed. Therefore, the importer has to ask for survey either by the steamer agents or by the insurance surveyors and the report issued by them would form the basis for claiming remission. As in such the circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.

Duty on pilfered goods is payable by port authorities – If goods are pilfered after they are unloaded but before they are cleared from the port, the customs duty is payable by port trust authorities or airport authorities under whose custody the goods were lying [section 45 (3)].

Remission on lost, destroyed, abandoned goods [section 23(1)]

Where it is shown to the satisfaction of the AC/DC of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, *at any time before clearance for home consumption,* the AC / DC shall remit that duty on such goods.

Remission on relinquished goods [Section 23 (2)]

The owner of any imported goods may, *at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under*

section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

The owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed

Even if goods are warehoused, the owner of warehoused goods can relinquish the title of goods any time before order for home clearance is made. He will be required to pay rent, interest, other charges and penalties that may be payable, but duty will not be payable [Section 68].

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Abatement of duty on damaged goods [Section 22]

Abatement of duty on goods damaged or deteriorated is granted in any of the following cases:

a) damaged before or during unloading in India

b) damaged by accident after unloading but before examination of goods for assessment by Customs Officer - provided that the accident is not due to wilful act, negligence or default of importer, his employee or agent

c) damaged by accident in warehouse before clearance of goods - provided that the accident is not due to wilful act, negligence or default of importer, his employee or agent.

The customs duty chargeable will be in proportion to the value of damaged good to value of goods before damage or deterioration e.g. if value of goods is Rs. 1,000 and after damage, the value is Rs. 500, then 50% of the normal customs duty is payable.

The value of damaged goods may be decided by Assistant Commissioner of Customs, or if the owner agrees, the damaged goods may be sold by auction and gross sale proceeds of the auction will be deemed to be the value of goods.

Power to make rules for denaturing or mutilation of goods [Section 24]

Section 24 empowers the Central Government to make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods arc so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

Emergency Power to increase duty

Central Government has been granted emergency powers to:

(A) Levy or increase export duty - Section 8 of Customs Tariff Act

Where, in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be levied, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.

(B) Increase import duty - Section 8A of Customs Tariff Act.

Where in respect of any article included in the First Schedule, the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

Provided that no second increase of import duty on any article shall be made under this section, unless the first such increase has been approved with or without modifications by the parliament.

EXEMPTION FROM CUSTOMS DUTY [SECTION 25]

Central Government's power to grant exemption

Article 265 of the Constitution provides that "No tax shall be levied or collected except by authority of law". The power of the Central Government to alter the duty rate structure is known as delegated legislation and this power is always subject to superintendence and check by Parliament.

a. **General exemption:** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette,

exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

b. **Special exemption:** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

Both the above mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable.

Further, the duty leviable under such altered form or method shall in no case exceed the statutory duty leviable under the normal form or method.

RATIONALE FOR GRANT OF EXEMPTION

The power for grant of exemption vests with the Central Government subject to the overall control of the Parliament. The Government on a rational basis may discretely use this power and the exemptions may be based on any of the following bases:

a. Moral grounds, where the duty should not be levied at all. Some of the instances, which may be given, are;

(i) Where the goods do not reach the Indian soil at all.

(ii) Where the goods have reached the Indian soil but are not available for consumption.

(iii) Where the goods get damaged or deteriorated in transit.

b. Discretionary provision, where the exemption is used for controlling the economy and industrial growth of the country.

EXEMPTION FROM CUSTOMS DUTY ON IMPORTED GOODS USED FOR INWARD PROCESSING OF GOODS [SECTION 25A]

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

(a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;

(b) the imported goods are identifiable in the export goods; and

(c) such other conditions as may be specified in that notification.

EXEMPTION FROM CUSTOMS DUTY ON RE-IMPORTED GOODS USED FOR OUTWARD PROCESSING [SECTION 25B]

Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely :—

(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;

(b) the exported goods are identifiable in the re-imported goods; and

(c) such other conditions as may be specified in that notification.".

Appointment of Customs Officers

Section 3 - Classes of officers of customs

(a) Principal Chief Commissioners of Customs / Chief Commissioners of Customs;

(b) Principal Commissioners of Customs / Commissioners of Customs;

(c) Commissioners of Customs (Appeals);

(cc) Joint Commissioners of Customs;

(d) Deputy Commissioners of Customs;

(e) Assistant Commissioners of Customs

(f) such other class of officers of customs as may be appointed for the purposes of this Act.

The other officers of customs have been appointed as below:

- Appraisers of Customs
- Preventive officers of Customs
- Ministerial Officers
- Chemical Examiner

Section 4 - Appointment of officers of customs -

1) The Board may appoint such persons as it thinks fit to be officers of customs.
2) Without prejudice to the provisions of sub-section (1), the Board may authorise a Principal Chief Commissioner of Customs or Chief Commissioner of Customs or a Principal Commissioner of Customs or Commissioner of Customs or a Joint or Assistant Commissioner of Customs or Deputy

Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

Section 5 - Powers of officers of customs –

1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.
2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.
3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

Section 6 - Entrustment of functions of Board and customs officers on certain other officers

The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.

Section 7 - Appointment of customs ports, airports, etc. -

(1) The Board may, by notification in the Official Gazette, appoint -

(a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;

(aa) the places which alone shall be inland container depots or air freight stations for the unloading of imported goods and the loading of export goods or any class of such goods;

(b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;

(c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;

(d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

(e) the post offices which alone shall be foreign post offices for the clearance of imported goods or export goods or any class of such goods;

(f) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods, (w.e.f 01-04-2017)

Section 8 - Power to approve landing places and specify limits of customs area

The Principal Commissioner of Customs or Commissioner of Customs may, -

a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
b) Specify the limits of any customs area.

Section 9 - Deleted w.e.f 14-05-2016

Section 10 - Appointment of boarding stations

The Principal Commissioner of Customs or Commissioner of Customs may, by notification in the Official Gazette, appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.

TYPES OF DUTIES

A. Basic Customs Duty

Basic customs duty is levied under section 12 of Customs Act. Normally, it is levied as a percentage of Value as determined under section 14 (1)

Peak rate of BCD for non-agricultural items is 10% with some exceptions. The general rate of duty on baggage is 35%.

Preferential Rate of Duty - Section 4 of Customs Tariff Act

Where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, or is admissible by virtue of a notification under section 25 of the Customs Act, 1962, the duty to be levied and collected shall be at the preferential rate, if all of the following conditions are satisfied

- the owner/importer of the article claims at the time of importation that it is chargeable with a preferential rate of duty
- the article is a produce or manufacture of such preferential area
- the origin of such article that it is a produce or manufacture of preferential area must be determined

For the purposes of this section, "preferential area " means any country or territory which the Central Government may, by notification in the Official Gazette, declare to be such area

If the importer fails to discharge the above conditions, the goods shall be liable to standard rate of duty.

B. Additional Customs Duty u/s 3(1)

'Additional Customs Duty' is often called 'Countervailing Duty' (CVD). Additional duty is levied under section 3(1) of Customs Tariff Act. This duty is equal to excise duty levied on a like product manufactured or produced in India.

Rate of additional duty in case of alcoholic liquor: In case of any alcoholic liquor for human consumption imported into India, the Central Government may notify the rate of additional duty having regard to the excise duty for the time being leviable on like alcoholic liquor produced or manufactured in different States. In case if the like alcoholic liquor is not produced or manufactured in any State, then, the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs would be the applicable rate.

C. Countervailing duty under section 3(3):

Special additional duty under sub-section (3) is levied to counter balance the excise duty leviable on raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of the imported article. The Central Government can levy such duty if it is satisfied that it is necessary in the public interest to do so even if such article is liable to additional duty leviable under sub-section (1).

D. Special additional duty under section 3(5)

If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding 4% of the value of the imported article as specified in that notification.

Note: Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and /or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol) and natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Thus. additional duty of customs will be levied only on the few products not leviable to GST.

D. INTEGRATED TAX [SECTION 3(7) OF THE CUSTOMS TARIFF ACT]

It is the tax equal to	IGST as leviable under section 5 of IGST Act. 2017 on a like article on its supply in India.
Leviable on	Any imported article, on the value of the imported article as determined under sub-section (8) or sub-section (8A).
Rate of tax	Not exceeding 40%

Manner of computing assessable value for levying Integrated tax [Section 3(8) of Customs Tariff Act]

For the purposes of calculating the integrated tax on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of—

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the integrated tax referred to in section 3(7) of the Customs Tariff Act, 1975 or the goods and services tax compensation cess referred to in section 3(9) of the Customs Tariff Act, 1975.

The assessable value for levying GST compensation cess is to be computed in the same manner as discussed above. [Section 3(10) of Customs Tariff Act]

Manner of computing value in case of warehoused goods [Section 3(8A) of the Customs Tariff Act]

If the goods stored in Warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the

integrated tax under sub-section (7) shall be—

(a) where the whole of the goods are sold, the value determined under sub-section (8) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher.

(c) where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b).

(d) Further, in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).

E. GOODS AND SERVICES TAX COMPENSATION CESS [SECTION 3(9) OF CUSTOMS TARIFF ACT)

GST compensation cess is a compensation cess levied under section 8 of the Goods and Services Tax (Compensation to State) Act, 2017. GST compensation cess is levied on intra-state supply of goods or sendees and inter-state supply of goods or services to provide compensation to the States for loss of revenue due to implementation of GST in India.

It may be noted that GST compensation cess would be applicable only on those supply of goods or services that have been notified by the Central Government. As of now, GST compensation cess is levied on luxury and sin goods like pan masala, tobacco etc.

It is the tax equal to	Cess as leviable under section 8 of the GST (Compenstion to States) Cess Act, 2017 on a like article on its supply in India.
Leviable on	Any imported article
Rate of tax	Same as leviable under section 8 of the GST (compensation to States Cess Act, 2017

Assessable value for computing integrated tax and GST compensation cess

Value under section 14(1) / tariff value determined section 14 (2)		XXX
	Add: Basic custom duty	XXX
	Assessable value	XXX
The provisions of the Customs Act, 1962 and the rules and regulations mode thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply tio the duty chargeable under this section as they apply in relation to the duties leviable under that Act. The duty or tax or cess chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.		

Protective Duties

The two types of custom duties are revenue duties and protective duties:

a) **Revenue duties:** are those which are levied for raising customs revenue.

b) **Protective duties:** are intended to give protection to indigenous industries. If resort to protective duties is not made there could be a glut of cheap imported articles in the market making the indigenous goods unattractive.

Factors to be considered while giving protection through protective duties: The protection through protective duties is given considering the following factors.

a) The protective duties should not be very stiff so as to discourage imports.

b) It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.

Levied by Central Government: The protective duties are levied by the Central Government upon the recommendation made to it by the Tariff Commission and upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any industry established in India.

The Central Government may reduce or increase the duty by notification in the Official Gazette.However, such duty shall be altered only if it is satisfied, after such inquiry as it thinks necessary, that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India [Section 7(2)].

In case of increase in duty, approval of Parliament is required: If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval.

F. Countervailing Duty on Subsidized goods [Section 9 of Customs Tariff Act]

If a country or territory pays any subsidy (directly or indirectly) to its exporters for exporting goods to India, Central Government can impose Countervailing duty up to the amount of such subsidy under section 9 of Customs Tariff Act. This duty is also known as anti-subsidy duty.

Subsidy shall be deemed to exist if -

(a) There is financial contribution by the Government or any public body in the exporting or producing country or territory. Such contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.

(b) There is any form of income or price support granted or maintained by the Government, which results in increased export of such article or reduced import of any article into that country.

(c) A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments.

Countervailing duty on subsidized articles shall not be levied unless it is determined that -

(i) The subsidy relates to export performance;

(ii) The subsidy relates to the use of domestic goods over imported goods in the export article; or

(iii) The subsidy has been conferred on a limited number of persons engaged in manufacturing producing or exporting the article unless such a subsidy is for -

- Research activities conducted by or on behalf of such persons engaging in manufacture, production, export;
- Assistance to disadvantaged regions within the territory of the exporting country; or
- Assistance to promote adaptation of existing facilities to new environmental requirements.

Anti-circumvention measure in respect of countervailing duty: Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty has taken place, by either of the following ways:-

(i) by altering the description or name or composition of the article on which such duty has been imposed

(ii) by import of such article in an unassembled or disassembled form

(iii) by changing the country of its origin or export or

(iv) in any other manner, whereby the countervailing duty so imposed is rendered ineffective

it may extend the countervailing duty to such other article also.

Amount of countervailing duty on subsidized articles: The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.

Provisional countervailing duty: If the amount of subsidy cannot be ascertained, provisional duty can be collected and after final determination, difference may be refunded. Such imposition should be by way of a notification.

Provisions of Customs Act in respect of date of determination of rate of duty, non-levy, short-levy, refunds, interest, offences, appeal and penalties shall apply to this duty

The CVD under this section shall, unless revoked earlier, cease to have effect on the expiry of **5 years** from the date of such imposition. The Central Government may extend the period of such imposition for a further period of 5 years.

If the review is not completed before the expiry of the period of imposition (5 years) then the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.

Retrospective imposition of countervailing duty

The following conditions should be satisfied for imposition of countervailing duty with retrospective effect.

(a) The injury to domestic industry, which is difficult to repair, is caused by massive imports in a relatively short period, of the articles benefiting from subsidies.

(b) In order to preclude recurrence of such injury, it is necessary to levy countervailing duty retrospectively.

The retrospective date from which the duty is payable shall not be beyond 90 days from date of notification.

G. Anti-Dumping Duty

Large manufacturer from abroad may export goods at low prices compared to prices in his domestic market. This is called 'dumping'. In order to avoid such dumping and to protect domestic industry, Central Government can impose anti-dumping duty under section 9 A of Customs Tariff Act.

Section 9A - Anti-Dumping Duty

Sub-section (1) provides that where any article is exported by an exporter or producer from any country or territory to India at less than its normal value, then' upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty **not exceeding the margin of dumping** in relation to such article.

Anti-dumping action can be taken only when there is an Indian industry producing 'like articles'.

H. Safeguard Duty [SECTION 8B OF THE CUSTOMS TARIFF ACT]

Central Government is empowered to impose 'safeguard duty' on specified imported goods if

- It is satisfied that the goods are being imported in large quantities and
- Under such conditions that they are causing or threatening to cause serious injury to domestic industry.

- Such duty is permissible under WTO agreement. The only condition under WTO is that it should not discriminate between imports from different countries having Most Favoured Nation (MFN) status.
- Safeguard duty is targeted at remedying or preventing serious injury to domestic industry with a view to making it competitive and to enable it to stand on its own.
- Government has to conduct an enquiry and then issue a notification in the Official Gazette.
- The duty, once imposed, is valid for 4 years from the date of its imposition, unless revoked earlier. This can be extended by the Central Government, but the total period of safeguard duty cannot be more than 10 years.
- The duty is in addition to any other customs duty being imposed on the goods.
- Education cess and secondary and higher education cess is not payable on safeguard duty.

Provisional Levy: Central Government can impose provisional safeguard duty, pending final determination up to 200 days. On Final determination, if the Central Government is of the opinion that neither any injury has been caused to the domestic industry, nor there is any such threat to cause serious injury, the duty so collected shall be refunded.

Education Cess on Customs Duty

The education cess will be 2% of the aggregate duty of customs.

However, education cess will not be payable on (a) Special CVD (SAD) payable u/s 3(5) of Customs Tariff Act (b) Safeguard duty under sections 8B and 8C (c) Countervailing duty under section 9 and (d) Anti-Dumping Duty under section 9A of the Customs Tariff Act

K. Secondary and Higher Education Cess

In addition to existing education cess, an education cess of 1% of the total duties of customs has been imposed on imported goods.

SAH education cess will not be payable on (a) Special CVD (SAD) payable u/s 3(5) of Customs Tariff Act (b) Safeguard duty under sections 8B and 8C (c) Countervailing duty under section 9 (d) Anti- Dumping Duty under section 9A of the Customs Tariff Act

Export Duty

Since Government actively encourages export, there is export duty on very few products. Articles on which export duty is leviable are given in Second Schedule to Customs Tariff.

Calculation of export duty

Export duty will be calculated on FOB price. If duty rate is 15% and FOB price is Rs 100, the export duty will be Rs. 15.

Tirupati Udyog Ltd. V. UOI 2011 (272) EL.T.209 (A.P.)	Since both the SEZ unit and the DTA unit are located within the territorial waters of India, Section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

	SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorized operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication. Hence, clearance of goods from DTA to Special Economic Zone is not liable to export duty.
Uol Vs M/s Adoni Power Ltd 2016 (331) ELT A129 (SC) dated 20.11.2015	When no customs duty is payable on electrical energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Section 51 of the SEZ Act.

CLASSIFICATION OF GOODS

Customs Tariff Act (CUTA)

Customs Tariff contains two schedules -

- **First schedule** - Enlists goods liable to import duty
- **Second schedule** - Enlists goods liable to export duty

Sections, **Chapters and Headings**

There are 21 sections in case of Customs Tariff.

Section

A section is a grouping of a number of Chapters which codify a particular class of goods. Each of the sections is related to a broader class of goods e.g. Section II is 'Vegetable Products', Section XI is 'Textile and Textile Articles', etc. Section Notes are given at the beginning of each Section, which govern entries in that Section. These notes are applicable to all Chapters in that section.

Chapters

Section is divided into Chapters. For example, Chapter 51 is Wool, Chapter 52 is Cotton, and Chapter 61 is Articles of Apparel and so on. Chapter Notes are given at the beginning of each Chapter, which govern entries in that Chapter.

In Customs Tariff, there are 99 chapters out of which only one i.e. Chapter 77 is blank.

Headings and Sub-headings

Each chapter and sub-chapter is further divided into various headings depending on different types of goods belonging to the same class of products.

Grouping of goods

The tariff groups all goods relating to same industry and all the goods obtained from the same raw material under one Chapter in a progressive manner as far as possible. So far as practicable, Goods are classified beginning with raw materials and ending with finished products within the same chapter. Pattern of arrangement is in following sequence - Natural products, raw materials, semi finished goods and fully manufactured goods / article / machinery etc. - Chapter •/ Para 5 of CBE&C's Customs Manual, 2001.

Harmonized System of Nomenclature (HSN)

International convention of Harmonized System of Nomenclature (HSN), called Harmonised Commodity Description and Coding System, was developed by World Customs Organisation (WCO)

This is an International Nomenclature standard adopted by most of the Countries to ensure uniformity in classification in International Trade. HSN is a multipurpose 8 digit nomenclature.

Explanatory Notes to the HSN

(i) Explanatory Notes to the HSN are the official notes issued by the Customs Co-operation Council,

Brussels.

(ii) They explain and clarify the scope and extent of each and every heading of the HSN, on the basis of which the present Central Excise Tariff has been patterned.

(iii) Explanatory Notes do not have legal backing, unlike the Chapter Notes and Section Notes contained in the Tariff. Consequently, these Explanatory Notes arc only of persuasive value and can be used as an aid to classification of goods when there is ambiguity as to the scope of the entry.

(iv) HSN explanatory notes can be resorted to in case of ambiguity in classifying goods. When there is no ambiguity about the scope of the entry, the classification has to be done as per the tariff entry itself.

GENERAL EXPLANATORY NOTES

There are **three general explanatory notes** included in the First Schedule. They are-

(a) Relevance of one dash ["-"] and two dash ["--"]

- "-" denotes that the said article or group of articles shall be taken to be sub-classification of the article or group of article covered by the said heading.
- "--" denotes that that the said article or group of articles shall be taken to be sub-classification of the immediately preceding article/group of articles which has "-".

(b) Meaning of abbreviation "%" in relation to the rate of duty

The abbreviation "%" in any column of the Schedule in relation to the rate of duty means that the duty shall be computed at the percentage specified on the value of the goods as defined in section 14 of the

Customs Act.

(c) ***Standard rate of duty applicable if no preferential rate specified***

In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.

Rules for Interpretation of CETA

Rules for Interpretation of Schedule are given in the Tariff. These are termed as 'General Interpretative Rules' (GIR).

These rules are to be applied only if classification is not possible on basis of tariff entry read with Chapter notes and section notes.

Rules to be applied sequentially - The Rules are to be applied sequentially — Chapter 4 Para 7 of CBEC Customs Manual, 2001.

Titles are for reference - Titles of sections or chapters cannot be used for classification. The titles of sections and chapters are provided for use of reference only, and have no legal importance for purposes of classification.

Section Notes and Chapter Notes have overriding effect — Classification is to be determined only on the basis of description of the heading, read with relevant section or chapter notes, Since these notes are part of the Act itself, these have hill statutory (legal) backing.

RULES OF INTERPRETATION OF THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT

Rule 1

Classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to other provisions of the rules.

Rule 2

Rule 2(a)

(i) Classification of Incomplete Goods - Any reference to complete goods also includes incomplete or un-finished goods, if such incomplete or un-finished goods have the essential characteristic of finished goods. [Rule 2(a)].

Ex: A Car without seats would still be classified as a Car

(ii) Classification of unassembled finished goods — Any reference to complete goods include finished goods removed un-assembled or disassembled i.e. in SKD or CKD packs [Second part of Rule 2(a)].

Cycle removed in CKD condition is a 'cycle'. - TI Cycles v. UOI1983

Only goods requiring minor adjustments can be construed as having the essential character

Only goods requiring minor adjustments would be construed as having the

essential character. Those requiring major processes like turning, grinding, broaching, groove cutting, heat treatment, surface treatment etc., cannot be construed as having the essential character of complete and finished articles and cannot fall within the scope of rule 2(a) of the General Interpretative Rules.

Rule 2(b)

Classification of mixtures/combinations of a material/ substance with other materials/substances

Any reference in a	Example
Material or substance includes mixtures or combinations of that material or substance with other materials or substances	• The term coffee will include coffee mixed with chicory • Natural rubber will cover a mixture of natural and synthetic rubber
Goods of a given material or substance includes goods consisting wholly or partly of such material or substance.	• Steel tube. Steel is a kind of iron with the addition of small quantities of carbon and other substances. Still it is steel only • Gold jewellery. It includes a small portion of copper. Still it is gold only.

Rule 3

Classification in case of Conflict between various headings **-** While applying Rule 2(b), some conflict may arise e.g.,

(a) a mixture or combination containing more than one material may be classifiable under more than one headings by applying rule 2(b). If it contains two items A and B, one classification may be on the basis of 'B',

(b) There may be two descriptions which may both seem possible

In above cases, Rule 3 states as follows -

When by application of Rule 2(b) or for any other reason, goods are classifiable under two or more headings, classification shall be effected as given in Rule 3

Specific heading preferable over general heading - The heading which provides most specific description shall be preferred to heading which provides a general description. [Rule 3(a)].

Classification as per Essential Character - Mixture and Composite goods consisting of different materials which cannot be classified based on above rule, should be classified as if they consisted of the material or component which gives it their essential character [Rule 3(b)]

Ex: If a set consists of drawing instruments (90.17), pencil (96.09) and pencil sharpener (82.14), put up in a leather case (4201.90); the set will be classifiable under 90.17 i.e. drawing instrument.

Latter the better - When goods cannot be classified by reference to above two sub rules, they shall be classified under the heading, which occurs last in numerical order among those, which equally merit considerations. [Rule 3(c)]

Rule 4

Akin Goods - If the classification is not possible by any of the aforesaid rules, then it should be classified under the heading appropriate to goods to which they are most akin. This is only a last resort and a desperate remedy [Rule 4].

Illustration:

Plastic films used to filter or remove the glare of the sun light, pasted on car glass windows, window panes etc.

Classification: These goods do not find a specific entry in the tariff schedule. However, heading 3925 30 00 covers Builder's wares of plastic not elsewhere specified - shutters, blinds (including Venetian blinds). Even though the product in question is not a builder's ware, they are most akin to plastic blinds and hence it can be classified under 3925 30 00 heading.

Rule 5

Rule 5 provides for classification of packing material and packing cases.

As per this rule, cases for camera, musical instruments, drawing instruments, necklaces etc. specially shaped for that article, suitable for long term use will be classified along with that article, if such articles are normally sold along with such cases.

Conditions to be fulfilled:-

- These cases/containers are specially shaped or fitted to contain a specific article or a set of articles.
- These cases/containers are suitable for long term use and presented with the articles for which they are intended.

This rule does not, however, apply to containers which give the whole its essential character.

Further, packing materials and containers are also to be classified with the goods if they are normally used for packing such goods. However, this provision does not apply when the packing is for repetitive use.

However **this provision does not apply** when such packing material or packing containers are clearly suitable for repetitive use.

Exceptions to rule 5

(a) Durable containers capable of repetitive use should be classified separately.

(b) When packing material itself gives the essential character as a whole.

Rule 6

Goods can be compared at the same level only - This means that if one heading contains 4 -5 sub¬headings, these sub-headings can be compared with each other. However, sub-heading under one heading cannot be compared with sub-heading under a different heading. Thus, first heading has to be decided and then one of the sub-headings within that heading has to be selected.

Hewlett Packard India Sales (p) Ltd. v. CC 2007 (215) E.L.T. 484 (S.C.)

In this case the assessee was engaged in the manufacture of, and trading in, computers including Laptops (otherwise called 'Notebooks') falling under Heading 84.71 of the CTA Schedule. They imported Notebooks (Laptops) with Hard Disc Drivers (Hard Discs, for short) preloaded with Operating Software like Windows XP, XP Home etc. These computers were also accompanied by separate Compact Discs (CDs) containing the same software, which were intended to be used in the event of Hard Disc failure.

The assessee classified the software separately and claimed exemption. The court held that without operating system like windows, the laptop cannot work. Therefore, the laptop along with software has to be classified as laptop and valuation to be made as one unit.

VALUATION UNDER CUSTOMS

Date for determination of rate of duty and tariff value

For imported goods [Section 15]:

(a) Goods Cleared for home consumption - The relevant date for the three modes of transport as laid down by section 15(l)(a) read with proviso would be as follows:

Particulars	Relevant Date
For goods imported by vehicle at land customs station	Date of filing the B/E under section 46 or Arrival of the Vehicle, whichever is later.
For goods imported by a vessel at a customs port	Date of filing the B/E under section 46 or date of entry inwards to vessel under section 31, whichever is later.
For goods imported by aircraft at a customs airport	Date of filing the B/E under section 46 or date or arrival of aircraft, whichever is later.

(b) Goods cleared from a warehouse - the relevant date is the date on which a bill of entry for home consumption in respect of such goods is presented.

(c) In the case of any other goods - the relevant date is the date of payment of duty.

These provisions relating to determination of relevant date do not apply to baggage and imports by post, in which sections 78 and 83 apply respectively.

For export goods (Section 16]:

The provisions are as follows:

(a) In case of goods cleared for export (irrespective of the mode of transport) - the relevant date is the date of the 'let export' order of the proper officer permitting export and loading of cargo on board under section 51.

(b) In case of any other goods - the relevant date is the date of payment of duty.

However, the provisions do not apply to baggage and Experts post.

Rate of exchange: The relevant date for applying rate of exchange is the date of presentation of bill of entry in case of importation, and shipping bill or bill of export in case of exportation.

The rate of exchange will be determined by the Board or is ascertained in the manner directed by Board.

The date of first presentation of Bill of Entry is relevant for the purpose of considering the rate of exchange. If it is returned for correction and is re-presented after correction, the date of re-presentation cannot be considered.

Rate of exchange in case of warehoused goods: In case of warehoused goods, the date on which Into Bond Bill of Entry is presented shall be considered for determining the rate of exchange.

Notes:

Case Law: MS. Shoes East Ltd. v. CC 2007

- In this case, the assessee imported a Rolls Royce car and filed a bill of entry on 31-08-96 for clearance of the same. However, the car was released after 9 years. The assessee claimed depreciation on the value of car.

- The question for consideration is whether the assessable value of car should be taken after depreciation of post import period.

- The court decided that the value of imported goods is to be determined at the time and place of importation. According to section 15, the rate of duty and tariff valuation in force at the date of filing of bill of entry shall be applicable. Thus, the valuation of the goods is to be based on the price at the time of import. Hence delay in release of goods is not relevant for the purpose of valuation

  .

TECHNICAL TERMS RELATING TO VALUE IN THE COURSE OF IMPORT OR EXPORT

1) Ex-Factory Price	It is the price of the goods as comes out of the factory. It includes cost of production and manufacturer's margin of profit
(2) F.A.S (Free Alongside)	It is the cost at which the export goods are delivered alongside the ship, ready for shipment. It includes ex-factory + local freight + local taxes.
(3) F.O.B. (Free on Board)	Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on board the conveyance carrying the vessel. It can be said to include FAS ◆ loading charqes + export duty cess.
(4) C.I.F. (Cost Insurance Freight)	It is the cost at which the goods are delivered at the Indian port. It covers cost of goods. Sometimes there is referred as CFC also.

Valuation of goods (imported goods or export goods) under the customs Act

The value of the goods (i.e. imported goods or export goods) is determined in accordance with the provisions of Section 14 of the Customs Act, 1962.

Valuation of goods [Section 14(1)]

New Section 14(1) of Customs Act (effective from 10-10-2007) states that 'value' of imported goods and export goods *shall be the transaction value of such goods, that is to say. the price actually paid or payable, for the goods when sold-*

a) For export to India for delivery at the time and place of importation, or

b) For export from India for delivery at the time and place of exportation.

Where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

(i) In case of export goods, the transaction value shall be

- the price actually paid or payable for the goods
- when sold for export **from** India
- for delivery at the time and place of exportation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale.

However further conditions may be specified in the rules made in this behalf.

(ii) In case of imported goods, the transaction value shall be

- the price actually paid or payable for the goods when sold for export
  to India
- for delivery at the time and place of importation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale.

However, in this case also further conditions may be specified in the rules made in this behalf.

Such transaction value shall also include in addition to the price as aforesaid, any amount paid or payable for costs and services,

including:

- commissions and brokerage,
- engineering,
- design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance
- loading,
- unloading and
- handling charges

to the extent and in manner specified in the rules made in this behalf.

Accordingly Customs Valuation (Determination of Value of Imported Goods) Rules 2007 and Customs Valuation (Determination of Value of Export Goods) Rules 2007 have been notified with effect from 10-10-2007

Transaction value to be taken only if prescribed conditions fulfilled: The transaction value referred to in section 14(1) shall be taken to be the value of the goods only if the conditions as given aforesaid and, also, other conditions prescribed in the valuation rules is fulfilled. In case any of such conditions is not fulfilled, the valuation will be done as per other methods prescribed by the rules.

Scope of valuation rules: The rules made in this behalf may provide for, -

a) The circumstances in which the buyer and the seller shall be deemed to be related;

b) The manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale, or in any other case;

c) The manner of acceptance or rejection of value declared by the importer or exporter where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section

CURRENCY CONVERSION RATE

(i) The rate of exchange is notified by three agencies- the Central Board of Indirect taxes and Customs (Board), the Reserve Bank of India and the Foreign Exchange Dealers' Association of India. For the purpose of customs valuation, "rate of exchange" means the rate of exchange-

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency. Thus, for the purpose of valuation under customs laws, rate notified by CBIC (Board) shall be taken into account.

The CBIC notifies the rates periodically, generally every fortnight. There are separate rates for imported goods (selling rate) and export goods (buying rate).

TARIFF VALUE

(i) Sub-section (2) provides that the Board may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods by notification in the Official Gazette if it is satisfied that it is necessary to do so.

(ii) Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Provisions of sub-section (2) have an overriding effect on the provisions of sub-section (1).

Transaction Value [Rule 2(g)]

Transaction value means the value referred to in section 14(1) of the Act. Accordingly, transaction value means the ***'price actually paid or payable'*** for goods when sold for export to India for delivery at the time and place of importation.

RULE 3 -

As per **Rule 3(1)** of the import valuation rules, the value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10.

Conditions subject to which transaction value acceptable [Rule 3(2)]: The transaction value of the imported goods, as determined under Rule 3(1), shall be accepted as the value of such goods only if the following conditions arc fulfilled -

a) There are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) Are imposed or required by law or by the public authorities in India; or

(ii) Limit the geographical area in which the goods may be resold; or

(iii) Do not substantially affect the value of the goods; e.g. A restriction not substantially affecting the value of goods would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

b) The sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

c) No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an

appropriate adjustment can be made in accordance with the provisions of rule 10; and

d) The buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of Rule 3(3).

Note: If the transaction value is rejected, the value of the imported goods shall be determined in accordance with the provisions of Rule 4 to Rule 9 sequentially.

Interpretative Notes: The interpretative notes explain the aforesaid provisions as follows –

(A) Conditions or considerations for which value cannot be determined with respect to goods being valued: If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include -

1) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities.
2) The price of the imported goods is dependent up on the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods.
3) The price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods, which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

Transaction value in case if the buyer and seller are related persons

Related Persons [Rule 2(2)]: Persons shall be deemed to be 'related' only if,-

a) They are officers or directors of one another's business;
b) They are legally recognized partners in business;
c) They are employer and employee;
d) Any person directly or indirectly owns, controls or hold 5% or more of the outstanding voting stock or shares of both of them;
e) One of them directly or indirectly controls the other;
f) Both of them are directly or indirectly controlled by a third person;
g) Together they directly or indirectly control a third person or
h) They are members of the same family.

- **Person includes legal persons:** The term "person" also includes legal persons.
- **Sole distributor or sole agent or sole concessionaire:** A sole distributor or a sole agent or a sole concessionaire (by whatever name called) shall be deemed to be related only when he or it satisfies any of the above-mentioned criteria.
- **Control' - Interpretative notes:** One person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Transaction value acceptable even if goods sold to related person [Rule 3(3)]

Even if goods are sold to related persons, the value under Rule 3(1) shall be accepted in the following two different cases -

a) If the examination of circumstances surrounding the sale reflects that relationship did not influence the price; or

b) Where the importer demonstrates that the declared value of the goods being valued closely approximate to the following value ascertained at or about the same time:

(i) Transaction value of the identical or similar goods, in sales to unrelated buyers in India;

(ii) The deductive value of identical or similar goods; or

(iii) The computed value of identical or similar goods.

However, in applying values used for comparison, due account shall be taken of the demonstrated difference in commercial levels, quantity levels, adjustments in accordance with Rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

Interpretative Notes: Where a test under (b) above is met, it is not necessary to examine the question of influence under (a) above.

Inclusions and Exclusions from Transaction Value

As per Rule 10(1), while determining the transaction value, the dutiable factors mentioned below are to be added to the price actually paid or payable for imported goods in computing the transaction value:

a) The following costs and services to the extent they are incurred by the buyer but have not been included in the price actually paid or payable for the imported goods -

(i) Commission and brokerage, except buying commission [rule 10(1)(a)(i)J

(ii) Cost of containers imported along with the goods [rule 10(1)(a)(ii)]

(iii) Cost of packing whether for labour or materials [rule 10(1)(a)(iii)]

b) The whole or appropriately apportioned value of the following goods and services, which are supplied by the buyer free of charge or at reduced costs for use in connection with the production and sale for export of imported goods (to the extent not already included) -

(i) Materials, components, parts and similar items incorporated in the imported goods;

(ii) Tools, dies, moulds and similar items used in the production of the imported goods;

(iii) Materials consumed in the production of the imported goods;

(iv) Engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

c) Royalties and the license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent the same is not included in the price actually paid or payable;

d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

e) All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller, to the extent that such payments are not included in the price actually paid or payable.

f) Cost of transport upto place of importation [rule 10(2)(a)]

g) Loading, unloading and handling charges associated with delivery of imported goods at place of importation (Also called as Landing Charges) [rule 10(2)(b)]

h) Cost of Insurance [rule 10(2)(c)]

Rule 10(3) and 10(4) provide that the additions under Rule 10 to the price actually paid or payable are to be made on the basis of objective and quantifiable data.

No other addition can be made to price actually paid or payable except as provided under Rule 10.

Explanatory Notes:

1. Buying Commission

Buying commission' refers to the fees paid by an importer to his agent for service of representing him aboard in purchase of goods being valued. The buying commission is not includible in the value of the imported goods as per Rule 10(1)(a)(i).

Hyderabad Industries Ltd. v. UOI 2000 - The assessee, a manufacturer of asbestos cement precuts, imported raw asbestos on high sea through MMTC a canalizing agent and paid them service charges @ 3.5%. It paid duty on such service charges also but subsequently claimed refund of such duty by treating such service charges as buying commission.

Held that the service charges paid to the canalizing agent cannot be equated with 'buying commission' because a canalizing agent is neither an agent of the importer nor does he represent the importer abroad. Hence, the service charges paid to canalizing agent were includible in the assessable value, as, such charges were not 'buying commission'.

2. Value of goods or services provided, free of charge or at reduced cost, by the buyer for production and sale of export goods - Interpretative notes to Rule 10(1)(b)

In case buyer is providing any goods or services free of charge or at reduced cost for production and sale of export goods, then, the valuation and apportionment thereof shall be done as under –

Valuation: If such goods were acquired by the buyer from an unrelated seller, the value thereof shall be purchase price, however, if such goods were produced by the buyer or were acquired from a related seller, the value shall be its cost of

production. If, in any of these cases, the goods had been used by the buyer-importer, prior to such supply, the purchase price/production cost will be suitably adjusted downward to arrive at a correct value reflecting such use.

Apportionment: The value determined in the aforesaid manner shall be apportioned to the imported goods in a reasonable manner following the generally accepted principles of accounting.

Based on the documentation provided by the importer and as per the option exercised by him, such value may be apportioned to the first shipment of import or to the goods produced up to the first shipment of import or to the entire anticipated production under the contract.

3. Technical Knowhow supplied by the buyer

Engineering, development, art work, design work, and plans and sketches undertaken by the buyer which necessary for the production of the imported goods is includible only if such work is undertaken outside India. The addition should be done on objective and quantifiable data.

Held that fees for supply of knowhow and documentation is includible in Assessable Value - CC v. Rockland Building Materials Ltd

Associated Cement Companies Ltd v. CC - It was held that 'drawings' are goods. Duty should be levied on 'value' of drawings and not merely on cost of media (i.e CD, Paper etc.)

4. Royalties and License fees

As per rule 10(1)(c), Royalty and Licence fees is added to the transaction value of the imported goods only if the following conditions are satisfied -

a) Such royalties or licence fees is related to the imported goods; and
b) The buyer is required to pay the same as a condition of the sale of the goods being valued.

Interpretative Notes:

a) The royalties and licence fees may include, among other things, payments in respect to patents, trademarks and copyrights.

b) **Reproduction royalty not covered:** However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

   For E.g.: Master copies of software like Photoshop, Windows OS are imported and arc licensed to be reproduced in India by the foreign owner of these software's. Charges for reproducing these software's will not be added to the price of imported software.

c) **Payment for distribution/re-selling rights:** Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale to the country of importation of the imported goods.

Objective and quantifiable data: Additions under Rule 10 can be made only on the basis of objective (i.e. unbiased) and quantifiable data. If such data do not exist, it would mean that transaction value cannot be determined under Rule 3.

Cost of transportation, insurance, loading, unloading and handling charges

Rule 10(2) provides that the following shall be included in the value of imported goods for delivery at the time and place of importation:

a) **Actual cost of transport of the imported goods to the place of importation:** However, in case the actual cost is unascertainable such cost shall be **20% of the FOB** value of the goods. In case of importation of goods by air, even if the actual cost of transport is ascertainable, the same shall not exceed 20% of FOB value of the goods.

Transportation cost form port of entry to ICD/CFS not includible: In case of goods imported by sea stuffed in a container for clearance at an Inland Container Deport or Container Freight Station, the cost of freight incurred in the movement from port of entry to the Inland Container depot or Container Freight Station shall not be included in the cost of transport.

Demurrage charges and lighterage or barge charges are includible:

In some cases, Ship is not brought upto jetty. Goods are discharges at outer anchorage. Charges for bringing the goods from outer anchorage are known as 'barge / lighterage charges.

Demurrage charges payable for not unloading the ship within specified time is includible in the cost of transport.

b) **Cost of insurance as actually incurred:** In case the cost of insurance is unascertainable, such
cost shall be 1.125% of the FOB value of the goods.

Tariff Value

Section 14(2) of the Customs Act, 1V62 empowers the CBEC to lix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Such tariff values are fixed through notification in the official gazette. At present tariff value has been fixed for some essential edible oils, brass, scrap etc.

Value in case of high sea sales

Section 14(1) provides that the value of goods shall be the transaction value i.e. the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.

Purchase on high sea basis means that the imported goods are acquired by a buyer from the original importer while they in the high seas i.e. the purchase takes place before they reach India.

In case of imported goods purchased on high sea sales basis, the price, at which the goods are acquired by the buyer from the original importer, can be the price for the delivery of such goods at the time and place of importation and, therefore, such price would be taken to be the value of such goods. In case of more than one high sea sales, the last sale price i.e. the actual high-seas-sale-contract price paid by the last buyer would be taken as the value of such goods.

Determination of duty where imported goods consist of articles liable to different rates of duty (Section 19)

In case the imported goods consist of a set of articles, the calculation of duty shall be in the manner given below –

a) In case of articles on which duty is leviable with reference to quantity, the duty shall be so charged

b) When the set consist of articles which are liable to duty with reference to value, they shall be chargeable to duty as under -

(i) In case they are liable to duty at the same rate, then the duty shall be charged at that rate.

(ii) If the articles in the set are liable to different rates of duty, they shall be chargeable to duty at the highest of such rates.

c) Even if some of the articles are not liable to duty, duty shall be charged at the highest of the rates specified in (b) above.

Articles liable at separate rates of duty if evidence as to separate values available: If -

- the importer produces evidence to the satisfaction of the proper officer or

- **the evidence is available (w.e.f. 8-4-2011)**

regarding the value of any of me articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Valuation of imported goods

Section 14(1) provides that the value of imported goods shall also include various items of costs and services to the extent provided by the rules. Hence, the value of imported goods shall be computed in accordance with section 14(1) read with the **Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**

Rule 3 of import valuation rules provides that the value of the imported goods shall be the transaction value adjusted in accordance with rule 10. However, where for any reason the transaction value cannot be determined, or, the same is not acceptable for any reason, then, the value shall be determined as per the following methods laid down in Rules 4 to 9, which are to be proceeded with sequentially -

a) Transaction value of Identical goods (Rule 4);
b) Transaction value of Similar goods (Rule 5);
c) Deductive value (Rule 7);
d) Computed value (Rule 8);
e) Residual Method (Rule 9);

Definitions:

Goods of same class or kind [Rule 2(l)(d)]

Goods of same class or kind means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods

Identical Goods [Rule 2(1) (d)]:

"Identical goods" means imported goods -

a) Which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods;
b) Produced in the country in which the goods being valued were produced; and
c) Produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

But shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Similar goods {Rule 2(1) (f)]:

"Similar goods" means imported goods -

a) Which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same function and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
b) Produced in the country in which the goods being valued were produced; and
c) Produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

But shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

Rule 4 - Determination of transaction value of identical goods

Transaction value of identical goods [Rule 4(1)]: If it is not possible to ascertain the transaction value of imported goods as per Rule 3 of Customs Import Valuation Rules, 2007, then, the value thereof shall be the transaction value of the identical goods, which are contemporaneous imports i.e. which are sold for export to India and imported at or about the same time as the goods being valued.

Provisionally assessed value, not to be taken: However, such transaction value of identical goods shall not be the value of such identical goods provisionally assessed under section 18 of the Customs Act, 1962.

Conditions: The transaction value of identical goods will be used in determining the value of imported goods only if such identical goods fulfill the following conditions:

1) They are in sale at the same commercial level; and
2) They are in substantially the same quantities as the goods being valued.

Adjustments when required: In case any of the above conditions is not fulfilled, transaction value in a sale of identical goods that takes place under any one of the following three circumstances may be used:

a) Sale at the same commercial level but in different quantities;

b) Sale at a different commercial level but in substantially the same quantities; or

c) Sale at a different commercial level and in different quantities.

However, in any of the aforesaid circumstance, adjustments will be made on the basis of demonstrated evidence in order to account for differences in prices arising due to sales at different commercial levels or in different quantities or both, whether such adjustment leads to an increase or decrease in the value.

Adjustment for difference in costs & charges referred to in Rule 10(2): Where the costs and charges mentioned in Rule 10(2) i.e. transport costs, landing charges and insurance cost, are included in the transaction value of identical goods and it is found that there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from the differences in distances and means of transport, adjustments shall be made to account for the same.

Lowest value to be taken [Rule 4(3)]: If more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of the imported goods.

Auto Stores v. Commissioner of Customs (Export), Mumbai |2015| 53 taxmann.com	Assessee imported various 'auto parts' most of which were unbranded and duplicate and were imported from China - Department rejected value on ground of heavy undervaluation and determined value on basis of Retail Sale Price of well-known brands, as declared by authorised service centres Held: Unbrandcd/duplicate parts are available at cheaper price and could not be comparable to well-known/branded; hence, value

129 (Mumbai CESTAT)	of unbranded/duplicate goods cannot be enhanced based on value of branded goods
Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)	Can the value of imported goods be increased if Department fails to provide evidence of import of identical goods at higher prices? The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

Valuation of similar goods under Rule 5

The same principles, as specified in Rule 4, are applicable for valuation of similar goods under Rule 5 of the Customs Import Valuation Rules, 2007

Rule 6- Determination of value where value cannot be determined under Rule 3 to 5

If the value of imported goods cannot be determined under the provisions of Rule 3 to 5, the value shall be determined under provisions of Rule 7 (Deductive Value) or when the value cannot be determined under Rule 7, then under Rule 8 (Computed Value). However, at the request of the importer, and with the approval of the proper officer, the order of application of Rules 7 and 8 shall be reversed.

Rule 7: Deductive value

The value will be determined under Rule 7 only when the following conditions are fulfilled-

1) Though the transaction value of the imported goods or identical or similar goods is not ascertainable, but the goods are sold in India alter importation.
2) The sale in India should be in the same condition as they are imported. In case neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the goods sold after further processing shall be considered, except where the value added by further processing cannot be ascertained separately.
3) The sale should be to unrelated persons.
4) The sales are made at or about at or about the time at which the declaration for determination of value is presented, or at the earliest date after importation but within a maximum of 90 days after import of the goods to be valued.
5) **Method of valuation and computation of deductive value:** The following table shows the method of valuation and deductive value-

Unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity.	Xxx
Less: The following deductions - a) Commissions; or Selling expenses, general expenses and selling profits b) Transport, insurance and associated costs within India. c) Customs duties, sales tax and other taxes levied in India. d) In case the value is based on unit price after further processing, the processing cost	 Xxx Xxx Xxx Xxx
Deductive Value	xxx

Valuation of goods cleared from a 100% EOU to a depot from where the sale to DTA is effected through consignment agents: Circular No. 933/23/2010 CX dated 16.08.2010 clarifies that the value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

Rule 8: Computed Value

Computed Value is possible when the importer in India and foreign exporter are closely associated and the foreign exporter is willing to give necessary costing data and provides subsequent clarifications.

Method of computation of computed value:

	Production/Processing cost of imported goods i.e. Cost or value of the materials and fabrication or other processing employed in producing the imported goods.	**Xxx**
	Add. Usual profit margin and general expenses i.e. an amount for profit and general expenses equal to that usually reflected in the sales of the goods of the same class or kind as the goods being valued, which are made by producers in the country of exportation for export to India.	**Xxx**

	Add: Costs and charges referred to in Rule (10(2) i.e. The cost of transport, the cost of insurance, and the loading and unloading and handling charges	**Xxx**
	Computed Value	**Xxx**

Rule 9: Residual method of valuation

According to this method, value is to be determined using reasonable means consistent with the principles and general provisions of these Rules and section 14 and the data available.

However, the value so determine shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale

Basis on which value cannot be determined under this rule [Rule 9(2)]: The following shall not be considered in determining the value under this method –

(i) The selling price in India of the goods produced in India,

(ii) A system which provides for the acceptance for customs purposes of the higher of the two alternative values.

(iii) Price of goods on the domestic market of the country of exportation

(iv) The cost of production other than the computed value of identical goods or similar gods as determined in rule 8.

(v) The price of the goods for the export to a country other than India,

(vi) Minimum customs values.

(vii) Arbitrary or fictitious values.

Thus, the value of imported goods determined in accordance with provisions of Rule 9 should, to the greatest extent possible be based on previously determined customs values, but a reasonable flexibility in the application of such methods would be allowed.

Examples of reasonable flexibility: Some examples of such reasonable flexibility are as follows:

a) **Identical / Similar goods:** The requirement of importation of identical / similar goods at or about the same time as the goods being valued may be flexibly interpreted; or goods produced in a country other than the country of exportation of imported goods may be taken as identical / similar goods; or customs values of identical / similar imported goods already determined under rules 7 and 8 could be used.

b) **Deductive method:** The requirement that the goods must have been sold in the "condition as imported" could be flexibly interpreted; or the 90 days requirement could be administered flexibly.

Declaration to be furnished by importer [Rule ll]

The importer or his agent shall furnish

a) A declaration disclosing full and accurate details relating to the value of imported goods; and
b) Any other statement, information or document as considered necessary by the proper officer for determination of the value of imported goods under these rules. The said statement, information or document includes an invoice of the manufacturer or producer of the imported goods where the

goods are imported from or through a person other than the manufacturer or producer.

The Customs officer has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes. The provisions of the Customs

Act, 1962 relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules

Rejection of declared value by customs officer [Rule 12]

When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence.

If, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of Rule 3(1). ***The provisions of Rule 12 overrides provisions of Rule 3.***

On importer's request, the proper officer shall intimate the importer, in writing, the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision.

(A) ***Reasons for which doubt may be raised:*** The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

- ***a)*** The significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- ***b)*** The sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- ***c)*** The sale involves special discounts limited to exclusive agents;
- ***d)*** The misdeclaration of goods in parameters such as description, quantity, country of origin, year of manufacture or production;
- ***e)*** The non-declaration of parameters such as brand, grade, specifications that have relevance to value;
- ***f)*** The fraudulent or manipulated documents.

Case Laws:

1. CC v J.D. Orgochem Ltd. (2008) (226) ELT 9 (SC)

- The asscssee imported certain goods at USS 13.2 per Kg. The same were earlier imported by the assessee at USS 18.7 per Kg
- Since the assessee was the only importer of such goods, the customs authorities, treating the earlier imports as contemporaneous imports, enhanced the value of the imported goods to USS 18.7 per kg.
- The assessce submitted that the due to lesser demand in the international market, the prices were declining. The evidences showing that the prices were further declining were also submitted.
- The Department contended that since the assessce had failed to prove the downward trend in international prices, therefore, the assessee's arguments were not acceptable.

Decision:

- The burden to prove that transaction value is not 'genuine' is on the department. The department must produce evidences of contemporaneous imports to reject invoice/transaction value.
- The contemporaneous imports have to be the imports made by other persons. The imports made earlier by the importer cannot be regarded as contemporaneous imports
- The assessee's submission that international prices have declined was to be considered.

Since the Department failed to produce contemporaneous evidence to reject transaction value, hence, the transaction value of US$ 13.2 per Kg. was acceptable

VALUATION OF EXPORT GOODS

Valuation of export goods - Section 14 (1)

The value of export goods shall be computed in accordance with the provisions of section 14(1) read with the **Customs Valuation (Determination of Value of Export Goods) Rules, 2007**

Rule 3 of the export valuation rules provides that the value of export goods shall be the transaction value. However, where for any reason the transaction value cannot be determined, or, the same is not acceptable for any reason, then, the value shall be determined as per the following methods laid down in Rules 4 to 6, which are to be proceeded with sequentially –

a) Determination of value by comparison or Comparative Value (Rule 4);
b) Computed Value (Rule 5);

c) Residual Method (Rule 6).

Rule 3-Transaction Value

The value of export goods shall be its transaction value. However, the transaction value may be rejected as per the provisions of Rule 8.

Valuation in case of related persons: The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

Valuation when transaction value not acceptable: In case the transaction value is not acceptable, the value will be determined proceeding sequentially through rule 4 to 6.

Rule 4 - Determination of value by comparison or comparative value

The value of the export goods shall be based on the transaction value of 'goods of like kind and quality' being contemporaneous exports i.e. exported at or about the same time to other buyers in the same destination country of importation or, in its absence, another destination country of importation, adjusted for the appropriate adjustments given below.

***Appropriate Adjustments*:** In determining the value of export goods as per the aforesaid provision, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

a) Difference in the dates of exportation,
b) Difference in commercial levels and quantity levels,
c) Difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,

d) Difference in domestic freight and insurance charges depending on place of exportation

"Goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person.

Rule 5 - Computed value

Computed value = cost of productions, manufacturer or processing of export goods + Charges, if any, for the design or brand + an amount towards profit.

Note: The Board has clarified that while determining the value under this rule, the proper officer shall give due consideration to the cost-certificate issued by a Cost Accountant or Charted Accountant or Government approved for determining the value of exports goods.

Rule 6 - Residual method

Where the value of the export goods cannot be determined under the provisions of rule 4 and 5, the value shall be determined using reasonable means consistent with the principals and general provisions of these rules. However, local market price of the export goods may not be the basis for determining the value of export goods.

Declaration by the exporter under Rule 7 and 8

Declaration by the exporter [Rule 7]

The exporter shall furnish a declaration contains various details regarding shipping bill, invoice, nature of transaction (sale/consignment/gift/sample/other), method of valuation, relationship between buyer and seller, terms of payment and delivery, etc.

Rejection of declared value [Rule 8]

When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with Rule 3.

At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relations to the export goods by such exporter and provides a reasonable opportunity of being heard, before taking a final decision.

Explanation to Rule 8

A) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.

B) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value based on certain reasons which may include -

a) Significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
b) The significantly higher value compared to the market value of goods of like kind and quality at the time of export.
c) The mis declaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

IMPORT AND EXPORT PROCEDURES

Flow pattern of import

Section 29: Arrivals of Vessels and aircrafts in India

The person-in-charge of the vessel or an aircraft shall not cause or permit the vessel or aircraft entering India from a place outside India to call or land at any place other than customs ports or customs airport, on its arrival for the first time in India or when it is carrying passengers or cargo brought in that vessel or aircraft.

Exceptions: However, in the case of any vessel or aircraft, which is compelled by accident, stress or weather or any other unavoidable cause, the person-in-charge can cause or permit the vessel or aircraft to call or land at any place other than customs ports or customs airports.

The Finance Act, 2013 has amended section 29(1) to empower CBEC to permit landing of vessels and aircrafts at any place other than customs port or customs airport.

The person-in-charge of a vessel or aircraft, which is compelled to land at a place other than customs port or customs airport due to stress of weather, is statutorily obliged under section 29(2)

a) To immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and, on demand, produce to him the log book belonging to the vessel or the aircraft;
b) Not to permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft without the consent of any such officer; and
c) To comply with any directions given by any such officer with respect to any such goods.

No passenger or member of the crew is allowed to leave the immediate vicinity of the vessel or the aircraft, without the consent of any such officer. However, where the departure of any crew or passenger from the vicinity of the vessel or aircraft or removal of the goods from the vessel or aircraft is necessary for reasons of health, safety or the preservation of life or property, they shall be allowed to so depart or permit to be removed from such vicinity.

Import General Manifest [section30]

According to Section 2(24) of the Customs Act, 1962 "import manifest" or "import report" means the manifest or report as required to be submitted under Section 30 of the Customs Act, 1962. Import manifest is filed in case of the vessel and aircraft while import report is filed in case of the vehicle.

Persons required to file the manifest / report: The following persons are required to file import general manifest / report -

a) The person-in-charge of the vessel, aircraft, vehicle; or

b) In case of vessel or aircraft, any other person as is notified by the Central Government.

The Central Government has notified that any person (other than a carrier) who is authorized to issue delivery orders in favour of the importer, on the basis of which goods are permitted to be delivered to such importer by the custodian of goods, can also file the import manifest / report. Thus, various authorities like the multi-model operators, break bulk agents, freight forwarders etc., dealing with the delivery of imported goods will now be able to file the import manifest / report,

Time limit for delivery of the Import Manifest / Report:

Import General Manifest (in case of vessels / Aircraft	Before arrival of vessel / aircraft	e-filing
Import report (vehicle)	Within 12 hours after arrival	Manual

The Commissioner of Customs may, in cases where it is not feasible to deliver export manifest by presenting electronically, allow the same to be delivered in any other manner **(w.e.f 10-05-2013)**

Registration of persons filing the Manifest: The person responsible for filing of the import manifest is required to register himself with the Jurisdictional Commissioner of Customs.

Penalty for not filing the import report / manifest: If the import report / manifest is not filed within the time limit specified above and the proper officer is not satisfied that there has been a sufficient cause for such delay, a penalty not exceeding Rs.50,000 is imposable.

Amendment / Supplementation of manifest / report: In case the proper officer is satisfied that the imports manifest / report is incorrect or incomplete and there was no fraudulent, he may permit such manifest / report to be amended or supplemented.

Subsequent amendment of IGM will not be treated as late filing. [CBIC's Customs Manual 2015, chapter 2] However, the CBIC has cautioned (circular *supra*) that this should not be used to circumvent the penal provisions for late filing.

Declaration as to truth of its contents: The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

Section 30A - Passenger and crew arrival manifest (w.e.f 01-04-2017)

(1) The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer -

I. the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and
II. the passenger name record information of arriving passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other person referred to in sub-section (1) shall be liable to such penalty, not exceeding Rs.50,000, as may be prescribed.

Entry inwards of the vessel [section 31]

1. The Master of the vessel shall not permit the unloading of the imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

2. The grant of 'entry inwards' by the proper officer depends up on the availability of berthing accommodation and it is not possible to hold that it is the duty of the proper officer to grant entry inwards forthwith.

3. The customs officer shall not give the order for entry inwards unless the import manifest has been filed or the proper officer is satisfied that there was sufficient cause for not delivering it.

4. This section shall not apply to the unloading of baggage accompanying a passenger or a member of the crew, mailbags, animals, perishable goods and hazardous goods.

Entry inwards date is crucial for the calculation of applicable rate of duty whenever bill of entry has been filed in advance.

The Supreme Court has, in **Bharat Surfactants (Pvt.) Ltd. v. UOI (1989) 43 ELT 189 SC,** held that the date of entry inward for the purpose of Section 15(1)(a) of the Customs Act, 1962 and the proviso thereto is the **date recorded in the Customs register and not the date of actual entry of the vessel.**

Imported goods not to be unloaded unless mentioned in import manifest / report - Section 32

No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at a^y customs station unless they are specified in such manifest or report for being unloaded at that customs station.

Unloading and loading of goods at approved places only — Section 33

Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under section 8(a) for the unloading or loading of such goods.

Goods not to be unloaded or loaded except under supervision of customs officer - Section 34

Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer

Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

Boat Note (or Restrictions on goods being water borne) [Section 35]

In case the vessel arriving at the port docks not get a berth, then, the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship, in boats.

No imported goods shall be water-borne for being landed from any vessel and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a boat-note in prescribed form.

The Board may give general permission and the proper officer may in any particular case give special permission for any goods to be water borne without being accompanied by any boat note.

Restrictions on unloading and loading of goods on holidays, etc. [Section 36]

No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any.

No fees shall be levied for the unloading and loading of baggage accompanying a(passenger or a member of the crew, and mail bags.

Power to board conveyances. [Section 37}

The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary.

Power to require production of documents and ask questions. [Section 38]

For the purposes of carrying out the provisions of this Act, the proper officer may require the person- in-charge of any conveyance or animal carrying imported goods or export goods to produce any document and to answer any questions and thereupon such person shall produce such documents and answer such questions.

Clearance of Imported Goods

As per Section 45 of the Customs Act, 1962, all the imported goods that are unloaded in the customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs (such persons may be the Port Trust Authorities or the Air Port Authorities or the Station Master).This person is called the custodian.

The goods will remain in the custody of the custodians till the time they are cleared for home consumption, or warehoused or are transshipped.

Duties of the Custodian: The person keeping the custody of the goods -

a) Shall keep a record of such goods and send a copy thereof to the proper officer

b) Shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer.

c) In pursuance to this responsibility, the custodian is required to tally the particulars of the goods landed by a vessel, and send a report known as out turn statement to the customs authorities. This enables the customs authorities to check whether all goods manifested in the import general manifest for landing in a place have actually been landed. In case of the goods are not so landed, action is taken against the carriers.

In case of pilferage of goods while in custody: If any imported goods are pilfered after unloading thereof in the customs area while in custody of the person as referred above, that person will be liable to pay duty on such goods at the rate prevalent on the date of delivery of import manifest / report to the customs officer for the arrival of the conveyance in which the said goods were carried.

Board of Trustees of the Port of Bombay v. UOI [2009] — Section 45(3) applies only to private custodians. In case any pilferage takes place while the goods are under the custody of a major port (or airport), the said major port/airport shall not be liable to pay any customs duty u/s 45(3).

Section 45(3) of the Customs Act, 1962 holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, the Port Trust, as bailee of the goods, is liable for value of the goods to the importer.

Forbes Forbes Campbell & Co Ltd v Board of Trustees of Port of Bombay (2014) 310 ELT 625, SC held that Demurrage and port charges are statutory charges, and

in absence of any restriction under Major Port Trust Act, the same can be collected from steamer agents.

Bill of Entry - Section 46

Bill of Entry is a certificate, which is delivered to the customs authorities by importers of goods giving particulars of such goods and the port or place from which they have been imported. It is the basic document for assessment of customs duty.

E-filing of Bill of Entry - The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting **electronic integrated declaration** to the proper officer a bill of entry for home consumption or warehousing in the prescribed form

Principal Commissioner / Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner.

(1) Bill of Entry for Home Consumption - Form I (White)

(2) Into Bond Bill of Entry for Warehousing - Form II (Yellow)

(3) Bill of Entry for Ex-bond clearance for home consumption - Form III (Green)

Entry is filed electronically, it is in four copies:

(a) **Original, meant for the customs authorities for assessment and collection of duty;**

(b) **Duplicate, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;**

(c) **Triplicate, as a copy for record for the importer; and**

(d) **Quadruplicate, as a copy to be presented to the bank or Reserve Bank of India for the purposes of making remittance for the imported goods.**

Declaration by Importer: The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

Time of presentation of the Bill of Entry: The importer shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

However, where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed, **(w.e.f 01-04-2017)**

CUSTOMS AUDIT [SECTION 99A]

In supersession of On-site Post Clearance Audit at Premises of Importer and Exporter Regulations, 2011, Government has notified Customs Audit Regulations, 2018. For this reason, a separate section 99A is introduced authorizing the proper officer to audit of assessment that has already been conducted at the time of customs clearance. Such audit is permitted to the carried out swiftly either at the premises of the auditee or at the office of the proper officer.

It may be noted that 'auditee' is defined in this section to include not only the principal (importer or exporter) but also persons concerning themselves with dealing with goods attracting section 12 of Customs Act.

In the 2018 Regulations, 'auditee' is defined in 2(c) to mean "a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods"

Salient feature of this audit procedure are as follows:

(i) Auditee is to preserve records for conduct of this audit for a period of five years

(ii) Risk based assessment will identify persons to be audited

(iii) Audit will be conducted at the premises of the auditee by the authorized officers who will intimate fifteen days in advance of their schedule visit

(iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable

(v) Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs

(vi) Contravention of these Regulations attracts penalty of ` 50,000

TYPES OF AUDIT-TRANSACTION BASED AUDIT (TBA) AND PREMISE BASED AUDIT (PBA)

Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed.

- ***TBA (audit of transactions): Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA).***
- ***PBA (audit at the premises): The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of Premises Based Audit by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or Theme for the audit.***

Selection criteria for audit:

Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.

Executive Commissionerates to assist Audit Commissionerates

The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Theme based audit and Premises based audit.

The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit. Apart from overall supervision, Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit Commissionerates to ensure that audit has been conducted as per prescribed procedures.

[Circular No. 02/2019-Cus dated 08.01.2019]

Section 47 - Clearance of goods for home consumption.

(1) Where the proper officer is satisfied that

- any goods entered for home consumption arc not prohibited goods and
- the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same,

the proper officer may make an order permitting clearance of the goods for home consumption.

Central Govt may by notification in official gazette permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules (Finance Act 2016 w.e.f 14-05-2016)

In this respect, Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers). AEO means Authorized Economic Operator certified by the Directorate General of Performance Management under CBEC.

(2) The importer shall pay the import duty -

a) on the date of presentation of the bill of entry in the case of self-assessment; or

b) within one day (excluding holidays) from the date on which the bill of entry is returned to
him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or

c) in the case of deferred payment under the proviso to sub-section (l)i from such due date as may be specified by rules made in this behalf,

and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than 10% but not exceeding 36% per annum, as may be fixed by the Central Government, by notification in the Official Gazette, on such duty till the date of its payment (w.e.f 01-04-2017)

Deferred Payment of Import Duty Rules. 2016 read with Circular No, 52/2016-Cus daled 15,U,2Q18

Information about intent to avail benefit of notification: An eligible importer intending to avail benefit of deferred payment shall intimate to Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer allow him to pay the duty by due dates.

Bill of Entry returned for payment	Due date of payment of duty, inclusive of the period as mentioned in Section 47(2) (excluding holidays)
1st day to 15th day of any month	16th day of that month
16th day till the last day of any month other than March	1st day of the following month
16th day till the 31st day of March	31st March

Electronic payment of duty: The eligible importer shall pay the duty electronically: However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment

Deferred payment not to apply in certain cases: If there is a default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry.

E-payment of duty: Central Government has. specified following classes of importers who shall pay customs duty electronically, namely:

(i) Importers registered under Accredited Clients Programme/AEO

(ii) Importers paying customs duty of Rs.1,00,000 or more per bill of entry.

Bill of Entry (Electronic Integrated Declaration Regulation, 2011

a) "authorised person" means an importer or a person authorised by him who has a valid licence under the Customs Brokers Licensing Regulations, 2013;

b) “bill of entry” means electronic Integrated declaration accepted and assigned a unique number by the Indian Customs Electronic Data Interchange System, and includes its electronic records or print outs;

c) “ICEGATE" means Indian Customs Electronic Data Interchange Gateway, an e-commerce portal of the Central Board of Excise and Customs;

(i) Importer or authorised person may enter the **electronic Integrated declaration** (Notification 45/2016 w.e.f 01-04-2016) in the Indian Customs Electronic Data Interchange System by himself through ICEGATE or by way of data entry through the service Centre by furnishing the particulars, in The electronic form provided at the website https:// www.icegate.gov.in

(ii) The bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the **electronic Integrated declaration** in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service Centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration.

(iii) After the completion of assessment, the authorised person shall present the original bill of entry (customs copy) and duty-paid challan and supporting import documents to the proper officer of customs for making an order permitting clearance, after examination of the imported goods if so required.

After making an order under regulation 5, the proper officer shall generate duplicate bill of entry (importer's copy) and the triplicate bill of entry (exchange control copy).

The original bill of entry (customs copy) along with supporting import documents shall be retained by the proper officer of customs and after suitable endorsements the duplicate bill of entry (importer's copy) and the triplicate bills of entry (exchange control copy) shall be handed over authorized person.

Note: Integrated Declaration under Indian Customs Single Window Project

- ✓ CBEC has taken-up the task of implementing Indian Customs Single Window Project' to facilitate trade. This project envisages that the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.

- ✓ The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India, Textile Committee etc. would be obtained online without the importer/exporter having to separately approach these agencies.

- ✓ This would be possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window would thus provide the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.

- ✓ This online clearance under Single Window Project has been rolled out at main ports and airports in Delhi, Mumbai, Kolkata and Chennai so far. It will be gradually extended across the country.

- ✓ CBEC has since developed the Integrated Declaration', under which all information required for import clearance by the concerned government agencies h3s been incorporated into the electronic format of the Bill of Entry.

- ✓ The Customs Broker or Importer shall submit the "Integrated Declaration" electronically to a single entry point, i.e. the Customs Gateway (ICEGATE). Separate application forms required by different PGAs would be dispensed with.

- ✓ The Integrated Declaration will be applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies will continue to apply.

- ✓ Apart from incorporating such forms, the Integrated Declaration will also include different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letterheads.

- ✓ Upon filing of the Integrated Declaration, the bill of entry will automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs. The Integrated Declaration has become effective from 1st April, 2016. [Circular No. 10/2016 Cus dated 15.03.2016]

Amendment of the Bill of Entry

Section 149 of the Act, gives discretionary powers to the proper any document presented in the customhouse. Hence, Bill of Entry can be amended in accordance with provisions of Section 149 of the Act.

However, in case the imported goods are cleared for home consumption or for deposit in a warehouse, the amendment of the Bill of Entry is not permissible except on the basis of the documentary evidence, which was in existence at the time the goods were cleared or deposited.

Substitution of Bill of Entry

The customs officer shall allow the substitution of the Bill of Entry for home consumption for a Bill of Entry for warehousing or vice versa only if he is satisfied that the revenue is not prejudicially affected and that there is no fraudulent intention,

Substituted Bill of entry to be in prescribed form: In case the importer seeks to substitute the Bill of Entry originally filed, he has to file a subsequent Bill of Entry in the prescribed form again along with the application for substitution.

Bharat Commerce & Industries Ltd. v. CC, the proper officer was held right in rejecting the application for substitution of the Bill of Entry for home consumption with the Bill of Entry for warehousing (into-bond) on the grounds that allowing it would have caused loss of revenue, as the request for substitution along with the substituted bill of entry duly filed in the prescribed form was received on a date when it was known that the rate of customs duty applicable was reduced.

Goods not cleared, warehoused or transshipped within 30 days after unloading

According to **Section 48,** the imported goods brought into India are to be cleared for home consumption, or warehoused or transshipped within 30 days from the date of the unloading thereof at the Customs Station or within such further time as the proper officer may allow.

If the goods are not so cleared or if the title to any imported goods is relinquished, such goods can be sold by the person having custody thereof after notice to the importer and with the permission of the proper officer.

However, in case of animals, perishable goods, hazardous goods, they can be sold at any time with the permission of the proper officer and in case of arms and ammunitions, they can be sold only as per the directions of the Central Government.

'Warehousing without warehousing' under the Customs Act, 1962 - Section 49 (w.e.f 01-04-2017)

Where, -

a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the AC / DC of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;

b) in the case of any imported dutiable goods, entered for warehousing, the AC / DC of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time, the goods may pending clearance or removal, as the case may be, be

permitted to be stored in a public warehouse for a period not exceeding 30 days:

The provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse Under this section

Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

Clearance of Export cargo

The procedure that is required to be followed by the exporter for clearing the export cargo is as under -

Entry of Goods for Exportation |Sec.50): The exporter of any goods shall make entry thereof by presenting electronically a shipping bill (in the case of goods to be exported in a vessel or aircraft) or electronically a bill of export (in the case of goods to be exported by land) to the proper officer in the prescribed form.

However, the commissioner of customs may, where it is not feasible to make an e-filing of shipping bill/ bill of export, allow presenting it in any other manner

Declaration: The exporter of any goods while presenting the shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

Clearance of goods for exportation [Sec.51]: The proper officer may make an order permitting clearance and loading of export goods for exportation (i.e. “let ship' or “let export” order) only when -

a) The shipping bill has been filed by the exporter;
b) The proper officer is satisfied that such goods are not prohibited goods; and
c) The exporter has paid the duty, if any, assessed on such goods any charges payable under this Act

Central Govt may by notification in official gazette permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules

Interest on delayed payment - *Where the exporter fails to pay the export duty, either in full or in part, by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below 5% and not exceeding 36% per annum, as may be fixed by the Central Government, by notification in the Official Gazette (w.e.f14-05-2016)*

Notice of Short-Export of Goods

According to the Notice of Short Export Rules, 1963, if any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the exporter shall, within seven days, from the date of departure of the conveyance by which such goods were exported, furnish the prescribed information to the proper officer in respect of such goods.

Section 17: Assessment of duty

(1) Self-assessment by importer or exporter: An importer entering any imported goods under section 46, or exporter entering any export goods under section 50, shall self-assess the duty, if any, leviable on such goods, except as otherwise provided in section 85.

(2) Verification by the proper officer and Examination/Testing of goods: The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Power to call for information/documents for verification:

For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be. can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information (w.e.f 01-04- 2017)

(3) Re-assessment of duty, if self-assessment not correct:

Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, re-assess the duty leviable on such goods, without prejudice to any other action which may be taken under this Act.

Reassessment contrary to self-assessment -Speaking order be passed within 15 days:

Where any re-assessment done is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing,

the proper officer shall pass a speaking order on the re-assessment, within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(4) Audit of assessment at officer's premises or premises of importer/exporter:

Where re-assessment has not been done or a speaking order has not been passed on reassessment, the proper officer may -

- audit the assessment of duty of the imported goods or export goods

- at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

Section 18 - Provisional assessment of duty

The proper officer may direct that the duty leviable on goods be assessed provisionally in the below

cases:

a) where the importer or exporter is unable to make self-assessment and makes a request in writing to the proper officer for assessment; or
b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
c) where the importer or exporter has produced all the necessary documents and furnished full information-but the proper officer deems it necessary to make further enquiry; or
d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.

The importer or exporter shall furnish such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed and the duty provisionally assessed.

If any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within prescribed time, and the proper officer shall finalise the provisional assessment within prescribed time and in prescribed manner [Sub- section (1A)].

(2) When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then -

a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest on the amount payable, consequent to the final assessment order or re-assessment order, at the rate fixed by the Central Government under section 28AB from the **first day of the month in which the duty is provisionally assessed till the date of payment thereof.**

(4) If any refundable amount is not refunded **within 3 months** from the date of assessment of duty finally or re-assessment of duty, there shall be paid an interest at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

The refund of duty and interest thereon is subject to the principle of unjust enrichment and shall be paid to the importer or the exporter, as the case may be, only if such amount is relatable to:

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.

In all other cases, the amount of such refund and interest shall be credited to the Consumer Welfare Fund [Sub-section 5].

Further, CBEC has issued following guidelines for provisional assessment vide Circular No. 38/2016 Cus dated 22.08.2016:

Wherever, duty is to be assessed provisionally, the importer shall:

a. **execute a bond in the prescribed form, for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed; and**

b. **furnish prescribed amount of security for the payment of the duty deficiency. No sureties shall be obtained. The security to be obtained shall be in the form of a bank guarantee or a cash deposit, as convenient to the importer.**

DUTY DRAWBACK

Duty Drawback u/s Section 74

Section 74 deals with the drawback of customs duty paid on articles, which are imported, and subsequently, re-exported.

(1) The goods must be capable of being easily Identified and must and import duty must have been paid thereon.

(2) The proper officer must have made an order permitting clearance of the goods for exportation:

- The goods must have been entered for export u/s 51, or,
- If it is to be exported as baggage a declaration of its contents by its owner u/s 77 must have been made, or,
- The goods must have entered for export by post u/s 82.

The goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16.

(3) 98% of the duty is re-paid as drawback: The goods imported are allowed to be re-exported with drawback claim for 98% of the duty paid on importation subject to the condition that the goods are not put to use.

(4) Time limit for re-export: In order to claim drawback under this section, the goods are to be entered for export within two years from the date of payment of duty on the importation thereof. However, the Board can extend the above period on sufficient cause been shown. It may be noted that the time period is related to the date of payment of duty and not date of importation.

(5) In the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty.

Identity of the goods

1. One of the important conditions is that the identity of the goods exported should be established as the one which has been imported earlier on payment of duty.
2. The authority who has to be satisfied in this behalf is the Assistant or Deputy Commissioner of Customs at the port of export.
3. The concerned authority can be satisfied:-

(a) primarily by physical examination of the goods

(b) and as alternative through the correspondence exchanged between the overseas seller of the goods and the Indian importer.

In the course of physical examination emphasis will be laid on

(i) description of the goods

(ii) quantity and weight

(iii) identifying markings/distinguishing features

(iv) original packing of the goods.

Where the goods are at the time of import itself, intended to re-export later, it is desirable to have the above aspects ascertained during the customs examination of the imported goods and recorded on the Bill of Entry. A certified copy of the Bill of Entry with the customs examination report showing the above factors is obtained at the port of import and produced to the customs authorities at the port of export. The customs authorities would physically examine the goods with reference to the above recorded examination report recorded at the time of import.

If identity is to be established through documents, the relevant materials are: -

(i) import documents including indent, acceptance, contract, invoice, packing specification, payment documents, triplicate copy of Bill of Entry, insurance and or other survey reports;

(ii) correspondence covering the circumstances necessitating return of the goods, the importation/test report thereon, the letter to supplier posing the problem and the subsequent full correspondence;

(iii) the terms and conditions on which the supplier is prepared to take the goods back, the financial settlement for the cost of the goods, import duty paid on the goods and all the

expenditure incurred by the importer on the goods.

(iv) the clearance of appropriate authorities for the re-export and settlement of the financial aspect, whether refund or credit of cost etc. or free replacement etc.

Power to make rules under section 74: Central Government is empowered to make rules for the purpose of carrying out the provision of section 74 and in particular such rules may provide for the following:

(a) Establishing the manner of identification of goods imported in different consignments which are ordinarily stored together in bulk;

(b) Specifying the goods which shall be deemed to be not capable of being easily identified and

(c) The manner and the time within which a claim for payment of drawback is to be filed

Drawback in case of goods which are exported after being put to use

Section 74(2) empowers the Central Government to fix the rate of drawback in case of those gcods, which are exported after having been put to use subsequent to their importation, after giving due consideration to the duration of use, the depreciation in value and other relevant circumstances.

The drawback rates, in respect of goods taken into use after importation, as notified by the Central Government are as under –

(i) Wearing Apparel;

(ii) Tea Chests;

(iii) Exposed cinematograph films passed by Board of Film Censors in India.

(iv) Unexposed photographic films, paper and plates, and X-ray films.

It implies that if these goods are not used after their importation into India and subsequently re-exported in the condition they were imported, then they would be entitled to 98% drawback.

Reduced drawback rates having regard to duration of use:

Even if imported goods are merely tested though not used, it will be treated as "used" after importation.

Following percentages have been fixed as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control.

Length period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.	**% of import duty to be paid as Drawback**
Not more than 3 months	**95%**
More than 3 months but not more than 6 months	**85%**
More than 6 months but not more than 9 months	**75%**
More than 9 months but not more than 12 months	**70%**
More than 12 months but not more than 15 months	**65%**

More than 15 months but not more than 18 months	**60%**
More than 18 months	**NIL**

Special rate of drawback in respect of motor vehicles: Having regard to the international practice, a different percentage of import duty to be paid as drawback has been prescribed in the case of motor vehicles and goods imported by the person for his personal and private use.

(i) **If the car or specified goods are re-exported immediately:** 98% of the duty paid is refundable.

(ii) **If the car or specified goods are re-exported after being used:** Percentage of reduction of the drawback is related to use of the motor vehicle per quarter as under:-

S.No.	Year	**Drawback of duty shall be calculated by reducing the import duty by**
1.	1st	4% per quarter or part thereof
2.	2nd	3% per quarter or part thereof
3.	3rd	2 ½ % per quarter or part thereof
4.	4th	2% per quarter or part thereof

It has been specifically provided that where such cars are exported after the

expiry of the period of two years, the drawback would be allowed only if the Central Board of Indirect taxes and Customs, on sufficient cause being shown, extends the period for expiry beyond two years. It is further provided that no drawback shall be allowed if such motor car or goods have been used for more than four years.

Note: Anti-dumping duty, Safeguard duties and countervailing duties are rebatable as duty drawback.

Drawback on goods imported for personal use and subsequently re-exported

In respect of a motor car or goods imported by a person for his personal and private use, drawback of duty shall be calculated by reducing the import duty paid in respect of such motor car or goods by 4%, 3%, 2.5% and 2% for use for each quarter or part thereof during the period of first year, second year, third year, and fourth year respectively.

Where the period aforesaid is more than 2 years, drawback shall be allowed, only if the Board, on sufficient cause being shown, has in that particular case extended the period beyond 2 years. Further, no drawback shall be allowed if such motorcar or goods has or have been used for more than 4 years.

RE-EXPORT OF IMPORTED GOODS (DRAWBACK OF CUSTOMS DUTIES) RULES, 1995

Procedure for claiming drawback on goods exported by post [Rule 3]

Goods exported by post

Where goods are to be exported by post under a claim for drawback,-

(a) the outer packing shall carry the words "DRAWBACK EXPORT".

(b) the exporter shall deliver to the competent Postal Authority a claim in the prescribed form.

Date of filing of drawback claim for the purpose of section 75A:

In case of export by post, the date of filing of drawback claim for the purpose of section 75A would be the date on which the aforesaid claim form is received by the proper officer of customs from the postal authorities.

Deficiencies in the claim: In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within 15 days by a deficiency memo and such claim shall be deemed not to have been received.

When the exporter complies with the requirements specified in deficiency memo within 30 days, he shall be issued an acknowledgement.The date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

Statements/Declarations to be made on exports other than by post [Rule 4]: In the case of exports other than by post, the exporter shall at the time of export of the goods:-

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under

section 74 and make a declaration on the relevant shipping bill or bill of export that-

(i) the export is being made under a claim for drawback under section 74 of the Customs Act;

(ii) that the duties of customs were paid on the goods imported;

(iii) that the goods imported were not taken into use after importation;

or

(iii) that the goods were taken in use :

However, the Principal Commissioner/Commissioner of Customs may exempt the exporter or his authorized agent from the provisions of this clause if he is satisfied that failure to comply with the said provisions is due to the reasons beyond his (exporter/authorized agent) control.

(b) furnish to the proper officer of customs, copy of the Bill of Entry or any other prescribed document against which goods were cleared on importation, import invoice, documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary.

Manner and time of claiming drawback on goods exported other than by post [Rule 5]

(a) Time-limit for filing drawback claim

A claim for drawback under these rules shall be filed:-

- in the prescribed form
- within **three months** (extendable by another three months)

from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

Extension of the aforesaid time-limit

Authority	Period of extension	Application fee	Grant/ refuse of extension
Assistant/Deputy Commissioner of Customs	three months	(i) 1% of the FOB value of exports or (ii) ` 1000/- whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of Customs	further extension of six months	(i) 2% of the FOB value of exports or (ii) ` 2000/- whichever is less	

(b) **Documents to be filed alongwith drawback claim:** The claim shall be filed alongwith the following documents, namely:-

(a) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.

(b) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.

(c) Import invoice.

(d) Evidence of payment of duty paid at the time of importation of the goods.

(e) Permission from Reserve Bank of India for re-export of goods, wherever necessary.

(f) Export invoice and packing list.

(g) Copy of Bill of lading or Airway bill.

(h) Any other documents as may be specified in the deficiency memo.

(c) **Date of filing of the claim for the purpose of section 75A:** The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims.

(d) **Deficiencies in the claim:** In case of incomplete claim/claim without the specified documents, such claim shall be returned to the claimant with the deficiency memo within 15 days of submission and shall be deemed not to have been filed.

Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).

Under the GST regime, goods upon import shall be subject to integrated tax and compensation cess in terms of sections 3(7) and 3(9) respectively of the CTA, 1975. Further, in terms of section 3(12) of the CTA, 1975, the provisions of the Customs Act, 1962 and rules and regulations made thereunder relating *inter alia* to drawback shall apply to integrated tax and compensation cess also. Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with

basic customs duty, etc.

Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc. *[Notification No. 57/2017 Cus (NT) dated 29.06.2017 read with Circular No. 21/2017-Cus dated 30.06.2017]*

Section 75:

1. Section 75 deals with drawback in case of imported materials used in manufacture of goods which are exported.
2. As per the new rules, drawback refers to rebate of duty paid on imported materials.
3. Drawback is allowed on export of goods at an amount or rate determined by Central Government.
4. No drawback is allowed if the goods have been taken into use after manufacture. However, tea cherts can be used as packing material for export of tea. Further, drawback is not allowed in the following cases:
   a) Import duty not paid
   b) On jute batching oil used in manufacture of jute yarn, thread and ropes (Jute batching oil used to make jute yarn , thread and ropes stronger)
5. Central Government shall determine the amount of drawback based on various parameters such as quantity, value, duty, waste, etc. Further CG will also specify the period upto which such drawback is allowed.
6. If drawback is not determined by CG, then exporter can apply to Principal Commissioner or Commissioner and exporter can also ask for provisional drawback. Then Commissioner shall determine accordingly.
7. If the exporter finds the amount of drawback low then he can apply for increase in cases where drawback is less than 80% of duties paid on imported materials.

8. No drawback shall be determined if export value is less than the value of imported materials (or) is not more than such % of the value of materials used in the manufacture of goods.
9. The upper limit of drawback is 1/3 of market price of exported goods.
10. Customs officer has power to require various information and documents and he can also access the premises where the goods are manufactured.
11. In case of goods exported by port, there should be words mentioned "Drawback export". If other than port, then statement is declared on export document, i.e., Shipping Bill (or) Bill of Export.
12. Drawback if any, shall be paid along with interest if applicable. If the drawback paid is less than what he is entitled, then he can file a supplementary claim.
13. If any excess drawback is paid, then it will be recovered by the government along with interest.
14. No drawback of duty shall be allowed under this section if any drawback has been allowed on any goods and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act (FEMA). In such a case, the drawback shall be deemed never to have been allowed and the Central Government, may, by rules made under sub-section (2) specify the procedure for the recovery or adjustment of the amount of such drawback.
15. In this regard, Central Government is empowered to prescribe the circumstances under which duty drawback would not be disallowed even though the export remittances are not received within the period allowed under FEMA.

Section 75(1A): Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which any operation has been carried out in India and exported outside India, then the Central Government, may, by notification in the Official Gazette declare that so much of the material as is contained in the goods exported shall for the purpose of sub-section (1) be deemed to be imported material.

Drawback [Rule 3]: Subject to the provisions of the Customs Act, 1962, the Central Excise Act, 1944, and the rules made there-under; and these rules [Drawback rules], a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government.

However, where any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid; or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained.

Factors considered while determining amount/rate of drawback: In determining the amount or rate of drawback under this rule, the Central Government shall have regard to -

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.

(b) the average quantity or value of the imported materials or

excisable materials used for production or manufacture in India of a particular class of goods.

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents.

However, if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted.

(e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods.

(f) any other information which the Central Government may consider relevant or useful for the purpose.

Revision of rates [Rule 4]: The Central Government may revise amount or rates determined under rule 3.

Determination of date from which the amount or rate of drawback is to come into force and the effective date for application of amount or rate of drawback [Rule 5]:

- The Central Government may specify the period upto which any amount or rate of drawback determined under rule 3 or revised under rule 4, as the case may be, shall be in force.
- Where the amount or rate of drawback is allowed with retrospective effect, such amount or rate shall be allowed from such date as may be specified by the Central Government by

notification in the Official Gazette which shall not be earlier than the date of changes in the rates of duty on inputs used in the export goods.

- The provisions of section 16, or section 83(2), of the Customs Act, 1962 shall determine the amount or rate of drawback applicable to any goods exported under these rules.

Cases where amount or rate of drawback has not been determined [Rule 6]:

Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within 3 months from the date relevant for the applicability of the amount/rate of drawback, apply to the Principal Commissioner/ Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

However, in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner/ Commissioner of Customs, having jurisdiction over any one of the said places of export.

On receipt of an application, the Principal Commissioner/ Commissioner of Customs, as the case may be, shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

Provisional drawback:

While making an application under this rule, an exporter may apply for a provisional amount of drawback pending determination of the amount or

rate of drawback.

The Principal Commissioner/ Commissioner of Customs, may, after considering the application, allow provisionally payment of an amount not exceeding the amount claimed by the exporter in respect of such export.

For the said purpose, he may require the exporter to enter into a general bond for such amount, and subject to such conditions, as he may direct; or to enter into a bond for an amount not exceeding the full amount claimed by such exporter as drawback in respect of a particular consignment and binding himself to refund the amount so allowed provisionally, if for any reason, it is found that the duty drawback was not admissible; or to refund the excess, if any, paid to such exporter provisionally if it is found that a lower amount was payable as duty drawback. The bond may be required to be furnished with prescribed surety or security.

When the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such exporter shall repay to the Principal Commissioner/ Commissioner of Customs, as the case may be, the excess or be entitled to the deficiency, as the case may be.

Revocation of or direction to withdraw the rate/ amount of drawback determined under this rule:

Where the Central Government considers it necessary so to do, it may revoke the rate of drawback/ amount of drawback determined under this rule or may direct the Principal Commissioner/ Commissioner of Customs to withdraw the rate of drawback or amount of drawback determined.

Explanation - For the purpose of this rule, **"place of export"** means customs station or any other place appointed for loading of export goods

under section 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

Cases where amount or rate of drawback determined is low [Rule 7]:

Where, in respect of any goods, the exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods is less than 80% of the duties paid on the materials or components used in the production or manufacture of the said goods, he may, except where a claim for drawback under rule 3 or rule 4 has been made, within 3 months from the date relevant for the applicability of the amount or rate of drawback, make an application to the Principal Commissioner/ Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

However, in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner/ Commissioner of Customs, having jurisdiction over any one of the said places of export.

Extension of the time-limits prescribed under rule 6 & 7:

Authority	**Period of extension**	**Application fee**	Grant/ refuse of extension
Assistant/Deputy Commissioner of Customs	three months	(i) 1% of the FOB value of exports or	The concerned authority may, on an application and after making such enquiry

		(ii) ` 1000/- whichever is less	as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of Customs	further extension of six months	(i) 2% of the FOB value of exports or (ii) ` 2000/- whichever is less	

On receipt of the application, the Principal Commissioner/ or Commissioner of Customs, as the case may be, may, after making or causing to be made such inquiry as it deems fit, allow payment of drawback to such exporter at such amount or at such rate as may be determined to be appropriate, if the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, is in fact less than 80% of such amount or rate determined under this sub-rule.

Provisional drawback:

Provisional drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs and where the exporter desires that he may be granted further drawback provisionally, he may, while making an application, apply to the Principal Commissioner/ Commissioner of Customs, in this behalf in the manner as has been provided in rule 6 for the application made under that rule along with details of provisional drawback already paid and the grant of further provisional

drawback shall be considered in the manner and subject to the conditions as specified in rule 6, subject to the condition that bond required to be executed by the claimant shall only be for the difference between amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 by the Central Government and the provisional drawback authorised by the Principal Commissioner/ Commissioner of Customs under this rule.

Revocation of or direction to withdraw the rate/ amount of drawback determined under this rule:

Where the Central Government considers it necessary so to do, it may revoke the rate of drawback/ amount of drawback determined under this rule or may direct the Principal Commissioner/ Commissioner of Customs to withdraw the rate of drawback or amount of drawback determined.

Explanation - For the purpose of this rule, **"place of export"** means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

Note: CBIC has clarified that since safeguard duties and countervailing duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the Customs & Central Excise Duties Duties Drawback Rules, 1995.

This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties/countervailing duties are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties/countervailing duties as part of total duties paid, subject to fulfillment of other conditions.

Cases where no amount or rate of drawback is to be determined [Rule 8]: No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the

export value of each of such goods or class of goods in the bill of export or shipping bill is

(i) less than the value of the imported materials used in the manufacture of such goods or class of goods, or

(ii) is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

- **Upper limit of drawback amount or rate [Rule 9]:** The drawback amount or rate determined under rule 3 shall not exceed one third of the market price of the export product.

- Power to require submission of information and documents [Rule 10]: For the purpose of -

(a) determining the class or description of materials or components used in the production or manufacture of goods or for determining the amount of duty paid on such materials or components; or

(b) verifying the correctness or otherwise of any information furnished by any manufacturer or exporter or other persons in connection with the determination of the amount or rate of drawback; or

(c) verifying the correctness or otherwise of any claim for drawback; or

(d) obtaining any other information considered by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, to be relevant or useful,

any officer of the Central Government specially authorised in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of

Customs, as the case may be, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer.

- **Access to manufactory [Rule 11]:** Whenever an officer of the Central Government specially authorised in this behalf by an Assistant Commissioner/ Deputy Commissioner of Customs, as the case may be, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under these rules.

- **Procedure for claiming drawback on goods exported by post [Rule 12]:** Where goods are to be exported by post under a claim for drawback under these rules, -

  (a) the outer packing carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT";

  (b) the exporter shall deliver to the competent Postal Authority, along with the parcel or package, a claim in the Form at Annexure I, in quadruplicate, duly filled in.

  The date of receipt of the aforesaid claim form by the proper officer of Customs from the postal authorities shall be deemed to be date of filing of drawback claim by the exporter for the purpose of section 75A and an intimation of the same shall be given by the proper officer of Customs to the exporter in such form as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may prescribe.

- **Statement/Declaration to be made on exports other than by Post [Rule 13]:** In the case of exports other than by post, the exporters shall at the time of export of the goods -

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that -

(i) a claim for drawback under these rules is being made;

(ii) in respect of duties of Customs and Central Excise paid on containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities.

However, if the Principal Commissioner/ Commissioner of Customs, as the case may be, is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause;

(b) furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.

Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that -

(a) there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and

(b) the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

- **Manner and time for claiming drawback on goods exported other than by post [Rule 14]:** Electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback or triplicate copy of the shipping bill for export of goods under a claim of drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

  The said claim for drawback should be accompanied by the following documents, namely:

  (i) copy of export contract or letter of credit, as the case may be;

  (ii) copy of ARE-1, wherever applicable;

  (iii) insurance certificate, wherever necessary; and

  (iv) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under rule 6 or rule 7 of these rules.

  If the said claim for drawback is incomplete in any material particulars or is without the documents specified above, shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the

case may be, within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed in this rule for the purpose of section 75A.

For computing the period of 1 month prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than 1 month, shall be excluded.

Payment of drawback and interest [Rule 15]: The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.

The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.

The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment -

(a) by cheque, the date of issue of such cheque; or

(b) by credit in the exporter's account maintained with the Custom House, the date of such credit.

- **Supplementary claim [Rule 16]:** Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government/ Principal Commissioner/ Commissioner of Customs, as the case may be, he may prefer a supplementary claim in the specified form.

However, the exporter shall prefer such supplementary claim within a period of 3 months:

(i) where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the Official Gazette;

(ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;

(iii) in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.

Extension of the time-limit

Authority	Period of extension	Application fee	Grant/ refuse of extension
Assistant/Deputy Commissioner of Customs	three months	(i) 1% of the FOB value of exports or (ii) ` 1000/- whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of Customs	further extension of six months	(i) 2% of the FOB value of exports or (ii) ` 2000/- whichever is less	

The date of filing of the supplementary claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

Repayment of erroneous or excess payment of drawback and interest

[Rule 17]:

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962.

- **Recovery of amount of drawback where export proceeds not realized [Rule 18]:** Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (FEMA), including any extension of such period, such drawback shall, except under circumstances or conditions specified in in this rule, be recovered in the manner specified below.

  However, the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the DTA to a SEZ.

  If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Deputy/Assistant Commissioner of Customs shall issue a notice to the exporter to produce evidence of realisation of export proceeds within 30 days. Where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within

thirty days of the receipt of the said order. Recovery of drawback will be effected in case of non – receipt of payment from the consignee, based on R.E.I. or bank certificate.

However, such recovery shall not be made in case the non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

If export proceeds are not realized, duty drawback allowed can be recovered even if proceedings under FEMA are dropped.

- **Power to relax [Rule 19]:** Any relaxation in procedure may be made by the Government after recording the reasons in writing.

Interest on drawback

(1) Section 75A provides for interests on drawback. The relevant provisions are as follows -

Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A (6%) from the dale after the expiry of the said period of 1 month till the date of payment of such drawback.

(2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act, the claimant shall,

- within a period of 2 months from the date of demand,
- pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA (15%) and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

PROHIBITION AND REGULATION OF DRAWBACK [SECTION 76]

(a) Notwithstanding anything herein before contained, no drawback shall be allowed

(i) in respect of any goods, the market price of which is less than the amount of drawback due thereon,

(ii) where the amount of drawback in respect of any goods is less than fifty rupees. [Sub-section (1)]

(b) Without prejudice to the provision of sub- section (1), if the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this chapter are likely to be smuggled back into India, it may by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

The market price is as prevailing in India and not the price which exporter expects to receive from the foreign customer *[Om prakash Bhatia v. CC 2003(155) ELT 423 (SC)].*